



**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 11 May 2020**

**on amendments to Latvian national security, emergency situation and mobilisation laws  
(CON/2020/15)**

**Introduction and legal basis**

On 9 April 2020 the European Central Bank (ECB) received a request from the Ministry of Finance of the Republic of Latvia for an opinion on three draft laws: (a) a draft law amending the Law on national security<sup>1</sup>; (b) a draft law amending the Law on emergency situations and states of exception<sup>2</sup>; and (c) a draft law amending the Law on mobilisation<sup>3</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 on the third and fifth indents of Article 2(1) of Council Decision 98/415/EC<sup>4</sup>, as the draft laws relate to the Latvijas Banka, and payment and settlement systems as well as 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 laws**

**1.1 *Purpose of the draft law amending the Law on national security***

1.1.1 The general aim of the draft law amending the Law on national security is to set out the vital or critical services which are important for the functioning of the State and the public and to ensure their continuity in case of a threat to national security.

1.1.2 This draft law amends the definition of 'critical infrastructure' by providing that a critical infrastructure includes not only objects and systems located in Latvia, as already provided by the current wording of the Law on national security<sup>5</sup>, but also services provided in Latvia which are important for ensuring the carrying out of important public functions, human health protection, security, economic or social welfare, the destruction of or interference with which would significantly affect the carrying out of such State and public core functions.

1.1.3 The draft law adds a provision that the owner or legal possessor of a critical infrastructure, including a European critical infrastructure, must take the minimum measures necessary to ensure

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1 *Grozījumi Nacionālās drošības likumā.*

2 *Grozījumi likumā "Par ārkārtējo situāciju un izņēmuma stāvokli".*

3 *Grozījumi Mobilizācijas likumā.*

4 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).

5 See Article 22.<sup>1</sup>(1) of the Law on national security.

security and operational continuity. The existing wording of the Law on national security only provides that the owner or legal possessor of a critical infrastructure, including a European critical infrastructure, must ensure planning and implementation of security measures and operational continuity<sup>6</sup>.

- 1.1.4 The draft law includes a dedicated new section, introducing a concept of ‘critical financial sector services’, defined to include cash and non-cash settlement services provided in the Republic of Latvia by a credit institution licensed or registered in a European Union Member State. Thus, based on the amended definition of ‘critical infrastructure’, which under the draft law includes not only objects and systems located in Latvia, but also services provided in Latvia, critical financial sector services would be considered as part of a critical infrastructure. In order to ensure the availability of critical financial sector services in case of a threat to national security, a credit institution must develop an operational continuity plan stipulating the obligations of outsourced service providers used by the credit institution to ensure cash and non-cash settlements and must submit this plan to the Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission (FCMC)).
- 1.1.5 Under the draft law, the FCMC establishes (a) the criteria for identifying credit institutions ensuring the availability of critical financial sector services in case of a threat to national security; (b) the minimum scope of critical financial sector services in case of a threat to national security; and (c) the requirements for developing credit institutions’ operational continuity plans.
- 1.1.6 The FCMC, in cooperation with Latvijas Banka, will (a) monitor and control the development and implementation of credit institutions’ operational continuity plans in case of a threat to national security; and (b) evaluate the test results of credit institutions’ operational continuity plans.
- 1.2 *Purpose of the draft law amending the Law on emergency situations and states of exception*
- 1.2.1 The general aim of the draft law amending the Law on emergency situations and states of exception is to ensure the continuity of the functioning of the State during emergency situations and states of exception, providing for additional restrictions on rights to be imposed during a state of exception, expanding the rights of the Cabinet of Ministers and elaborating on the procedure for changing the appropriation of the State budget for the current year.
- 1.2.2 The draft law contains provisions related to the withdrawal of cash for overcoming a threat to national security. In particular, it provides that State institutions responsible for overcoming a threat to national security may receive cash from the Latvian State Treasury account in Latvijas Banka and Latvijas Banka will disburse cash to such institutions within the limits of the balance of the Latvian State Treasury account with Latvijas Banka. The abovementioned institutions shall repay the unused cash to Latvijas Banka, and Latvijas Banka shall accept it and credit it to the Latvian State Treasury account with Latvijas Banka.
- 1.3 *Purpose of the draft law amending the Law on mobilisation*
- 1.3.1 The general aim of the draft law amending the Law on mobilisation is to provide for exceptions for the conscription of certain officials and providers of critical or vital services into active military service.

