



EUROPEAN CENTRAL BANK
EUROSYSTEM

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Mario DRAGHI
President

Ms Paloma López Bermejo
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt, 9 November 2016

L/MD/16/476

Re: Your letter (QZ-086)

Honourable Member of the European Parliament, dear Ms López Bermejo,

Thank you for your letter, which was passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 22 September 2016.

The legal basis for the advisory role of the ECB with regard to draft legislation falling within its fields of competence is contained in Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union¹ (“the Treaty”), which are reproduced in Article 4 of the Statute of the European System of Central Banks and of the European Central Bank. In particular, Article 127(4), second indent, of the Treaty provides that the ECB must be consulted by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the legislative procedure laid down in Article 129(4) of the Treaty.

Acting pursuant to that legislative procedure, the Council has adopted Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (98/415/EC) (OJ L 189, 3.7.1998, p. 42)², which further specifies the limits and conditions applicable to the ECB’s advisory role under the Treaty. Article 2(1) of this Decision specifies that the authorities of the Member

¹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

² Council Decision of 29 June 1998 (98/415/EC): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998D0415>

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States must consult the ECB on any draft legislative provision within its fields of competence pursuant to the Treaty and in particular on:

- currency matters;
- means of payment;
- national central banks;
- the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics;
- payment and settlement systems;
- rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.

The ECB has published a *Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions*.³ The guide includes general information regarding the advisory role of the ECB as well as a comprehensive description of the draft legislative provisions that are subject to the duty of consultation, a detailed explanation on each of the matters within the ECB's fields of competence, and an overview of the consultation procedure followed by the ECB in accordance with Council Decision 98/415/EC.

For an exhaustive list of the draft legislative provisions on which the ECB has been consulted by the Spanish authorities since 2010, please find annexed to this letter a list of the relevant opinions adopted by the ECB. All these opinions have been published on the ECB's website.⁴

Regarding cases where the national authorities have amended draft national legislation along the lines proposed by the ECB in an opinion, please note that, while the national authorities have an obligation to consult the ECB on the draft legislative provisions within the areas of its competence, the views expressed by the ECB in its opinions are not binding on the national authorities. Rather, in accordance with Article 4 of Council Decision 98/415/EC, the relevant national authority is encouraged to "take into consideration the ECB's opinion before taking its decision on the substance". Therefore, it is a matter for the national authorities to decide whether to amend the national draft legislative provisions along the lines suggested by the ECB in its opinion. The ECB does not systematically examine whether the opinions it has issued are in fact taken into account by the national authorities.

Yours sincerely,

[signed]

Mario Draghi

³ *Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions*, in English: <https://www.ecb.europa.eu/pub/pdf/other/consultationguide201510.en.pdf>
in Spanish: <https://www.ecb.europa.eu/pub/pdf/other/consultationguide201510.es.pdf>

⁴ All opinions issued by the ECB are available on the ECB's website at:
<https://www.ecb.europa.eu/ecb/legal/opinions/html/index.en.html>

ANNEX

List of the draft legislative provisions on which the ECB has issued opinions in response to consultation requests by the Spanish authorities since 2010⁵

- Opinion CON/2011/21 ES on the strengthening of the financial system (*Real Decreto-ley 2/2011, de 18 de febrero, para el reforzamiento del sistema financiero*)
- Opinion CON/2011/54 ES on cross-border transactions (*Orden EHA/2670/2011, por la que se modifica la Orden de 27 de diciembre de 1991, de desarrollo del Real Decreto 1816/1991, de 20 de diciembre, sobre transacciones económicas con el exterior*)
- Opinion CON/2012/11 ES on the reorganisation of the Spanish financial sector (*Real Decreto-ley 2/2012, de 3 de febrero, de saneamiento del sistema financiero*)
- Opinion CON/2012/13 ES on State guarantees (*Orden ECC/149/2012, de 30 de enero, por la que se desarrolla el apartado Dos. b) del artículo 49 de la Ley 39/2010, de 22 de diciembre, de Presupuestos Generales del Estado para el año 2011*)
- Opinion CON/2012/33 ES on limitations on cash payments (*Ley 7/2012, de 29 de octubre, de modificación de la normativa tributaria y presupuestaria y de adecuación de la normativa financiera para la intensificación de las actuaciones en la prevención y lucha contra el fraude*)
- Opinion CON/2012/46 ES on the reorganisation and sale of real estate assets in the financial sector (*Real Decreto-ley 18/2012, de 11 de mayo, sobre saneamiento y venta de los activos inmobiliarios del sector financiero*)
- Opinion CON/2012/60 ES on State guarantees (*Real Decreto-ley 21/2012, de 13 de julio, de medidas de liquidez de las Administraciones públicas y en el sector financiero [solo la Disposición Final Primera]*)
- Opinion CON/2012/75 ES on European financial assistance (*Real Decreto-ley 21/2012, de 14 de julio, de medidas de liquidez de las Administraciones públicas y en el ámbito financiero [solo la Disposición Adicional Quinta]*)
- Opinion CON/2012/89 ES on euro banknotes and coins and amendments to the Banco de España's Statute (*Ley 10/1975 de 12 de marzo de regulación de la moneda metálica, Ley 46/1998 de 17 de diciembre de la introducción del euro, y Ley 13/1994 de 1 de junio de autonomía del Banco de España*)

⁵ Please note that the ECB did not issue any opinions in respect of draft Spanish legislation in 2010 and has not so far issued any opinions in 2016.

- Opinion CON/2012/108 ES on asset management companies (*Real Decreto 1559/2012, de 15 de noviembre, por el que se establece el régimen jurídico de las sociedades de gestión de activos*)
- Opinion CON/2013/3 ES on early intervention, restructuring and resolution of credit institutions (*Real Decreto-ley 24/2012, de 31 de agosto, de reestructuración y resolución de entidades de crédito*)
- Opinion CON/2013/25 ES on the Deposit Guarantee Fund (*Real Decreto-ley 6/2013, de 22 de marzo, de protección a los titulares de determinados productos de ahorro e inversión y otras medidas de carácter financiero*)
- Opinion CON/2013/33 ES on mortgagor protection (*Ley 1/2013, de 14 de mayo, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social.*)
- Opinion CON/2013/52 ES on savings banks and banking foundations (*Ley 26/2013, de 27 de diciembre, de cajas de ahorros y fundaciones bancarias*).
- Opinion CON/2013/61 ES on the autonomy of the Banco de España internal rules of the Banco de España (*Resolución del Consejo de Gobierno del Banco de España, por la que se aprueba la modificación del Reglamento Interno del Banco de España, de 28 de marzo de 2000*)
- Opinion CON/2014/22 ES on the conflict of interest rules for senior officials of the Banco de España (*Proyecto de resolución del Consejo de Gobierno del Banco de España, por la que se modifica el Reglamento interno del Banco de España de 28 de marzo de 2000 en lo relativo a las normas que rigen los conflictos de intereses de sus altos cargos*).
- Opinion CON/2014/40 ES on the organisation, supervision and solvency of credit institutions (*Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito*).
- Opinion CON/2014/82 ES on euro banknote production by a special-purpose entity (*Ley 36/2014, de 26 de diciembre, de Presupuestos Generales del Estado para el año 2015 [solo la Disposición final segunda, de modificación de la Ley de Autonomía del Banco de España]*).
- Opinion CON/2015/19 ES on the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperación y resolución de entidades de crédito y empresas de servicios de inversión*).

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