NORGES BANK

26 October 2017 Item: 17/01405

CONSULTATION RESPONSE TO THE REPORT OF THE CENTRAL BANK LAW COMMISSION

Official Norwegian Reports NOU 2017: 13 from the Central Bank Law Commission provides a thorough examination of Norges Bank's governance structure, the Norges Bank Act and Norges Bank's relationship to government authorities. The report is a good starting point for assessing an appropriate governance structure for Norges Bank and the management of the Government Pension Fund Global (GPFG) and for drafting a new central bank act.

Section 1 discusses the Commission's recommendations on the organisation of Norges Bank and the GPFG. Section 2 comments on the proposal on a new central bank act, while Section 3 comments on the new act on Norwegian Government Investment Management and proposed amendments to the Government Pension Fund Act.

1 THE ORGANISATION OF NORGES BANK AND THE GOVERNMENT PENSION FUND GLOBAL

1.1 Evolution of the organisation of Norges Bank over the past 20 years

Norges Bank's functions and organisation have evolved considerably over the past 20 years. The range of central banking activities has narrowed substantially. In this period, the Bank has outsourced the production of notes and coins, cash management and various IT functions, and the production of statistics has been transferred to Statistics Norway. All of the Bank's regional branches have also been closed. Central banking activities are now concentrated on policy issues (core activities). At the same time, the Bank has faced new challenges in areas such as monetary policy, the development of macroprudential supervision and changes in the payment system (digitalisation, cyber risk, etc.). Staffing in central banking operations has been reduced from almost 1,200 employees in 1997 to 340

today. Over the same period, a global investment management organisation (NBIM) has been built up, with almost 600 employees responsible for the GPFG's investments in equities, bonds and real estate. Around 300 work in Oslo, and the remainder at offices in London, New York, Singapore and Shanghai. In 2014, a separate organisation (NBREM) was set up within NBIM to manage the fund's investments in unlisted real estate. NBREM has operating subsidiaries with employees in Luxembourg, Tokyo and London.

The past 20 years have also seen a number of changes to Norges Bank's governance structure. The aim has been to further develop and strengthen the Bank's governance, supervision and oversight arrangements in response to growing complexities and responsibilities, especially in the area of investment management. In 2006, the Executive Board established an internal audit unit and an audit committee. In 2009, the Norges Bank Act was amended and specific requirements relating to the internal audit function and the audit committee were laid down in the Regulation on risk management and internal control at Norges Bank. The audit committee comprises three members of the Executive Board, elected by and from among the external members. In 2009, requirements for external auditing were added and the framework for the central bank's financial reporting was changed with effect from 2011. In 2010, the Supervisory Council established its own secretariat. It was also set out in the Norges Bank Act that the Supervisory Council is to report directly to the Storting on its supervisory performance. In 2015, the Executive Board created two new preparatory subcommittees to strengthen and streamline its work on investment management: a risk and investment committee and an ownership committee. The government appointed a second Deputy Governor from 1 January 2016 with special responsibility for investment management matters. At the same time, the Governor created a Central Executive Managers Forum to discuss matters affecting the entire organisation.

Norges Bank is now organised into two largely independent operational areas: Norges Bank Central Banking Operations and Norges Bank Investment Management. The Governor chairs the Executive Board and is also general manager of Central Banking Operations. The Executive Board has decided that NBIM is to have its own CEO with separate job description, mandate and reporting lines. There are several reasons why the Bank has adopted this structure. First, the two operational areas have different legislative foundations and follow different rules and regulations. Second, the powers and responsibilities of the heads of the two areas need to be clearly defined. In addition, the broad range of tasks across the two operational areas means that most tasks and functions are best organised decentrally. Action plans and budgets are prepared and followed up separately for each operational area.

The Bank's organisation and its governance, supervision and oversight arrangements have evolved over the past 20 years in order to adequately address the Bank's functions. Norges Bank is well-placed to make further changes to its governance structure.

1.2 The organisation of the management of the Government Pension Fund Global

The Commission recommends on the basis of an overall assessment the separation of the management of the GPFG from Norges Bank and the creation of a new statutory entity for managing the fund. The Commission's point of departure is that the Bank has managed the fund and performed its central banking functions satisfactorily. The Commission attaches importance to facilitating the continued evolution of the management of the fund, and therefore is of the view that it will be a strength to have a separate organisation and a board tasked solely with investment management. The Commission also underlines the necessity of clear lines of responsibility when it comes to the management and supervision of operational activities, and that few people will have the experience and breadth of expertise needed to cover both investment management and central banking.

The Executive Board takes note of the assessment above, ie that the Bank has managed the GPFG and performed its central banking functions appropriately (cf also the Ministry's assessments in the 2018 National Budget). The Bank is well-placed to continue to do so. At the same time, the Executive Board recognises that developments suggest the need for a closer examination of aspects of the current organisation and governance model. The Bank's organisation, governance structure and supervision must be adapted to new challenges facing central banking and investment management. The Executive Board agrees with the Commission on the importance of clear lines of responsibilities for these areas of the Bank.

Changes to the mandate in recent years have given the Bank greater responsibility for deciding on investment strategy. The fund's management has also demanded more resources from both the Executive Board and the organisation as a whole, due partly to the inclusion of unlisted real estate as a new asset class. In addition, the Bank has been given responsibility for deciding on the observation and exclusion of individual companies on ethical grounds based on recommendations from the Council on Ethics. The Bank has been able to accommodate these new functions by developing its governance structure and organisation (cf Section 1.1). If the Bank retains its responsibility for the management of the fund, the Bank can build further on the existing management model. With the fund under the aegis of the Bank, further changes to the governance structure would be appropriate, such as the creation of a committee for monetary policy and financial stability (see discussion in Section 1.4).

The home and future organisation of the fund should be considered in the light of the future evolution of the management strategy. The Commission itself notes that the Ministry of Finance could delegate more decisions on asset allocation and investment strategy to the manager, as is the case with many other investment funds. It is also possible that the investment strategy will come to include more unlisted asset classes (such as infrastructure and other private equity). Investments of this kind will demand more from Norges Bank's organisation and Board. The Commission also recommends incorporating the

Council on Ethics into the organisation tasked with managing the fund. This would give the management organisation greater responsibility for ethical assessments. Requirements and expectations for the fund's active ownership activities could also increase. If it is likely that management will evolve along the lines indicated above, this could count in favour of the management of the fund being organised outside the central bank.

The management of the GPFG has been built up and developed under the aegis of Norges Bank, and hence determined by the central bank's position in society and the Constitution. This has given the management of the fund a stable legal footing. One condition for separating the fund from Norges Bank should be that the new management organisation's position in law and in society enables the necessary stability and independence to be retained in the management of the fund. The Commission recommends creating a new statutory entity – a state-owned company governed by special legislation – if the GPFG is separated from Norges Bank. The Executive Board agrees that a statutory entity of this kind provides a good starting point for giving the fund a robust governance structure outside the Bank.

The Executive Board would stress the importance of retaining the fund's principal objective regardless of the chosen structure. The objective must still be the highest possible return with cost-effective investment management, sound risk management, a high level of transparency, and responsible investment as an integral part of the manager's task.

The Commission recommends a number of changes to the law to underline the fund's role in economic policy. These proposals aim to strengthen the current framework for the fund and apply regardless of the organisational solution chosen for its management. The Executive Board supports these proposals. Like the Commission, the Executive Board is also of the opinion that neither the fund nor investment management should be split into multiple units. This would lead to higher management costs and make it difficult to pursue a sound investment strategy for the fund as a whole.

Any change to the organisation of the management of the fund also raises the question of changes to the fund's tax position and immunity protections. Reference is made to a further discussion of this matter in Section 1.5.

In operational terms, the Executive Board is of the opinion that a separation of the GPFG could be carried out efficiently. NBIM is already organised as a largely independent organisational unit. Some increase in costs due to the operation of two separate organisations (Norges Bank and the new management entity) must be expected. There will also be one-off costs for the separation of the fund.

1.3 Norges Bank without the management of the Government Pension Fund Global

The Commission recommends substantial changes to the governance structure for Norges Bank even if the fund is separated from the Bank. It proposes setting up a committee for monetary policy and financial stability that is given responsibility for the use of policy instruments in those areas. This committee is to be chaired by the Governor. The Commission also proposes creating a board for Norges Bank with only external members. This board is to be responsible for central bank matters not under the remit of the committee, and for the Bank's operations, budget and administration. Furthermore, the Commission proposes eliminating the arrangement with a supervisory council and transferring parts of the Supervisory Council's current supervisory responsibilities to the Ministry of Finance. It is the Commission's view that this will result in a clearer governance structure, and that a committee for monetary policy and financial stability will be well-placed to take monetary policy forward.

With the fund still within the Bank, the Executive Board appreciates that there are arguments for establishing a separate committee for monetary policy and financial stability. Such a committee will help reduce the scope of the board's responsibilities and so also the breadth of expertise required of its members.

If the management of the GPFG is separated from the Bank, however, the Executive Board is of the view that the arguments for establishing a separate expert committee are weaker. The scope of the board's responsibilities would then be substantially reduced, and time will be freed up for greater focus on central banking. The expertise of the external members can then be even more focused on monetary policy and financial stability.

The Executive Board is of the opinion that it will be a challenge to establish an appropriate division of duties and responsibilities between a board with external members and a committee for monetary policy and financial stability. The Commission proposes that the committee should decide on the use of instruments in the areas of monetary policy and financial stability, and inform the public about its decisions and the background for its decisions. The committee is also to be responsible for the Bank's contingency plans for financial crises. Under the Commission's proposals, the external board is responsible for other central banking matters, including work on the payment system, guidelines for liquidity policy and the management of the foreign exchange reserves, and tasks carried out by the Bank on behalf of the government.

Dividing the responsibility for central banking matters at the central bank into two in this way would be a challenge, especially when the Governor is not a member of both the Board and the committee. The central bank's core activities are closely intertwined and need to be viewed as a whole, as demonstrated during the financial crisis. The Commission also proposes that decision-making powers for some central banking matters should be transferred from the board to the committee in a crisis situation. Such grey areas and

situation-dependent transfers of duties and responsibilities could engender a lack of clarity and competence conflicts.

As well as various central banking matters, the Commission proposes that the board is given responsibility for administrative matters, for supervising the day-to-day management and operation of the Bank, and for adopting its budget. This would mean that the board with external members has considerable influence over central banking areas in the committee's remit via the allocation of resources. One important point in this context is that the Governor is not accountable to the board for the committee's discharge of its duties, but reports directly to the Ministry on central banking matters.

