



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 17 April 2020

on the identification and reporting by financial institutions of the  
allocation of sums deposited in savings accounts

(CON/2020/12)

### Introduction and legal basis

On 20 February 2020 the European Central Bank (ECB) received a request from the Secretariat of the Belgian Parliament's Commission of Economy on a draft law amending the Belgian Code of Economic Law<sup>1</sup> (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 indent of Article 2(1) of Council Decision 98/415/EC<sup>2</sup>, as the draft law relates to the Banque Nationale de Belgique/Nationale Bank van België ('NBB') and the ECB's tasks 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 The draft law imposes a duty on financial institutions to identify the allocation of sums deposited on savings accounts in their balance sheets. According to the explanatory memorandum, the purpose of this obligation is to encourage transparency, higher ethical standards and greater control in the Belgian banking sector.
- 1.2 Pursuant to the draft law, financial institutions would have to draft a report each year on the allocation of those sums. This report would be filed with the NBB. Under the draft law, the report would also be sent to the Belgian Chamber, one of the two main assemblies of the Belgian Parliament. The explanatory memorandum specifies that the Committee of Finance and Budget within the Chamber would analyse the report carefully.
- 1.3 The draft law would further confer on the King the power to adopt a Royal Decree in order to determine the technical modalities of the allocation of the sums and to establish a model of the report.

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<sup>1</sup> *Loi du 28 février introduisant le Code de droit économique/Wet van 28 februari 2013 tot invoering van het Weboek van economisch recht, telle que modifiée/zoals nader gewijzigd, Moniteur Belge/Belgisch Staatsblad, 29.3.2013, p. 19975.*

<sup>2</sup> 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. Observations

- 2.1 The ECB appreciates that the draft law intends to encourage transparency, higher ethical standards and greater control in the Belgian banking sector. However, whether the measures contemplated by the draft law adequately serve this purpose should be reconsidered.
- 2.2 First, regarding Belgian credit institutions supervised by the ECB within the framework of the Single Supervisory Mechanism, the ECB is responsible for carrying out various tasks for prudential supervisory purposes in relation to credit institutions established in Belgium. These tasks include ensuring compliance with all relevant Union law, including Union regulations and Belgian legislation transposing Union directives, which impose (a) prudential requirements in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters, and (b) requirements on credit institutions to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions, risk management processes, internal control mechanisms, remuneration policies and practices and effective internal capital adequacy assessment processes<sup>3</sup>. Against this backdrop, the Belgian legislator is invited to consider how the proposed new reporting obligation imposed by the draft law on financial institutions to identify in their balance sheets the allocation of sums deposited on saving accounts would fit into the existing Union and Belgian legal and regulatory framework for the prudential supervision of credit institutions. Taking existing reporting and disclosure obligations of credit institutions regarding prudential matters into account, consideration could also be given as to whether this new reporting obligation would increase the reporting burden of credit institutions, and if so, for what purposes, such as encouraging transparency, higher ethical standards and greater control. It is suggested that the Belgian legislator considers the added value of the reporting obligations that would be implemented under the draft law.
- 2.3 Second, while it should be feasible for a credit institution to identify and report on the amount of liabilities that are represented by deposits on savings accounts, it is not clear what is intended by the obligation on credit institutions to identify and report on the allocation of sums deposited on savings accounts. The liabilities, including deposit liabilities and the equity of a credit institution, come from a variety of different funding sources, as clarified in the financial statements of that credit institution. In principle, insofar as credit institutions comply with the prudential requirements set out in Union law, there are no constraints on how funding is used. Therefore, the identification of the allocation of each source of financing is in practice extremely difficult, if not completely impossible. Given the diversity of a credit institution's sources of funding, and – quite importantly - given the intrinsically fungible character of money, it would not be feasible for a credit institution to identify the exact source of financing when extending a particular loan or investing in a particular asset. In fact, this would only be possible in cases where the assets, invested in using deposits in savings accounts, had been segregated from the rest of the institution's assets.
- 2.4 Third, the reporting obligation of financial institutions vis-à-vis the NBB, as set out in the draft law,

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<sup>3</sup> See Article 4(1)(d) and (e) of 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).

raises some uncertainties. The content of the report has not been specified. Although the draft law provides that the King must determine a model of the report in a royal decree, the level of detail that the financial institutions will have to respect remains undefined in the draft law. Moreover, the King must determine the ‘technical modalities of the allocation of the sums’. The draft law does not specify what this precisely refers to. As the Royal Decree would clarify the content of the report and the practical modalities of the obligations set forth in the draft law, the ECB expects to be consulted on the draft Royal Decree on the basis of Article 127 (4) of the Treaty.

- 2.5 Fourth, the NBB’s powers and tasks with respect to the measures contemplated by the draft law, and more particularly the annual report to be filed by Belgian financial institutions with the NBB, remain at this stage undefined in the draft law. The draft law requires that the report be annually submitted to the NBB, but does not specify what the NBB should do with the information received. The draft law could helpfully indicate whether the NBB is expected to use this annual report within the scope of its existing powers and tasks, or whether the submission of the report would trigger any particular obligation or power for the NBB. The ECB expects to be consulted under Article 127 (4) of the Treaty insofar as new tasks are conferred on the NBB under the draft law.

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

Done at Frankfurt am Main, 17 April 2020.

[signed]

*The President of the ECB*

Christine LAGARDE