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<sup>6</sup> See Article 22.<sup>1</sup>(4) of the Law on national security.

- 1.3.2 The draft law specifically provides that the Governor, Deputy Governor and Members of the Council of Latvijas Banka as well as the Chairman and Members of the Council of the FCMC are exempt from conscription into active military service.
- 1.3.3 The draft law also provides that depending on the type, intensity and nature of threats to the State, the Cabinet of Ministers may grant mobilisation exceptions to other officials, employees or persons having an employment relationship with a person ensuring the continuity of critical infrastructures or critical financial sector services of the State and local government institutions.

## 2. Observations

- 2.1 The ECB notes that under Article 127(6) of the Treaty and Council Regulation (EU) No 1024/2013<sup>7</sup> specific tasks concerning the prudential supervision of credit institutions have been conferred upon the ECB. In particular, the ECB carries out the task of authorising and withdrawing the authorisations of all credit institutions. For significant credit institutions the ECB also has the task, among others, to ensure compliance with relevant Union law imposing prudential requirements on credit institutions, including the requirement to have in place robust governance arrangements, such as sound risk management processes and internal control mechanisms<sup>8</sup>. To this end, the ECB is given all supervisory powers to intervene in the activity of credit institutions that are necessary for the exercise of its functions. As previously noted by the ECB, pursuant to the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the Member States are obliged to assist the ECB in carrying out tasks which flow from the Treaties. This implies that Member States should refrain from taking any measures which could jeopardise the ECB's objectives. As the tasks related to critical financial sector services which the draft law amending the Law on national security assigns to the FCMC have been partially conferred upon the ECB, the national legislative bodies might consider clarifying that the relevant provisions of that draft law are without prejudice to the tasks and powers conferred on the ECB for prudential supervisory purposes under the Treaty and Regulation (EU) No 1024/2013<sup>9</sup>.
- 2.2 The ECB understands that the term 'critical infrastructure' under the draft law amending the Law on national security does not include financial market infrastructures, including payment, settlement and clearing systems and central securities depositories, operated and/or overseen by Latvijas Banka, whether in the framework of the Eurosystem and the European System of Central Banks (ESCB), or otherwise. The ECB understands that the term 'critical infrastructure' under that draft law only includes physical objects, systems and parts thereof located in Latvia as well as services provided in Latvia which are of significance for ensuring the implementation of important public functions, as well as human health protection, security, economic or social welfare and destruction of or interferences in the operation of which would significantly affect the implementation of State functions. IT systems are governed by the Law on the security of Information Technologies<sup>10</sup>,

<sup>7</sup> 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).

<sup>8</sup> See Article 4(1)(e) and Article 6(4) of Regulation (EU) No 1024/2013.

<sup>9</sup> See paragraphs 2.1 and 2.6 of Opinion CON/2020/2. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>10</sup> Informācijas tehnoloģiju drošības likums.

which implements Directive (EU) 2016/1148 of the European Parliament and of the Council<sup>11</sup> into Latvian law. The ECB therefore understands that the only financial market activity covered by the definition of 'critical infrastructure' under the draft law amending the Law on national security comprises 'critical financial sector services', consisting of cash and non-cash settlement services provided in Latvia by credit institutions licensed (registered) in a Union Member State. However, for the avoidance of doubt, the national legislative bodies might wish to consider explicitly clarifying in the draft law that the term 'critical infrastructure' excludes all financial market infrastructures operated and/or overseen by the Latvijas Banka, whether in the framework of the Eurosystem and the ESCB, or otherwise.

- 2.3 The ECB understands that the draft law amending the Law on mobilisation allows the Cabinet of Ministers to grant mobilisation exceptions to other officials, employees and persons having an employment relationship with entities which ensure the continuity of critical infrastructures or critical financial sector services of a State and local government institutions, depending on the type, intensity and nature of endangerment to the State. The national legislative bodies might consider explicitly clarifying in the draft law that officials, employees and persons having an employment relationship with Latvijas Banka who perform tasks required for continuity of critical financial sector services provided by credit institutions may also be granted mobilisation exceptions by the Cabinet of Ministers.

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

Done at Frankfurt am Main, 11 May 2020.

[signed]

*The President of the ECB*

Christine LAGARDE

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<sup>11</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).