If the fund is separated from the Bank, the central bank's role will consist primarily in the exercise of authority as a public administrative body in the core areas of monetary policy, financial stability and the payment system. It would then be natural for the Governor to head the Bank's ultimate governing body. The parallel with good corporate governance at limited companies is weak in this context. Internationally, it is generally the case that the governor of the central bank is responsible for all important central banking matters in core areas (see also Chapter 15.5 of the Commission's report). A central bank's special responsibility in economic policy also gives its governor a special role in the public debate. A governance model where the governor does not chair the board, but where the board still has central banking responsibilities, could present challenges for the division of roles and responsibilities over time and thereby blur the lines of responsibility for policy performance. In the light of considerations relating to the Bank's independence and clarity in the division of responsibility, important central banking matters should be decided by a body chaired by the Governor.

The Executive Board is of the opinion that a board with a similar composition to the current one, but whose competence is focused more on central banking, will function well if the management of the GPFG is separated from the Bank. Such a board, chaired by the Governor, will have overall responsibility for both central banking and administrative matters at the Bank. One strength of this solution is that responsibility is placed with the same body in the organisation in both normal times and times of crisis. This board will also ensure an important linkage between central banking and administrative matters. Such a board will also have a majority of external members, which provides a corrective to internal staff when it comes to key policy decisions.

An organisational solution based on the current model will also ensure that the central bank is sufficiently independent. Independence is especially important in the conduct of monetary policy, but also matters in other areas where the Storting in its legislation has assigned duties and responsibilities directly to the central bank. The Commission's proposed organisational solution could present challenges for this independence, because the Ministry is given direct responsibility for supervising the central bank's board and is also to evaluate the Bank's exercise of judgement. The Commission says little about the precise content and nature of the Ministry's supervisory responsibilities in its preferred model.

Without the Supervisory Council, the Ministry's oversight and supervision of the Bank's board will be far more extensive and more direct than is currently the case.

With the Governor chairing the board, it would be natural for the supervision of the board's activities to be along the lines of that currently conducted by the Supervisory Council. Members of the Supervisory Council are appointed by the Storting, and the Council reports directly to the Storting on its supervisory activities. This ensures independent supervision of the central bank. With a governance model of this kind, it is natural for the Supervisory Council to approve the Bank's financial statements and adopt its budget. A board chaired by the Governor will, as today, supervise the Bank's administration and day-to-day operations. This supervisory function has legitimacy because there is a majority of external members on the board, and an audit committee is appointed by and from among these external members.[1] As today, the internal audit unit will report directly to the audit committee.

If the Supervisory Council continues to have supervisory responsibilities, there may be a need to clarify its role, responsibilities and powers as a supervisory body. The Commission discusses this and writes on page 438:

"The Supervisory Council's supervision should, as today, be retrospective supervision based on the minutes of board meetings. The Supervisory Council must not be some kind of 'super-board' for Norges Bank. The right to directly or indirectly override board decisions would create an ambiguous division of responsibilities. Nor should the Supervisory Council evaluate the performance of the board or the committee. That is a matter for the Ministry and the Storting.

"The boundary between verification of legality and supervision of the board's exercise of judgement may be difficult to specify precisely. […]Especially in the Bank's core areas, such as the conduct of monetary policy, the verification of legality will be restricted to matters that do not require technical evaluation. But the Executive Board must also have significant freedom to use judgement, for example when choosing solutions for operations within the bounds of the legislation."

The Executive Board supports this more detailed specification of the Supervisory Council's responsibilities.

[1] Proposition to the Odelsting No. 58 (2008-2009) states: "Board and management consisting to some extent of the same people is not, however, the same as the board not having a supervisory responsibility vis-à-vis the administration, but it does place special demands on the way the board organises its work."

1.4 Norges Bank with the management of the Government Pension Fund Global

The Commission proposes two alternative governance models should the fund continue to be managed by Norges Bank. One of these models (model B) – the Commission's preferred solution – is based on the Commission's proposed organisation of Norges Bank without the management of the fund, ie a committee for monetary policy and financial stability and a board with only external members. So that Norges Bank can also handle the management of the fund, the Commission recommends supplementing this governance structure with a separate board for the management of the GPFG. The Commission also discusses a governance model (model C), which is more reminiscent of the current organisation and supervisory structure. In this model, the Bank has a board as today, but also sets up a committee for monetary policy and financial stability. The Supervisory Council retains responsibility for supervision. The Commission justifies both of these models as reducing the scope of responsibilities facing the current Executive Board. The Commission does, however, recognise that both models could result in unclear lines of responsibility.

In Report to the Storting No. 10 (2009-2010), the Ministry of Finance discusses the organisation of the management of the GPFG and writes in Section 4.4.3:

"The Ministry has considered a model in which a separate board equal in ranking to the Executive Board is created for investment management in Norges Bank. Such a model is not advisable in the Ministry's view. It would create significant management challenges in Norges Bank in that no single body in the Bank would have overall responsibility for the Bank's activities. […]In reality, a model with a separate board for NBIM would result in two separate organisations gathered under the same business name, with a blurred interface between the two. The Ministry is not aware of any major organisations that are governed by a model with two separate boards for different parts of operations within a single legal entity. In the Ministry's view, testing such a corporate law innovation in the country's central bank would not be justifiable.

"Should it be desirable to relieve the Executive Board of duties that would permit it to spend even more time on investment management, the creation of a separate monetary policy committee with responsibility for the conduct of monetary policy (setting interest rates) appears to be a more obvious measure."

The Executive Board agrees with the Ministry's assessment from 2010. The Executive Board is of the opinion that model B presents a number of governance challenges. The demanding division of duties between the board (chaired externally) and the committee for monetary policy and financial stability (chaired by the Governor) was discussed in Section 1.3 above. There will also be interfaces between the division of duties between the board (chaired externally) and the board for investment management (chaired by the Governor). In this model, the supervisory role will be split between the board and the Ministry, but in

different ways for central banking and investment management. This model could also entail doubts as to the central bank's independence (see discussion in Section 1.3).

The Executive Board finds model C preferable if the fund is to remain within the Bank. This governance structure is based on the current model, but reduces the scope of tasks faced by the current Executive Board by establishing a separate committee with responsibility for monetary policy and financial stability. This committee will substantially unburden the board of central banking matters, and the composition of the board can then be tailored more closely to specific tasks relating to investment management. Clarifying the division of responsibilities between committee and board will be less of a challenge in such a model, as the Governor chairs both. It would be natural for the new board and the new committee to arrive at an appropriate division of responsibilities that also addresses the need for clear information barriers between central banking and investment management.

In model C, responsibility for supervising the board is, as today, assigned to the Supervisory Council. This may be a natural solution for central banking activities (see discussion of the Supervisory Council's roles and responsibilities in Section 1.3). However, it is not as natural for the Supervisory Council to have an equivalent supervisory responsibility when it comes to investment management. This is because the Storting in its legislation has assigned responsibility for the management of the fund to the Ministry of Finance, which in turn has delegated the operational management of the fund to Norges Bank. As owner, it might be natural for the Ministry also to have overall supervisory responsibility. One possible solution might be for the Supervisory Council to supervise investment management under an agreement with the Ministry, and report to the Ministry on supervisory performance. This would be an extension of the current arrangement where the Supervisory Council conducts assurance engagements concerning investment management in accordance with recommendations by the Ministry.

The Commission raises the question of including the Council of Ethics in the organisation tasked with managing the GPFG, but provides little detail on how the Council of Ethics can be integrated into a management organisation. The Executive Board is of the opinion that the current arrangement with an independent Council of Ethics functions as intended.

The Commission makes a number of proposals concerning the composition and duties of the board, committee and supervisory body. The Executive Board has opinions on these proposals, but wishes to revert to this matter when it is further clarified which governance model is to be chosen for central banking and the management of the GPFG.

1.5 A new statutory entity to manage the Government Pension Fund Global

The Commission proposes the establishment of a new statutory entity to manage the fund outside Norges Bank. The Ministry of Finance will continue to issue the management

mandate for the fund, and it will also be given responsibility for supervising the board of the management entity. It is the Commission's view that this provides a clear governance structure, and that such an arrangement will facilitate the further development of the fund's management.

The Executive Board agrees with the Commission's assessments concerning the choice of corporate form. Moreover, in the event of separation, the Board is of the opinion that a statutory entity in the form of a state-owned company governed by special legislation will be best suited to managing the fund in line with the objectives set by the Storting and the government. Such an entity will be able to retain the key features of the fund's current management.

The Commission proposes that the King in the Council of State appoints a board with seven members. The Executive Board supports this and assumes that the government's corporate governance principles will guide the board's duties, responsibilities and required competence. The Commission proposes that the entity's board has members with expertise in finance and investment management, but also expertise beyond the purely financial. The Executive Board's experience is that a sound understanding of the fund's position in the Norwegian economy and role in economic policy will be important for fulfilling the board's role. A board composition that contributes to stability, legitimacy and credibility in the management of the fund will also be particularly important for a new statutory entity.

The current governance model has ensured a sound division of roles and responsibilities between the Ministry as owner and Norges Bank as manager. The Ministry issues the management mandate for the fund, endorsed by the Storting, while Norges Bank handles the fund's operational management. The Executive Board is of the opinion that this governance model has worked well and should be retained when establishing the new management entity. The governance model also attaches importance to a high degree of transparency around the fund.

In the Commission's model, it is the Ministry that supervises the board's activities and evaluates its performance. The Commission does not discuss in detail the precise content, form and conduct of the Ministry's supervision, which would include a substantial share of the work currently performed by the Supervisory Council. Various arrangements can be considered for the organisation of the Ministry's supervision. For example, a separate supervisory body can be established that is appointed by and reports to the Ministry of Finance, and which could be provided for in the act establishing the management entity.

Tax

In a letter to the Central Bank Law Commission of 27 October 2016, Norges Bank discussed changes in the fund's tax position in the event that management of the GFPG is separated from Norges Bank. A preliminary conclusion in the letter was:

"The changeover to a new model (statutory entity) does not in itself entail changes in the actual basis for local taxation of dividends and interest income. The main reason for this is that in both models the Norwegian government will be the beneficial owner of the GPFG's assets and revenue. It should therefore be possible to achieve largely the same tax position under a new model as the fund currently has today."

The Ministry of Finance is of the opinion that it is necessary to perform a detailed examination of the tax consequences of a possible separation (cf letter of 4 October 2017 to Norges Bank). The Ministry requests that the Bank perform such an examination by 31 January 2018. The Executive Board will return to this.

Immunity from jurisdiction (prosecution)
The Commission discusses the possible consequences for immunity from jurisdiction and enforcement of transferring ownership to the new entity. On balance, the Commission concludes that this issue is not such that it should be assigned overriding weight when deciding whether or not to set up a new management entity. The Executive Board supports this conclusion and refers to its letter to the Commission of 27 October 2016.

