



OPINION OF THE EUROPEAN CENTRAL BANK

of 31 January 2020

**on changes to the governance of De Nederlandsche Bank and the formal establishment of the
Financial Stability Committee**

(CON/2020/6)

Introduction and legal basis

On 20 December 2019 the European Central Bank (ECB) received a request from the Minister for Finance of the Netherlands for an opinion on a draft law on the amendment of The Bank Act 1998¹ (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/EC², as the draft law relates to De Nederlandsche Bank (DNB). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council has adopted this opinion.

1. Purpose of the draft law

- 1.1 The draft law introduces changes to the internal procedures for the nomination and appointment of the members of the Executive Board, Supervisory Board³ and Bank Council⁴ of DNB. In addition, the draft law strengthens the current legal basis for the existing Financial Stability Committee (FSC).
- 1.2 Under the existing provisions of The Bank Act 1998, the President of DNB and the other three to five members of the Executive Board of DNB, which is the main decision-making body responsible for the management of DNB, are appointed by the Crown for a term of seven years. The existing provisions provide that the Supervisory Board, after consulting the Executive Board, draws up a shortlist of three recommended persons⁵ with respect to every such appointment of the Executive Board and of the Supervisory Board. The draft law amends these provisions to clarify that the shortlist shall comprise ‘in principle’ three persons.
- 1.3 As explained in the Explanatory Note to the draft law, the inclusion of the phrase ‘in principle’ in certain provisions encourages a situation in which multiple individuals are considered for a position

¹ *Bankwet 1998*.

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 According to Article 13(6) of The Bank Act 1998, the Supervisory Board: (i) oversees the general course of business within DNB and the policy pursued by the Governing Board in the implementation of DNB’s tasks outside the framework of the ESCB, (ii) advises the Governing Board, and (iii) adopts the annual accounts with the approval of the Dutch State as DNB’s sole shareholder.

⁴ According to Article 15(1), (2) and (5) of The Bank Act 1998, the Bank Council is an internal body of DNB. The Governor of DNB reports to the Bank Council about general economic and financial developments and discusses the policy of DNB.

⁵ Articles 12 to 12b of The Bank Act 1998.

and can therefore contribute towards enhancing diversity in the composition of the respective body. The idea behind the change is that in exceptional cases it can be difficult to find a sufficient number of suitable candidates that are available for the position. This could be the case where the position is demanding and requires a very specific job profile in which specialist knowledge must be combined with extensive managerial experience. For this reason, the draft law introduces the phrase 'in principle' in order to allow a deviation from the standard, if necessary. In the event that a list contains fewer than the number of candidates that 'in principle' is required, the bylaws of DNB will require that the statement of reasons accompanying the list explicitly gives the reasons for this.

- 1.4 Under the existing provisions of The Bank Act 1998 and the bylaws of DNB, the four-year term of the members of the Supervisory Board may be renewed twice⁶. Under the draft law it is clarified that reappointments to the Supervisory Board may take place in accordance with the bylaws of DNB, and that the list for each vacancy drawn up by the Supervisory Board shall include 'in principle' three nominees (currently this list should include exactly three nominees), as outlined in paragraph 1.3 of this opinion. According to the Explanatory Note to the draft law, the bylaws of DNB will be amended in the light of the draft law so as to comply with the amended Dutch Corporate Governance Code with regard to the period of office of Supervisory Board members. Although the Code applies to listed companies, DNB voluntarily applies the Code, and, as a result, in the future a Supervisory Board member will serve a maximum of two terms of four years and two terms of two years.
- 1.5 Under the existing provisions of The Bank Act 1998, nine to eleven out of the eleven to thirteen members of the Bank Council of DNB are appointed by the Bank Council for renewable terms of four years, each from a shortlist of two persons for each vacancy drawn up by the Executive Board. The draft law clarifies that this shortlist comprises 'in principle' two persons, as outlined in paragraph 1.3 of this opinion.
- 1.6 The draft law provides for a FSC, in which representatives of DNB, the Authority for the Financial Markets, the Netherlands Bureau for Economic Policy Analysis (NBEPA) and the Ministry of Finance shall hold discussions and exchange information concerning macroeconomic and financial developments with the objective of identifying risks to the stability of the financial system and suggesting possible approaches to solve or mitigate those risks. The FSC shall have the power to make recommendations in that regard. The FSC shall publish its recommendations unless publication could pose a risk to the stability of the financial system. The representatives of the NBEPA and the Ministry of Finance shall not take part in the decision-making process leading to the establishment of recommendations. The FSC shall meet at least twice a year and shall be chaired by the President of DNB. An account of those meetings shall be issued to the Minister for Finance, who will in turn send copies of the minutes and the FSC's recommendations to both Houses of the Dutch Parliament.
- 1.7 As noted in the Explanatory Note to the draft law, the FSC was established in 2012. At present, the FSC is established under a Ministerial Decree issued by the Minister for Finance⁷. The draft law

⁶ Article 11(4) of the bylaws of DNB.

⁷ Decree by the Minister of Finance of 2 November 2012 for establishment of the Financial Stability Committee (Netherlands Government Gazette (Stcrt.) 2012, no 22730).

intends to provide the FSC with a legal basis in primary legislation (in The Bank Act 1998) in order to do justice to the importance of the FSC, further to recommendations by the Financial Stability Board (FSB) and the International Monetary Fund (IMF).

2. Observations

- 2.1 The ECB understands that the Executive Board of DNB is responsible for the performance of the DNB's ESCB-related tasks. The ECB takes note of the explanation in the Explanatory Note to the draft law that the increased flexibility as to the number of nominees for the Executive Board is motivated by practical considerations. This does not constitute a major change, and does not conflict with the principle of central bank independence under Article 130 of the Treaty.
- 2.2 The ECB understands that the Supervisory Board and Bank Council of DNB are expressly excluded from the performance of the ESCB-related tasks of DNB⁸. Nevertheless, and as a general remark, neither the Supervisory Board nor the Bank Council may seek to influence the Executive Board of DNB in the exercise of any of its ESCB-related tasks. Under Article 130 of the Treaty, when exercising its powers and carrying out the tasks and duties conferred upon it by the Treaty and the ESCB Statute, neither a national central bank, nor any member of its decision-making bodies shall seek or take instructions from, inter alia, any government of a Member State 'or from any other body', which includes statutory bodies such as the Supervisory Board or the Bank Council of DNB⁹.
- 2.3 Regarding the FSC, the main purpose of the draft law is to establish its legal basis in primary legislation. The draft law will also make NBEPA a full member of the FSC. The ECB welcomes that the Netherlands will strengthen the legal basis of the FSC, and thereby strengthen the FSC's role in identifying risks to the stability of the financial system and making recommendations in that regard. This is also in line with the recommendations of the FSB and the IMF.
- 2.4 The draft law does not materially alter the FSC's mandate or tasks. It does not confer any new tasks on DNB. Therefore, the issue of assessing whether the conferral of new tasks on a national central bank complies with the prohibition of monetary financing does not arise in the case at hand.

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

Done at Frankfurt am Main, 31 January 2020.

[signed]

The President of the ECB

Christine LAGARDE

⁸ This is evidenced by limiting the Supervisory Board's role to Article 4 of The Bank Act 1998, whereas the ESCB-related tasks of DNB are laid down in Articles 2, 3 and 7 of The Bank Act 1998.

⁹ See paragraph 2.3 of Opinion CON/2019/12. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.