Offices abroad
The Commission has also looked at the possible consequences for the operations of the offices outside Norway of transferring the management of the fund to a new management entity. The Executive Board assumes that these offices' operations can largely be continued regardless of the chosen organisational model for the fund, and does not consider this to be a significant issue. Operations must constantly be adapted to developments in the fund's investments and strategic choices, and the management and board of the fund will need to assess the most appropriate location of operations at any given time, whatever the organisational model.

The fund's conversion of foreign currency to and from NOK
The government's transfers to and from the fund need to be converted to and from foreign currency. This currently takes place monthly, and the transactions are performed by Central Banking Operations. There are internal guidelines at the Bank for how the operational transfer of funds is to be performed. The Commission stresses that this conversion to and from NOK should not be carried out by the new management entity but by Norges Bank. The reason given is that transactions of this size could otherwise disrupt liquidity management and the conduct of monetary policy. The Executive Board supports this and assumes that a separate agreement would be entered into between Norges Bank and the new management entity on the fund's NOK transactions and any other relations between the two institutions.

Operational matters
The Commission proposes that the management unit at Norges Bank (NBIM), as an organisation, can largely be retained in a separate entity outside the Bank. All of NBIM and all of its employees, including the real estate unit NBREM, would be transferred from

Norges Bank to the new entity. Some administrative functions currently performed by Central Banking Operations would need to be performed at the new entity. The Executive Board assumes that the separation will be conducted in accordance with provisions in the Working Environment Act relating to the transfer of undertakings and other relevant provisions of labour law.

A substantial number of commercial agreements have been entered into. These include agreements with service providers, agents and counterparties, IT licences and leases for the offices abroad. A separation from Norges Bank would require the transfer and possible renegotiation of these contracts.

2 COMMENTS ON THE NEW ACT RELATING TO NORGES BANK AND THE MONETARY SYSTEM

2.1 The purpose of Norges Bank and its relationship to government authorities

2.1.1 Proposed objects clause (Section 1-2)

Norges Bank's tasks derive from the purposes that have been set for the Bank's functions. The key instruments at the Bank's disposal are primarily related to tasks in the areas of monetary policy, financial stability and the payment system. The Commission proposes to codify these tasks in Section 1-3 on the Bank's functions. The Commission proposes to codify the long-term objectives of Norges Bank's functions in a clause solely specifying the Bank's purpose (Section 1-2). The Commission argues that most central bank acts currently contain a separate provision stating the purpose of the central bank. The Executive Board is positive to clarifying the long-term objectives of the Bank in a separate provision of the central bank act. Reference is made to pages 290-291 of the Report.

The proposed provision in Section 1-2 is closely related to the instruction provision in Section 1-4. Under Section 1-4, first paragraph, of the proposal, the King in the Council of State may adopt resolutions regarding the objectives of the Bank. These will typically be operational objectives in line with the current Monetary Policy Regulation[2]. Section 1-2 will be normative and place limits on the operational objectives that the King in the Council of State may lay down. Second, the objects clause will have implications for Norges Bank's interpretation of the operational objective and exercise of judgement pursuant to it. The two provisions are therefore essential for understanding the role of the central bank in the government administration, including the scope of the Bank's independence.

The Executive Board endorses the proposed objects clause.

[2] Regulation No. 278 of 29 March 2001 on Monetary Policy.

In Section 1-2, first paragraph, the Commission proposes that the purpose of Norges Bank's functions shall be to "maintain monetary stability and promote the stability of the financial system and an efficient and secure payment system". The Executive Board concurs and is of the opinion that it is important for these overriding objectives for the Bank's functions to be stated in the text of the law. The proposal is in line with Norges Bank's current understanding and performance of its tasks and is thus a codification of practice. The provision is also in line with what is customary in other more recent central bank acts.

The purpose of "maintaining monetary stability" sets a long-term objective for monetary policy. Maintaining monetary stability has always been a key central bank function. This is consistent with the central bank's role as sole issuer of banknotes and coins and the central bank's task of promoting a well-functioning payment system. Money performs a number of important tasks in the economy, but this depends on the confidence of households and firms that money will retain its value over time. If confidence in the means of payment is lost, the payment system may break down and financial stability may be threatened. A primary objective of monetary stability will be consistent with a number of operational objectives for monetary policy. Today, monetary stability is often linked to aims of price stability or low and stable inflation.

In the proposed act, Norges Bank is also given a clearly expressed responsibility for promoting financial stability. This reflects developments in central banks' actual responsibilities and tasks, where the work on financial stability has gained importance in the wake of the financial crisis. The Executive Board views this as a formalisation of the responsibility the Bank already has to promote financial stability in a broad sense.

As the Commission points out, Norges Bank cannot alone ensure the "stability of the financial system". The primary responsibility for financial stability rests with the government, and the instruments are divided between the Ministry of Finance, Finanstilsynet (Financial Supervisory Authority of Norway) and Norges Bank. The Bank can contribute with the instruments at its disposal and in consultation with the other parties.

The formulation "an efficient and secure payment system" is a continuation of the current Section 1, which provides that the Bank shall "promote an efficient payment system". This is an important specification of the central bank's particular and overriding responsibility for a well-functioning payment system. This task is also important for the Bank's responsibility for promoting financial stability.

Section 1-2, second paragraph, reads: "The Bank shall otherwise contribute to high and stable output and employment".

It is important for the central bank's credibility that the expectations of what the Bank can attain are proportionate to the instruments at its disposal. To pursue objectives that the Bank does not have sufficient means of fulfilling over time entails a risk that confidence in the central bank will be weakened. The Executive Board is of the view that maintaining

monetary stability and working to promote financial stability are the most important contributions that the central bank can make to favourable economic developments with high and stable employment over time. Norges Bank cannot have a primary responsibility for creating a high level of output and employment. There is broad consensus among economists that central banks cannot contribute to higher economic activity or a higher level of employment on a permanent basis by means of for example the systematic use of an expansionary monetary policy. The level of economic activity, and thereby employment, is a result of overall economic policy, particularly with regard to more structural factors such as wage and income formation, the tax and social security system, labour market regulation and others.

Even though Norges Bank does not have the means to boost employment on a permanent basis, it can help prevent downturns from becoming deep and persistent. This can reduce the risk that unemployment becomes entrenched at a high level in the wake of an economic downturn. By counteracting the build-up of financial imbalances, the central bank can also help reduce the risk of a sharp fall in demand further out. For that reason, Norges Bank finds that, for its use of instruments, the purposes stated in the provision's second paragraph are secondary to the purposes stated in the first paragraph (cf the word "otherwise").

2.1.2 Government authorities' power of instruction

Section 2, first paragraph, of the Norges Bank Act contains a provision stipulating that Norges Bank "shall conduct its operations in accordance with the economic policy guidelines drawn up by the government authorities and with the country's international commitments".

The Commission recommends that Section 2, first paragraph, be repealed and replaced by a new instruction provision. The Commission argues that the content of the provision is "unclear and is not suitable as a provision for issuing objectives to the Bank" (page 311). The Executive Board endorses the Commission's assessments and the proposal that the provision should be repealed.

Section 2, third paragraph, of the current Norges Bank Act contains provisions on the power of instruction of the King in the Council of State. Pursuant to the third paragraph, the King in the Council of State may "adopt resolutions regarding the operations of the Bank", which may take the form of "general rules" or "instructions in individual cases". Norges Bank shall be "given the opportunity to state its opinion" before a resolution on instructing the Bank is passed, and "[t]he Storting shall be notified on such a resolution as soon as possible". Reference is made to page 305 ff of the Report. This provision has only been used as an authorisation in general cases: when the Monetary Policy Regulation and Regulation on the Countercyclical Capital Buffer were laid down.

The Commission proposes retaining the instruction provision, but with changes. The proposed Section 1-4 first paragraph confers upon the King in the Council of State the power to adopt resolutions regarding the objectives of the Bank. The Commission mentions that this provision can be used, for example, to issue a mandate for monetary policy, but also to "specify other objectives for the Bank within the framework of the purposes set for the Bank to fulfil in the central bank act (cf Section 1-2)" (page 495 of the Report). Besides the operational target for monetary policy, these will typically be tasks in the area of financial stability. An instruction procedure is proposed that is the same as the current one.

The proposed Section 1-4 second paragraph entails a change compared with the current instruction provision. While the current Section 2, third paragraph, stipulates that instructions may take the form of "general rules" or "instructions in individual cases", the proposal limits the government's power of instruction over Norges Bank "as to its activities under the present Act" to apply only "in extraordinary circumstances". The Commission refers to the change as a "tightening of the current power of instruction" (page 495), stating that the provision is aimed at "instructions in individual cases" (loc cit). The Commission further specifies that "there is no intention to change the scope of this provision beyond this compared with the current Section 2, third paragraph, which pertains to areas where the Bank derives its authority directly from the Norges Bank Act" (loc cit). Under the proposal, the procedure for instruction shall be the same as for instructions pursuant to the first paragraph.

In the assessment of the Executive Board, the proposed provision concerns a matter of principle. Continuing to limit the power of instruction to the King in the Council of State implies that the Bank is to be fully independent of the Ministry of Finance, as is the case today. The conditions specifying that the Bank shall be given the opportunity to state its opinion before an instruction is issued and that the Storting shall be notified of the instruction as soon as possible generally underscores the Bank's independence. Furthermore, restricting the power of instruction in individual cases to "extraordinary situations" implies that the Bank is granted considerable independence in its use of instruments. Reference is made to page 311 ff of the Report.

The Executive Board agrees with the Commission's assessments of the Bank's independence and is of the opinion that the proposed Section 1-4 clarifies the Bank's legal independence: The central bank has "independence in the use of instruments", except in extraordinary circumstances, but has limited "independence in its objectives", in the sense that operational objectives are laid down by the King in the Council of State. The Executive Board further agrees that the government must be able to intervene in individual cases in extraordinary circumstances, and refers here to the Commission's opinion that the "threshold for issuing such instructions should be high", for example in the event of "serious social disruption" (page 495 of the Report). The power of instruction pursuant to Section 1-4, second paragraph, "should not be used, for instance, in cases where there is a policy disagreement between the government and Norges Bank on how Norges Bank's instruments should be structured in order to meet the objectives given to the Bank under

the central bank act" (loc cit). The Executive Board agrees with these assessments and supports the proposed Section 1-4.

The Executive Board assumes that when the power of instruction pursuant to the first paragraph is limited to matters "regarding the objectives of the Bank under the present Act", the objectives referred to are those stated in the objects clause in Section 1-2. This means that under Section 1-4, first paragraph, instructions may not be issued in other areas, such as the Bank's organisation and administration.

The instruction rule in the second paragraph applies to the Bank "as to its activities under the present Act". Reference is made to the Commission's argument on page 495 that "there is no intention of changing the scope of the provision compared with the current Section 2, third paragraph, which pertains to areas where the Bank derives its authority directly from the Norges Bank Act. This typically means where the Bank performs tasks or uses instruments authorised by the Norges Bank Act". The Executive Board agrees that the wording "as to its activities under the present Act" must be understood in this manner. According to page 495 of the Report, the provision further regulates "instructions in individual cases", which implies that the authority to issue general rules in this area is regarded to be exhaustively stated in Section 1-4, first paragraph.

On page 313, the Commission notes that the proposed provision in Section 1-4, second paragraph, is inspired by legislation in the UK, in which the Bank of England may by order be given directions with respect to monetary policy only in "extreme economic circumstances" (Section 19 (1) of the Bank of England Act of 1998). The Commission mentions that in the UK such instructions will entail "a formal suspension of the operational objectives of monetary policy and its replacement with a general order" (cf Section 19 (7) of the Bank of England Act of 1998, according to which the Bank's objectives under Section 11 – and thus the operational objectives under Section 12 – "shall not have effect" as long as such as order remains in force.

The Commission does not propose inclusion of such legal effects in the text of the law. Depending on the circumstances, uncertainty might arise as to whether Norges Bank would continue to be obliged to pursue operational objectives laid down under the first paragraph after been given an instruction under the second paragraph. Ambiguity regarding the legal effects of an instruction would be highly problematic. In the area of monetary policy, the situation could be perceived as one where owing to extraordinary circumstances, the government sets aside the operational target for monetary policy and decides on its own how Norges Bank's instruments can best be used. In that case, the government itself assumes responsibility for monetary policy as long as the extraordinary circumstances persist.

It is hardly necessary for the text of the law to directly specify the legal effects of an instruction in extraordinary circumstances, as the law does in the UK. However, the Executive Board finds that an instruction should be formulated in such a way as to remove

any doubt about its legal effects. This requirement for clarity regarding the legal effects of an instruction should be clearly stated in the preparatory works to the new act.

2.1.3 Norges Bank as a legal entity and the functions of the Bank

Norges Bank is the central bank of Norway, as stated in Article 33 of the Norwegian Constitution. The Commission proposes to reiterate this formulation in Section 1-1, first paragraph. The Bank is currently a separate legal entity owned by the state (see Section 2, fourth paragraph, and first sentence, of the current Norges Bank Act). The Commission proposes that this provision be retained in Section 1-1, second paragraph, of the proposed act, but further specify that the Bank has the capacity to be a party to legal proceedings. This does not entail a de facto change (cf pages 291-292 of the Report). The Executive Board has no comment to make on this proposal and supports the proposal.

The government's ownership raises questions as to whether the government is liable for the Bank's obligations, and further as to whether claims against the Bank can be enforced. Regarding the question of whether the government is liable for the Bank's obligations, it is the Commission's opinion that "the government will ultimately be liable for the Bank's obligations" (page 292) and that including a special provision on this question is not necessary. The Executive Board has no comment to make on this opinion. However, the Commission does not raise the question of whether claims against Norges Bank can be enforced. Under Section 1-2 of the Enforcement Act, claims against the government cannot be enforced, which also implies that the institution of debt settlement proceedings, or bankruptcy, is excluded. As a public body, there are no weighty grounds for the central bank to be in a different position from the government. With the government as ultimately liable, this will nevertheless not change the risk of losses by creditors with lawful claims against the Bank. A new third paragraph is proposed for inclusion in Section 1-1: "Claims against Norges Bank cannot be enforced", or as a new third paragraph of Section 1-2 of the Enforcement Act.

Section 1-3 of the proposed act on the functions of the Bank contains an enumeration of Norges Bank's primary tasks. While at the outset this is a new provision, materially, large portions of it have been taken from Section 1 of the current Norges Bank Act on the purposes and functions of Norges Bank. The provision specifies that the Bank shall be "the executive and advisory authority for monetary policy" (first paragraph), ie that in this area the Bank is the primary authority. In the area of financial stability, the Bank shall have "executive and advisory authority" (second paragraph), and the wording indicates here that the Bank is one of several public bodies. The Commission also proposes retaining the current Section 1, second paragraph, first sentence, which reads: "The Bank may take measures that are common and natural for a central bank (seventh paragraph). The Executive Board concurs with these proposals. With regard to the last proposal mentioned, the Executive Board endorses the Commission's assessment that there is still a need "for

some flexibility in the law to accommodate changes in the tasks the Bank shall and must perform to support its purpose" (page 299 of the Report).

In the new Section 1-3, fifth and sixth paragraphs, the Commission proposes new provisions on the foreign exchange reserves and investment management. These provisions are a codification of established arrangements. The fifth paragraph reads: "The Bank owns the country's official foreign exchange reserves". This is also the case today, and the Executive Board agrees that this should be established by law. The sixth paragraph reads: "The Bank shall ensure efficient and sound investment management". The Executive Board concurs that both the GPFG and the foreign exchange reserves must be managed efficiently and soundly, even though they serve different purposes and for that reason their management may differ in orientation.

2.1.4 The monetary unit and its external value

The proposed provision in Section 1-9 is essentially a continuation of Section 4 of the current Norges Bank Act. The Executive Board agrees that decision-making authority over the exchange rate arrangement shall rest with the King in the Council of State, and supports the proposal that this authority should not be delegable. Reference is made to page 301 of the Report.

2.1.5 Norges Bank's duty to inform the Ministry of Finance

Section 2, second paragraph, of the current Norges Bank Act stipulates that "[b]efore the Bank makes any decision of special importance, the matter shall be submitted to the ministry". This provision entails a duty to inform the Ministry of Finance of decisions of special importance before they are made, and furthermore that the Ministry shall have the opportunity to state its views on the matter.

As the Commission notes, this duty to submit information can in practice lead to misunderstandings regarding the division of responsibilities between the Bank and the Ministry (pages 313-314 of the Report) and it proposes to repeal this provision. In its place the Commission proposes to introduce a duty to inform the Ministry in Section 1-6. This duty to inform the Ministry shall pertain to "matters" instead of "decisions", as in the current Section 2, second paragraph. Moreover, it is proposed that this duty shall pertain to matters of "importance" and not decisions of "special importance" as is the case today. Both of these changes entail a broader formal duty to inform the Ministry compared with current law. However, unlike today, under the proposal there will not be a duty to provide information *before* a decision of importance is made. Nevertheless, the Bank may have a duty to inform the Ministry at an earlier stage if the matter in and of itself (and which subsequently results in a decision) is regarded as important. Reference is made to page 314 and page 496 of the Report. Like the current duty to submit matters to the Ministry, no formal requirements are proposed for the how the information is to be provided.

The Executive Board agrees with the Commission's assessments and supports the replacement of a duty to submit matters to the Ministry with a duty to inform the Ministry as proposed.

The Commission notes that "matters of importance" need not be decisions, but can also "be important developments and the basis for decisions in the Bank's area considered important for the Ministry to be aware of" (page 314). Significant developments in the Bank's organisation and administration may serve as examples. Moreover, changes in the key policy rate and considerable changes in liquidity management and the management of the foreign exchange reserves may be examples of "matters of importance".

As is the case today, the Bank will continue to decide which matters are of importance. The Executive Board gives weight to ensuring good communication and exchange of information with the Ministry and its political leadership.

2.1.6 Norges Bank's advisory function

Under Section 3, first paragraph, of the current Norges Bank Act, Norges Bank shall "state its opinion on matters that are put before it by the King or the ministry". Under the provision's second paragraph, Norges Bank shall "inform the ministry when, in the opinion of the Bank, there is a need for measures to be taken by others than the Bank in the field of monetary, credit or foreign exchange policy". The Commission proposes to retain this duty to advise the Ministry in Section 1-5 of the new act. The wording is changed somewhat, but "without the intention of changing the content" (see page 495 of the Report).

The Executive Board agrees with retaining the current provisions materially unchanged, and supports the proposed editorial changes. The Executive Board notes the Commission's opinion relating to Section 1-5, second paragraph, that Norges Bank does not have a "duty to inform the Ministry of its assessments of policy areas outside of the Bank's areas of responsibility, such as possible measures relating to tax policy, education etc.", even if such policy areas are of considerable importance for developments in the level of output and employment. Reference is made to page 495 and page 316 of the Report. Nevertheless, the Bank has the right to make public statements regarding such questions, also including critical views of the authorities' implementation of policy.

2.1.7 Information to the public

Under Section 3, third paragraph, of the current Norges Bank Act, Norges Bank shall "inform the public about the monetary, credit and foreign exchange situation". Under Section 3, fourth paragraph, the Bank shall "inform the public of the assessments on which monetary policy decisions are based". The latter provision was inserted into the Act in 2003, and is in essence identical to Section 2 of the Monetary Policy Regulation, which

reads: “Norges Bank shall regularly publish the assessments that form the basis for the implementation of monetary policy“. Section 24, first sentence, reads: “The Bank may undertake regular and public quotation of exchange rates pursuant to further rules laid down by the King”.

Under the proposed central bank act, the content of these provisions is proposed for retention, but with certain changes. According to the Commission, the basis for the duty to inform the public will be enlarged somewhat. (See page 496 of the Report.) Under the proposed new Section 1-7, first paragraph, the Bank shall “inform the public about the basis for decisions that the Bank takes to achieve its objectives”. The current Act and the Monetary Policy Regulation specify this portion of the duty to provide information to pertain to “monetary policy”, so that the proposal entails an intentional broadening of the Bank’s duty to provide information.

The phrase “to achieve its objectives” is broad in scope, and as the Commission notes, it may be “argued that it can cover most decisions that the Bank takes, including those relating to administrative matters etc” (loc cit). However, the Report makes clear that “the duty to provide information also pertains to decisions taken to promote financial stability”, and specifies further that “it is of course not the case that the Bank will have to inform the public about every decision taken at the Bank. *Information under Section 1-7 is intended to provide the public with regular and reliable information about the implementation of policy and decisions in the Bank’s core areas”* (page 315, emphasis ours). On page 496 it is also specified that “the provision is intended to cover … the more important decisions in areas of policy where there is a clear public interest in receiving detailed information about the Bank’s assessments and use of instruments”.

The Executive Board endorses the Commission’s assessments and agrees with formally extending the Bank’s duty to provide information to the public to policy areas other than monetary policy, as is already the practice. The intention is to retain the current provision in Section 3, third paragraph, that “[t]he Bank shall inform the public about the monetary, credit and foreign exchange situation” in the new act, and the Commission notes that that such a duty to provide information is “intended to be covered by first paragraph of the proposed Section 1-7”. Reference is made to page 496 of the Report. The wording should be tightened and made somewhat more precise in line with the Commission’s assumptions, and the Executive Board requests that a change in the wording be considered to “[t]he Bank shall inform the public about the basis for decisions and functions in other respects within the scope of the purpose of the Bank pursuant to Section 1-2”.

Moreover, the Executive Board is in agreement with the proposed Section 1-7, second paragraph.

2.2 Norges Bank's tasks and instruments

2.2.1 Credit to and deposits from banks etc

The Commission proposes to regulate credit to and deposits from banks etc in Section 3-1. In the main, this is a continuation of current law, but with some important changes. Access to Norges Bank's deposit and borrowing facilities is more clearly linked to the purposes of Norges Bank than under the current Norges Bank Act. That is, Norges Bank may consider whether an entity's right to hold an account will enable the Bank to fulfil its statutory purposes. The Commission mentions as an example (page 332 of the Report) that banks whose sole activity is accepting deposits for redepositing with Norges Bank without extending credit may interfere with the Bank's liquidity management. The Commission's proposal clarifies Norges Bank power to refuse such institutions the right to hold an account.

Under current law, Norges Bank may extend credit to and accept deposits from financial sector entities other than banks only "in special circumstances". The Commission argues that the "emergence of new, important providers of payment settlement services raises the question of whether this distinction between banks and other entities in the current Act should be retained in a new act" (page 331). Tying the right to hold an account to the objects clause will better enable Norges Bank to consider the right to hold an account for other types of entity that currently or may in the future play a role in the payment system. Therefore, the Executive Board supports the Commission's assessment that the Bank's use of instruments, such as deposit and borrowing facilities, should promote the purposes of the Bank.

Under the Commission's proposal, Section 3-1, second paragraph, will empower Norges Bank to "issue rules on which entities shall have the right to hold an account, and the Bank may set different terms for different types of entity" (page 504). The provision retains a similar provision of the current Norges Bank Act. The Executive Board supports the proposal.

The Executive Board notes that Norges Bank should continue to be able to establish different types of account for different types of institution, for example contingency accounts for smaller banks that are activated only when needed for the purpose of liquidity management or in the work to promote financial stability, including disruptions in the payment system. The proposed Section 3-1, first and second paragraph, and the Commission's assessments appear to retain this ability.

The Executive Board supports the Commission's proposed Section 3-1, third paragraph, which empowers Norges Bank to set minimum requirements for deposits from entities holding an account with the Bank, and the assessments by the Commission of such an arrangement. The Bank will be able to use a minimum requirement for deposits (reserve requirement) to promote monetary policy objectives, for example, in order to strengthen the effectiveness of the key policy rate. This is an ordinary central bank instrument, which,

for example, can help stabilise overnight money market rates. The Commission describes the arrangement on page 334:

"In order to meet the reserve requirements, banks may borrow reserves from the central bank at a rate close to the key policy rate. At the same time, the reserves required to be held in the account with the central bank are also remunerated at a rate close to the key policy rate. This means that neither banks nor the central bank realises any appreciable gains or losses from the reserve requirement. […]

"A reserve requirement as described above, has a different function from the reserve requirement for directly managing banks' extending of credit, as was authorised by the Money and Credit Act of 1965. The Commission does not view it as especially appropriate to use reserve requirements to regulate the supply of credit, but is of the opinion that a reserve requirement must be able to be used as a part of liquidity management, as is authorised by many other countries' central bank legislation."

Under Section 3-1, fourth paragraph, Norges Bank may grant loans on special terms (S-loan) when warranted by special circumstances. Strictly speaking, this provision is legally superfluous alongside the second paragraph, but it underscores that the role of lender of last resort is a fundamental central bank task. The Executive Board therefore supports the Commission in having Norges Bank's role as lender of last resort expressly stated in the act, as is the case today.

In practice, loans on special terms (S-loan) is only relevant for an individual bank or other financial sector entity that is considered to be solvent and requires liquidity beyond that offered by the Bank through ordinary facilities and collateral. An insolvent institution is not eligible for an S-loan. The solvency criterion is not expressly stated either in the current Norges Bank Act or in the Commission's proposed act, but follows from central bank practice and the Executive Board's guidelines from 2004. The Executive Board notes the Commission's observations that a decision as to whether to grant an S-loan will rest on a judgemental assessment. Such decisions must often be made in a crisis situation when Norges Bank must act quickly. There may be challenges associated with the valuation of the assets and liabilities of an S-loan applicant and the value of the collateral to be pledged for the loan. The requirements for solvency and collateral will in that case also depend on judgement, and such assessments will not be well suited to re-examination (cf below under 2.4.4. on the right to appeal such judgements under the rules in the Public Administration Act).

The Executive Board assumes that the draft act will continue to permit temporary liquidity loans from Norges Bank to the Norwegian Banks' Guarantee Fund, ie the proposed deposit guarantee fund and crisis management fund (cf Prop. 159 L (2016-2017)).

Section 3-1, fifth paragraph, codifies requirements for collateral for loans and grants the Bank authority to lay down further rules on the pledging of collateral. The Executive Board supports the proposal to codify the requirement for satisfactory collateral. This

requirement underscores that the central bank shall not offer support to banks or other financial sector entities if they are insolvent.

2.2.2 Macroprudential policy

In Norway, the Ministry of Finance has primary responsibility for macroprudential supervision, while both the Financial Supervisory Authority of Norway and Norges Bank have been given key tasks in this area. In 2015, the IMF pointed out that the institutional structure for macroprudential policies should be improved.[3] The Executive Board is of the opinion that a clearer framework is necessary for the establishment and use of macroprudential instruments in Norway. Time-varying macroprudential instruments can beneficially be delegated to an independent authority to facilitate implementation and enhance predictability over time and to ensure that decisions are based on financial stability considerations.

The Commission proposes a new authorisation in the Financial Undertakings Act, which will enable Norges Bank to be given the responsibility for deciding the level of the countercyclical capital buffer for banks. Currently, Norges Bank prepares the decision basis for the countercyclical capital buffer and advises the Ministry of Finance on the level of the buffer. Conferring decision-making authority on Norges Bank for the level of the countercyclical capital buffer will result in a clear division of responsibility between the Ministry and Norges Bank.

Against this background, the Executive Board supports the Commission's proposal.

The countercyclical capital buffer is only one element of the overall capital requirements for banks and must be viewed in the light of other requirements applying to banks. Norges Bank and the Financial Supervisory Authority should continue to exchange information and assessments regarding the level of the buffer, but there should not be a formal statutory requirement to explain any departure from official advice from the Financial Supervisory Authority. In line with proper procedure, Norges Bank will take into consideration the assessments and views of the Financial Supervisory Authority. The Commission's proposed model for setting the buffer requirements will facilitate this process, and the Executive Board supports the Commission's proposal. Norges Bank will continue to publish a thorough decision basis if the Bank is given decision-making responsibility for the countercyclical capital buffer.

Capital adequacy legislation and macroprudential regulation are work in progress internationally, including in the EU. This raises questions as to whether statutory authority should be broader than that proposed by the Commission for the countercyclical capital buffer in the Financial Undertakings Act. The Commission does not discuss this point.

[3] Norway – Financial Sector Assessment Program, IMF Country Report No. 15/252.

The systemic risk buffer is designed to make the banking system robust to more permanent systemic risks, while the countercyclical capital buffer aims to make it robust to cyclical systemic risks. Under the EU rules, the level of the systemic risk buffer is subject to review every other year. It is difficult to draw a clear distinction between structural and cyclical systemic risks, for example, the contribution to a strong credit expansion from an adjustment to a permanently higher level. Norges Bank analyses systemic risk on a regular basis and is responsible for issuing advice on the level of the countercyclical capital buffer. The Bank is therefore in a position to assume formalised advisory role when the level of the systemic risk buffer is being reviewed.

For its part, the Commission notes that it may "be appropriate to assign to Norges Bank other instruments to mitigate systemic risk in the financial sector. In this regard, the Commission would refer to the rules relating to requirements for new residential mortgage loans [...] cf the current mortgage lending regulation" (page 343 of the Report). The mortgage lending regulation serves a number of purposes. It regulates individual banks and their business practices, and safeguards consumer protection, in addition to mitigating systemic risks. The Commission does not discuss which portions of the mortgage lending regulation may be regarded as time-varying macroprudential instruments, nor does it discuss what, in its opinion, would be a natural division of responsibility between the Financial Supervisory Authority, the Ministry of Finance and Norges Bank for rules relating to new residential mortgage loans. The Executive Board does not view it as appropriate for the central bank to assume responsibility for the mortgage lending regulation, since the regulation also addresses banks' business practices and consumer protection. This responsibility should rest with the Ministry. It is also Norges Bank's view – which it has also stated earlier – that prudent lending requirements should primarily be regarded as a permanent, structural measure. As part of assessments of and advice on macroprudential instruments in Norway, Norges Bank will give advice on the formulation of the rules in the mortgage lending regulation, as the Bank did in 2015 and 2016.

When an administrative body is delegated authority to make decisions, it is a general administrative law principle that the body delegating the authority has the full power of instruction over the body to which authority has been delegated. If the King in the Council of State delegates authority to Norges Bank under another act, the principle will be that the King in the Council of State will then be able to instruct the Bank regarding all aspects of the exercise of authority to which the delegation pertains.

The proposed new provisions of the Financial Undertakings Act make an exception to this principle regarding the power of instruction. Instead, the Commission proposes that "[s]ection 1-4, second paragraph, of the central bank act, applies accordingly". This means that the Bank may not be instructed regarding these decisions except in extraordinary circumstances, and in that case in accordance with the formal requirements of Section 1-4, second paragraph. Among the Commission's justifications is the argument that "[t]his solution may guarantee a certain distance from the government authority in the use of instruments and make decisions less vulnerable to pressure from sectoral interests" (see

page 343 of the Report). Nevertheless, the King in the Council of State may withdraw delegated authority (see also page 514 of the Report).

The Executive Board supports the proposal that the instruction provision shall also apply to decisions concerning the countercyclical capital buffer. Such a rule clarifies the division of responsibility and emphasises Norges Bank's independence in decision-making. Independence is in itself an argument in favour of delegating time-varying instruments such as the countercyclical capital buffer.

2.2.3 Payment and settlement

The Commission proposes a separate provision in Section 3-3 related to Norges Bank's responsibilities for the payment and settlement system:

> "(1) The Bank shall provide for a stable and efficient system for payment, clearing and settlement between entities with an account at Norges Bank.
>
> (2) The Bank shall oversee the payment system and other financial infrastructure, hereunder contribute to contingency arrangements.
>
> (3) The Bank may lay down regulations to implement this section."

The Executive Board supports the proposal in the first paragraph to codify the Bank's responsibilities as the ultimate settlement bank.

The Executive Board also supports explicitly including in the text of the law the responsibility for overseeing the payment system and other financial infrastructure. This is generally a continuation of current law, which is expressed, for instance, in the Bank's published reports (cf. the 2017 *Financial Infrastructure Report* as a typical example). In this area the Bank also gives advice and makes recommendations to the Ministry when, in the Bank's opinion, action is deemed necessary and the Bank itself does not have instruments at its disposal.

Norges Bank's responsibility for overseeing the payment system under the current central bank act must be viewed in the context of the Bank's responsibilities under the Payment Systems Act and the division of responsibility set forth in the Payment Systems Act between Norges Bank and the Financial Supervisory Authority. Alongside its responsibility for overseeing the payment system, Norges Bank has supervisory responsibility for interbank systems under the Payment Systems Act. For retail systems, the Financial Supervisory Authority is the supervisory authority (also for security), while Norges Bank has oversight responsibility. Under the Payment Systems Act, the Ministry of Finance has the authority to issue regulations. Otherwise, it is Norges Bank's responsibility to make cash available as part of the overall payment system.

The distinction between oversight and supervision is not always sharp. In its oversight of the payment system, Norges Bank follows principles and guidelines issued by the

Committee on Payments and Market Infrastructures (CPMI). The oversight Norges Bank currently performs does not involve issuing decisions that are binding on individual market participants.

In the Commission's opinion, there is a need to clarify Norges Bank's responsibilities and tasks, especially with regard to contingency arrangements for cash distribution in cases of disruptions in the electronic systems. The Commission points out that today the Bank has few instruments – in practice only an advisory responsibility – and that there is

"a need to bolster the ability of Norges Bank to respond to disruptions in the electronic payment system and in particular its ability to design contingency arrangements for disruptions of the electronic infrastructure of longer than a few hours' duration. The existing contingency solution is banknotes and coins, and until other alternatives are in place, this will be the contingency solution in the years ahead as well" (page 347 of the Report).

Pursuant to Section 16-4 of the Financial Undertakings Act, banks shall accept cash from customers and make deposits available to customers in the form of cash "in accordance with customers' expectations and needs". This provision is to be followed up and enforced by the Financial Supervisory Authority. Pursuant to Section 16-4, second paragraph, the Ministry of Finance may lay down regulations relating to "the obligation of banks to accept and make cash available to customers". In 2017, the Ministry of Finance conducted a consultation on a draft regulation on contingency arrangements for cash distribution (cf. consultation document of 31 January 2017 "Beredskap for kontantdistribusjon" [Contingency arrangements for cash distribution] (in Norwegian only). The draft regulation was prepared jointly by Norges Bank and the Financial Supervisory Authority and is based on the power to lay down regulations in Section 16-4, second paragraph.

For its part, the Commission argues that Section 16-14 of the Financial Undertakings Act "does not in its present form empower the authorities to require that banks distribute cash as part of contingency arrangements in the event of an outage of the electronic infrastructure" (pages 347-348 of the Report). Furthermore, in the Commission's view, the provision does not authorise requiring banks to maintain a sufficient number of physical distribution points for contingency purposes. The Commission points out the importance of ensuring the authorities a statutory basis, and argues that the draft Section 3-3, second paragraph, combined with Section 3-3, third paragraph, will give Norges Bank statutory authority to order banks to make contingency arrangements for cash distribution.

After an overall assessment, it is the Executive Board's view that the most appropriate course would be for regulatory responsibility to continue to rest with the Ministry and that the responsibility for supervising individual institutions should, as is the case today, rest with the Financial Supervisory Authority. Proposed regulations should, also as is the case today, be formulated in collaboration between The Financial Supervisory Authority and Norges Bank.

The Executive Board is of the opinion that this will result in the clearest division of responsibility. Shared regulatory responsibility between Norges Bank and the Ministry, and regulations pursuant in part to the Financial Undertakings Act and in part to the proposed central bank act, and that are to be followed in a supervisory capacity up in part by the Financial Supervisory Authority and in part by Norges Bank, may give rise to ambiguities.

It can be difficult to define the increases in volume that are to be considered contingencies. Contingencies may have different causes and characteristics, for example, when the ordinary supply channels (electronic systems etc) do not function, but the volumes demanded are unchanged; when the ordinary supply channels do not function, but there is a sharp increase in volumes demanded; or when the ordinary supply channels function, but there is a sharp increase in volumes demanded.

Moreover, there is no absolute boundary between arrangements for normal situations and contingencies. Contingency arrangements should thus be based on the arrangements applying in normal circumstances.

The Executive Board refers to earlier work and the consultation on regulations pursuant to Section 16-4, second paragraph. In connection with the consultation, the Bank and the Financial Supervisory Authority have found that Section 16-14, second paragraph, is an appropriate statutory authority also for contingencies. If the Ministry finds it necessary, the Financial Undertakings Act can be clarified. The matter has been the subject of a consultation and is being considered by the Ministry of Finance.

The Executive Board would emphasise that in any case it is now important for the regulation to be adopted quickly and enter into force.

Furthermore, the Executive Board is of the opinion that the most appropriate course is for regulations pertaining to the Bank's tasks under the Payment Systems Act to be laid down pursuant to the Payment Systems Act. If the Bank were to lay down regulations pursuant to Section 3-3, third paragraph, of the central bank act in areas covered by the Payment Systems Act, ambiguities might arise. Moreover, regulations pursuant to the Payment Systems Act should be drawn up jointly by the Financial Supervisory Authority and Norges Bank.

In the view of the Executive Board, authority to lay down regulations will be necessary to implement Section 3-3, first paragraph, for example, for rules for a contingency account at Norges Bank for banks that use another bank as a settlement bank, or for rules not pertaining to account maintenance agreements under Section 3-1, first paragraph (cf second paragraph). The Executive Board proposes that Section 3-3, third paragraph, can be formulated as follows:

"(3) The Bank may lay down regulations to implement the first paragraph."

2.2.4 The sole right to issue banknotes and coins. Notes and coins as legal tender

The issuance of banknotes and coins is a core task of all central banks. Besides the fact that central bank money is of importance for confidence in banks' deposit money, the Executive Board cites the continued importance of cash as a contingency solution for the payment system. The Executive Board therefore endorses the Commission's assessments and proposal to retain Norges Bank's sole right to issue Norwegian banknotes and coins (see proposed Section 3-4, first paragraph) and for the Bank to be permitted to outsource the actual production of banknotes and coins (cf second paragraph).

In Section 3-5, the Commission proposes that the Bank's notes and coins remain legal tender in Norway. The Executive Board endorses the Commission's assessment that there is still a need for a mutual obligation to accept a certain type of means of payment as a predictable and legally secure way to ensure settlement finality unless otherwise agreed. Without such a rule for legal tender as a default option, uncertainty may arise as to how a debt can be settled with finality for the debtor. The Executive Board therefore supports the Commission's proposal to retain banknotes and coins as legal tender. Cash is a claim on Norges Bank and therefore occupies a unique position as a secure means of payment. Cash can be used by anyone independently of a bank account, special payment instrument or technical solutions, and cash transactions are settled immediately and without credit risk. If in the future it becomes appropriate to provide the public with types of central bank money other than banknotes and coins, this provision should be amended in order to include these as well.

The Executive Board also supports the proposed Section 3-5, first paragraph, second sentence, specifying that no one is obliged to accept in any one payment more than 25 coins of each denomination.

Under Section 14 of the current Norges Bank Act, severely damaged notes and coins are not legal tender. In practice it has been difficult to determine when damaged notes and coins cease to be legal tender. The Executive Board supports the proposed Section 3-5, second paragraph, specifying that Norges Bank may lay down rules for limits on what is to be regarded as legal tender, and for compensation for lost, burned or damaged notes and coins.

2.2.5 Withdrawal of notes and coins

In the Commission's proposed Section 3-6, Norges Bank may withdraw banknotes and coins of a certain series or coin type (see first sentence). After a certain date, such a banknote series or coin type will no longer be legal tender. A decision to withdraw notes or coins must be in the form of a regulation, and the regulation must be announced at least one year in advance (cf second sentence). This is a continuation of current law and the Executive Board supports the proposal.

Under Section 15, second paragraph, of the current Norges Bank Act, Norges Bank is currently obliged to redeem notes and coins for ten years after they have ceased to be legal tender. The current Act does not specify further rules for whether there is a right to redeem notes and coins also after the ten-year time limit, but in practice the time limit has not been strictly enforced.

In the Commission's proposed Section 3-6, third sentence, it shall be up to the Bank to decide how and how long withdrawn notes and coins may be redeemed: "The Bank may redeem banknotes and coins that are no longer legal tender." The current ten-year time limit is proposed repealed. Section 3-6, fourth sentence, gives the Bank the power to law down regulations on the procedure for redemptions, including rules on fees. The Executive Board supports the proposal to allow the Bank to lay down further regulations on the right to redeem notes and coins, procedures, fees, etc. In the Executive Board's assessment, the redemption rules must be based on the fundamental considerations underlying the rules for withdrawal and redemption, inter alia the confidence in legal tender, the need to prevent the counterfeiting of notes and coins and the efforts to combat money laundering.

The Executive Board also understands the proposal to mean that a time limit may be set in the regulation. It is important that the public be encouraged to redeem withdrawn notes and coins after a reasonable period of time. How long the redemption period shall be, the meaning of the time limit or whether different time limits shall apply should, in that case, also be specified in the regulation. The Executive Board intends for the Bank to continue a flexible practice.

2.2.6 Commemorative and special edition circulation coins

The Commission points out that at times it has been a challenge to deal with matters related to jubilee and commemorative coins. Among other reasons, this is because issuance is not actually decided by Norges Bank, and because the provisions related to sharing any profit on such issues may provide outside parties with financial incentives to try to influence the decision process. The Executive Board supports the proposal not to retain the provision of Section 16 on jubilee and commemorative coins, and that commemorative coins associated with special events may be issued on the basis of the general provision on the issuance of coins (see page 354 of the Report).

2.2.7 Electronic central bank money

The Executive Board refers to the Commission's discussion on page 355 and shares the assessment that electronic central bank money must be studied further before it can be introduced in Norway. In line with Norges Bank's strategy for 2017-2019, the Bank has already initiated a project to assess whether electronic central bank money can contribute to a more efficient financial infrastructure, including whether electronic central bank

money can be a possible future means of payment in Norway. This work may have consequences for the payment solutions of the future, and thus for the Bank's functions and responsibilities. Other central banks are also exploring the possibility of introducing electronic central bank money, but there is still uncertainty regarding technology, the impact on monetary policy, the consequences for the banking system, etc. On page 355, the Commission writes:

"After an overall assessment, the Commission has concluded that the new act should not now allow Norges Bank to issue central bank money to the public. The consequences for banks and for the provision of credit are unpredictable and may be considerable. Furthermore, it is the Commission's view that the issuance of central bank money to the public should only be permitted after a more thorough assessment than has been within the Commission's remit."

The Executive Board endorses the conclusion that these issues require further clarification before the introduction of electronic central bank money becomes relevant.

2.2.8 Banker to the government

The proposed Section 3-7 is generally a continuation of a similar provision of the current Act, with the important exception of the proposal to omit the reference to state banks and public funds. Nevertheless, it is the Commission's view that Norges Bank must be able to choose to perform services for parties other than the government if this will assist the Bank in fulfilling its purposes, and mentions tasks for a separated Government Pension Fund Global as an example.

As part of the development of an efficient payment system in Norway and in line with international best practice, Norges Bank has focused its activities as settlement bank on real-time settlement of interbank payments. A number of banking services once provided for the government, the Bank's own employees and others have been discontinued. The government now uses ordinary banks for payment transactions, and the tasks related to the government's account at Norges Bank are largely based on automated solutions in collaboration with banks. The reason for this is that the government wishes to maintain its holding of krone liquidity at Norges Bank. However, Norges Bank continues to provide account services for special purposes related to the government's liquidity management and the government's mandatory deposit arrangements. There is ongoing work to convert these payment routines into the ordinary solutions for the government's payment transactions.

The payment system requires high levels of security and efficiency. It is therefore important that Norges Bank's tasks as a settlement bank focus on continuous settlement of large interbank transactions, as the best means of maintaining financial stability. Tasks that diverge from this, such as manual payment orders and special account services for some government entities, may interfere with the core task as settlement bank. The Executive

Board therefore supports the omission of the explicit reference to state banks and public funds from the new act.

It is also positive that the Commission recommends that the scope of financial services that Norges Bank performs for the government should be specified in an agreement or mandate. It is important that the terms and conditions for Norges Bank's account services for the government, including coverage of costs, be specified in an agreement. This has also been the practice for a long time.

If the Government Pension Fund Global is to be managed by another entity, the manager should use the ordinary solutions for the government's payment transactions for transfers to the government's sight deposit account with Norges Bank. Operating payments should be made through an ordinary bank. Norges Bank should not be the banker for the manager of the GPFG, in the same way that Norges Bank is not the banker for the Government Pension Fund Norway. The arrangement for regular transfers of krone amounts between the GPFG's account with Norges Bank and the government's account with Norges Bank should be subject to an agreement between the Ministry of Finance, the management entity and Norges Bank.

2.2.9 Credit to the government

The Commission proposes retaining unchanged as to content the current provisions relating to credit to the government in Section 18 of the Norges Bank in Section 3-18 of the draft act.

A basic principle is that the central bank shall not finance the government's expenditures. Consequently, the Executive Board supports the Commission's proposal to retain the prohibition against directly extending credit to the government in Section 18 of the current Norges Bank Act.

2.2.10 The official foreign exchange reserves

In the new Section 3-2, the Commission proposes new provisions regarding the official foreign exchange reserves. The proposal is in part a continuation of Section 24, second sentence, of the current Norges Bank Act, which reads: "The Bank shall invest the official foreign exchange reserves with a view to maintaining the foreign exchange policy that has been established", but with some changes that codify established practice. In this connection, reference is also made to the proposed Section 1-3, fifth paragraph, concerning the Bank's ownership of the foreign exchange reserves, and further to Section 1-3, sixth paragraph, requiring efficient and sound investment management (cf 2.1.3 above).

The Executive Board notes the Commission's clarification that the "international commitments" referred to in the section's second sentence "are primarily commitments to

the IMF that Norges Bank shall honour on behalf of the government", and that "the government's other international commitments are not covered by this provision". Furthermore, there is an important clarification that "the requirement for collateral for credit in [the proposed] Section 3-1 does not preclude Norges Bank from investing funds in various types of unsecured financial instrument when doing so is appropriate and serves the purposes of the reserves". As the Commission points out, material changes to the guidelines for the management of the foreign exchange reserves will be a matter of importance of which the Bank must inform the Ministry pursuant to the proposed Section 1-6. Reference is made to pages 337-338 of the Report.

Against this background, the Executive Board supports the proposed Section 3-2.

2.2.11 International agreements

The proposed Section 3-10 on international agreements is a continuation of Section 25, first paragraph, of the current Norges Bank Act on foreign exchange transactions for the government and Section 26 on international agreements, but with certain changes.

The Commission proposes to retain Section 25, first paragraph, which reads: "The Bank shall administer Norway's rights and fulfil the corresponding obligations ensuing from membership of the International Monetary Fund", unchanged as Section 3-10, first paragraph. The Executive Board has no comment to make on this recommendation.

The proposed Section 3-10, second paragraph, concerning international deposit, credit and guarantee arrangements, is a continuation of Section 26 of the current Norges Bank Act, but with two changes. First, the Commission proposes removing the requirement in the current Section 26 for approval by the King of the Bank's international agreements. Owing to the requirement for satisfactory collateral, such agreements do not entail a financial risk to public budgets. Moreover, referring to agreements the Bank concluded during the financial crisis in 2008, the Commission adds that some international agreements may be "a part of Norges Bank's conduct of monetary policy and work to promote financial stability", and it may be important to "get the agreements in place quickly". If Norges Bank is in doubt as to whether satisfactory collateral has been furnished, but still is of the opinion that concluding an agreement is necessary for promoting the Bank's objectives under the new act, the Commission provides the clarification that "the Bank [must], if necessary, request a government guarantee". In that case, this must ultimately be decided by the Storting.

During and after the financial crisis, Norges Bank entered into three types of international agreement: a swap line with the Federal Reserve, a long-term loan agreement with the Central Bank of Iceland and bilateral borrowing agreements with the IMF. The swap line with the Federal Reserve was intended to strengthen Norges Banks foreign exchange liquidity in a crisis situation. The loan agreement with the Central Bank of Iceland was

intended to support Iceland. As a rule, it is important to conclude agreements of this kind quickly.

The borrowing agreements with the IMF differ in nature and the time aspect has been less crucial. Their purpose has been to bolster the IMF's lending capacity with a view to promoting global financial stability. This is important for Norway as a small, open economy. Norges Bank's assessment has been that loans to the IMF have "sufficient collateral" and Norges Bank has not requested a government guarantee. The agreements have been submitted to the King for approval under Section 26, and the Government has asked for the Storting's consent for the agreements between Norges Bank and the IMF.[4]

If the requirement for consent is repealed, a requirement to involve the government and/or the Ministry will not apply for agreements for which sufficient collateral is furnished. If an agreement is deemed to be important, for example, for policy reasons, the Bank will inform the Ministry under the proposed Section 1-6.

The second change proposed by the Commission is that Norges Bank will no longer be permitted to enter into deposit, credit and guarantee arrangements with "other credit institutions" as is currently allowed under Section 26. The Commission justifies this proposal by arguing that it is no longer the central bank's practice to establish international agreements with credit institutions that are not international organisations. For transactions with such credit institutions, the Commission refers to Norges Bank's general power "to issue its own financial instruments, extend credit to or receive deposits also from foreign banks etc under the proposed Section 3-1". The Commission underscores that it is still important for the central bank to be able to enter into agreements with foreign central banks.

The Executive Board agrees with the Commission's assessments and endorses the proposed Section 3-10.

2.2.12 Protective measures

The Commission proposes retaining the current provision on protective measures in Section 28 of the Norges Bank Act materially unchanged, but with updated terminology (cf the proposed Section 3-9 and pages 361-362 and page 506 of the Report).

The Executive Board has no comment to make on the proposal.

[4] See eg Prop. 40 S (2016-2017).

2.3 Organisation and supervision

2.3.1 Organisation of the Bank

The Executive Board has views on the Commission's legislative proposal with regard to the composition of the board and committee and the tasks of these two bodies, but prefers to return to this when it is clearer which governance model will be chosen for central banking operations and investment management (cf discussion in Section 1.4).

In Section 2-12, the Commission proposes provisions on terms and conditions for the dismissal of the Governor and Deputy Governors and the external members of the committee for monetary policy and financial stability. The purpose of including a separate provision on terms and conditions for dismissal is to guarantee "employment protection that ensures that they cannot be dismissed if the government or the Storting disagrees with the use of instruments in the conduct of monetary policy or in the work to promote financial stability" (cf Chapter 27.3.9 of the Report). The Commission argues further that it "finds that the Governor and Deputy Governors cannot be terminated under the ordinary rules for termination". The Commission further proposes that dismissal may only be appropriate if the person in question is unfit to perform his or her duties, has shown gross negligence in the performance of those duties, has committed a gross breach of official duties or engaged in improper conduct on or off the job. This largely corresponds to the provisions on dismissal in the bill for a new Act related to central government employees (cf Sections 26 and 27 of Prop. 94 L (2016–2017), page 166).

The Executive Board supports the proposal for a new provision to regulate the terms and conditions for dismissal of the Governor and Deputy Governors and external committee members. Even though on some points the provision provides clarification with regard to current law, the position under labour law of the Governor and Deputy Governors can be further clarified. For example, it should be specified which employer functions and responsibilities of the Governor and Deputy Governors and the external committee members are to rest with Norges Bank or the Ministry of Finance, respectively, and whether their employment will be regulated by the Working Environment Act (as is the case for the Bank's other employees) or by the Civil Service Act. This is important for avoiding ambiguity about the rights of the Governor and Deputy Governors/committee members in the event of termination/dismissal (right to sue, deadlines, legal effect of wrongful dismissal, etc).

The Commission proposes retaining the current practice whereby employee representatives attend meetings of the board when the board discusses administrative matters. However, the Commission also wishes to codify excluding employee representatives from attending when the board considers the Bank's budget. The Executive Board cannot see any decisive reason for this, and is of the opinion that it makes sense for employee representatives to attend board meetings also when the Bank's budget is being considered.

In a model where the Supervisory Council is retained, the Commission has proposed that the Supervisory Council shall represent Norges Bank as employer in cases pertaining to the employees of the Office of the Supervisory Council, who will continue to have a formal employment relationship with Norges Bank as an institution. The purpose is to ensure the professional and administrative independence of the Office from the rest of Norges Bank. The Executive Board supports the proposal, and assumes that this will clarify the most essential questions relating to the employer's managerial prerogatives, such as appointments and terminations. Nevertheless, the Executive Board sees that in some areas, clarification may still be necessary. This pertains, for example, to questions regarding who will conclude collective agreements on behalf of and with effect for the employees of the Office of the Supervisory Council, or whether terms and conditions for pensions may be laid down that depart from those otherwise applying to the Bank's employees.

On page 439 of the Report, the Commission refers to the Supervisory Council's letter of 17 March 2016 and raises questions as to whether other arrangements should be considered for security clearance of the chairman of the Supervisory Council and its members, if necessary, and the employees of the Office of the Supervisory Council. In the Commission's view, it may be undesirable in principle that the Bank's Security Unit, which is a part of the Bank's administration and is subject to the board, is the security clearance and authorisation body for members of the Supervisory Council and employees of the Office of the Supervisory Council. The Commission also points to the consultation on the changes to the Security Act proposed by the Ministry of Defence and the Supervisory Council's discussion of the matter in that connection. If the Supervisory Council is retained in a new central bank act, it is important that the responsibility for security clearance and authorisation of members of the Supervisory Council and the Office of the Supervisory Council be clarified.

2.3.2 Supervision, audit and equity

The legislative proposals regarding supervision and audit will depend on the governance model. The Executive Board prefers to return to this when it is clearer which governance model will be chosen for central banking operations and the management of the GPFG, and refers in other respects to the discussion of the role of the Supervisory Council in Section 1.3.

With regard to the proposed Section 4-5 concerning the Bank's equity, the Executive Board endorses the Commission's assessments of the mechanism that regulates transfers of Norges Bank's profit to the government. Like the Commission, the Executive Board is of the opinion that a mechanism that automatically triggers a transfer to the government owing to a temporary depreciation of the krone can be problematic. The Ministry should assess the transfer mechanism in further detail.

2.4 Relationship to other legislation. Duty to disclose information, duty of confidentiality, sanctions

2.4.1 Proposed duty of confidentiality

The Commission proposes largely to retain the current provision on the duty of confidentiality in a new Section 5-3. The Executive Board agrees that there is a need for a special provision on the duty of confidentiality for the Bank's activities that is somewhat stricter than what ensues from the general provision on the duty of confidentiality in Section 13, first paragraph, of the Public Administration Act, and that the current provision in Section 12 of the Norges Bank Act is largely retained. Owing to its activities as a central bank, the Bank is privy to other market participants' business circumstances in a manner comparable to that of other financial institutions. It is thus essential that Norges Bank's duty of confidentiality in this regard is equivalent to that of other financial institutions. Reference is made to pages 368 and 369 of the Report. Furthermore, the Executive Board agrees with the clarification in the wording that duty of confidentiality applies vis-à-vis "unauthorised persons" (cf proposed Section 5-2, first paragraph, and the Commission's reasoning on page 374 of the Report). This may appear to be somewhat unclear according to the wording of the current Section 12, but the Executive Board finds that a similar specification must also be construed into the current provision on the duty of confidentiality. The Executive Board supports the expressed inclusion of the European Central Bank among the institutions covered by the exemption from the duty of confidentiality under the proposed Section 5-2, second paragraph, first sentence (cf Section 12, second paragraph, first sentence, of the current Norges Bank Act).

The proposal for a new provision on the duty of confidentiality in Section 5-2 does not mention the relationship with the Norwegian Banks' Guarantee Fund. Under Section 5, second paragraph of the bill for a new Act on the Norwegian Banks' Guarantee Fund (cf Prop. L 159 (2016-2017)), Norges Bank has, in some situations, a duty to inform the Norwegian Banks' Guarantee Fund: if Norges Bank or The Financial Supervisory Authority has "become aware of circumstances at a member institution that may result in a liability for the deposit guarantee scheme, they shall notify the Norwegian Banks' Guarantee Fund of this without delay". According to this wording, Norges Bank is bound by duty to disclose information regarding business circumstances that will normally be covered by the duty of confidentiality under Section 5-2, first paragraph, of the new central bank act.

There are good reasons for the Bank's duty to inform the Norwegian Banks' Guarantee Fund if it has become aware of circumstances at a member institution that may lead to a liability for the deposit guarantee scheme. Under the proposed new Act on the Norwegian Banks' Guarantee Fund, the Fund will be granted a position as administrative body with key crisis management tasks (cf Section 7, first paragraph). There may also be a need for information exchange between the Bank and the Fund unhampered by the duty of confidentiality, beyond the duty to disclose information in Section 5, second paragraph. In the light of this, the Executive Board is of the opinion that no duty of confidentiality should apply vis-à-vis the Norwegian Banks' Guarantee Fund and proposes that the exemption

from the duty of confidentiality also applies to the Norwegian Banks' Guarantee Fund. If a duty of confidentiality is to apply vis-à-vis the Norwegian Banks' Guarantee Fund, the Executive Board is of the opinion that it should in any case be clarified in Section 5-2 that the duty of confidentiality is not an impediment to the Bank in disclosing information that the Bank is obliged to provide under Section 5, second paragraph, of the proposed new Act on the Norwegian Banks' Guarantee Fund.

2.4.2 Duty to disclose information

The provisions of Section 27 of the Norges Bank Act concerning the duty to disclose information are retained in the proposed Section 5-3 in somewhat altered form. One change is the proposal to transfer directly to Norges Bank the decision-making authority that currently rests with the King. The Executive Board agrees that this will simplify the provision and render it more efficient (cf page 509 of the Report) and supports the proposal.

Materially, the proposed provisions of Section 5-3, first paragraph, first and second sentence, do not entail any changes compared with current law. The Executive Board has no comment to make on this point.

A material change ensues from the proposed Section 5-3, first paragraph, third sentence, which reads that the ministry "may by means of regulations stipulate that also other entities registered in the Register of Business Enterprises shall be made subject to a duty to disclose information pursuant to the first sentence". This will entail a grant of authority to extend the duty to disclose information to some degree. The Commission justifies the proposal by arguing that the current powers in Section 27 of the Norges Bank do not fully address the Bank's potential needs, adding that the Bank may require information from a broad spectrum of market participants in the conduct of monetary policy and to promote financial stability (page 374 of the Report). In this context, disclosures not only from financial institutions and financial market infrastructures (FMIs) will be crucial, "but also the household sector and enterprises eg in the construction industry, oil sector, real estate business and exporters and importers" may be able to provide important information (loc cit). The Commission also cites a potential need for relative frequent changes to the categories of entities to be subject to a duty to disclose information, eg "as a consequence of new or amended EEA legislation".

The Executive Board agrees with the Commission's assessments on this point, and supports the proposed new provision in Section 5-3, first paragraph, third sentence. The Commission proposes to codify a duty to disclose information required to enable Norges Bank to fulfil its purposes, and that this information shall be disclosed notwithstanding any statutory duty of confidentiality. This should apply regardless of whether Norges Bank obtains data directly or via other registers. The Executive Board also supports specifying in the act the categories of entities that may be subject to a duty to disclose information.

The Executive Board endorses the Commission's assessment that Norges Bank should seek to meet its requirements for detailed information about the incomes and indebtedness of households and businesses by extracting this information from administrative registers rather than by direct data gathering. This will reduce costs both for Norges Banks and for potential reporting entities and is in line with the obligation to coordinate public sector data gathering in order to reduce reporting entities' disclosure burden. The Commission's proposed changes to the Tax Administration Act and the Statistics Act are an important prerequisite for bringing this about. In its assessments, the Commission points out that following the consultation on the proposed Act relating to Debt Information, the Ministry has been made aware that the personal identity number is necessary for linking information. Similarly, unique identifiers are necessary for linking information from other registers, eg the Norwegian Tax Administration and Statistics Norway. As part of the compilation process, the identifier in the linked data will be replaced by a sequence number before the data set is used for the purpose of analysis.

The Executive Board also supports the proposed provisions in the second, third and fourth paragraphs, and refers here to the Commission's assessments on page 509. Furthermore, the Executive Board concurs with the proposed rule changes pursuant to the new Act relating to Debt Information, as well as to changes to the Tax Administration Act and the Statistics Act. The Executive Board also supports the proposed amendments to the Accounting Act, which will grant Norges Bank access to gathered information beyond what is publicly available under Section 8-1 of the Accounting Act. The Executive Board refers to the Commission's assessments on pages 374-375.

Norges Bank's research activities are extensive, and the Commission makes a number of observations on the use of the duty to disclose information pursuant to the proposed Section 5-3 for research purposes, noting on page 375 "that Norges Bank may not use the central bank act as statutory authority for gathering data exclusively for research purposes" (page 375).

This presumably refers to the fact that data gathering for research purposes is regulated by separate provisions, eg Section 13, litra e, of the Public Administration Act on disclosure of information for research purposes, notwithstanding a statutory duty of confidentiality. Research at Norges Bank may for all intents be regarded as conducted "in order to fulfil [Norges Bank's] purposes pursuant to the present or other Act or to fulfil Norway's contractual obligations to a foreign state or international organisation" (cf. Section 5-3, first paragraph, first sentence). It is very seldom that research at the Bank pertains to other matters. Nothing in the wording would be an impediment to the use of the provisions of Section 5-3 for gathering information for the Bank's research activities, and the Executive Board therefore requests that in the preparatory works, the Ministry specify that a duty to disclose information pursuant to Section 5-3 may also be imposed for research purposes, insofar as the terms of the provision in other respects are met.

2.4.3 Proposals for coercive fines and penalties

The provisions related to coercive fines and penalties in Sections 31 and 32 in the current Norges Bank Act are in their essentials retained in the proposed Sections 5-4 and 5-5. The provision on coercive fines applies to contraventions of a lawful duty to disclose information pursuant to Section 5-3 (cf current Section 31, cf Section 27), while the penalty provisions pertain to contraventions of protective measures pursuant to Section 3-9 (cf current Section 32, cf. Section 28) or contraventions of a lawful duty to disclose information pursuant to Section 5-3 (cf current Section 32, cf Section 27). The only material change is the proposal to remove the alternative with imprisonment under particularly aggravating circumstances for contraventions of protective measures (cf proposed Section 5-5 compared with the current Section 32, first sentence. Under the proposal, a fine will be the only criminal sanction for contraventions of protective measures. Reference is made to pages 375-376 of the Report.

The Executive Board has no comment to make on the proposed provisions and supports the Commission's proposals.

2.4.4 Relationship to the Public Administration Act and the Freedom of Information Act

The proposed Section 5-1 contains provisions on the relationship to the Public Administration Act and Freedom of Information Act. These provisions are materially new.

As the Commission explains on pages 55-56 and pages 366-368, Norges Bank is to be regarded as an administrative body that in principle is subject to the ordinary rules of administrative law, including the Public Administration Act and the Freedom of Information Act. The current Norges Bank Act contains no particular regulation of Norges Bank's relationship to these rules. This means that as to content the ordinary rules of administrative law will apply to their full extent, unless statutory rules make a special exemption, eg the special provision on the duty of confidentiality in Section 12 of the Norges Bank Act.

In the implementation of the Public Administration Act and Freedom of Information Act, some problems have arisen that clearly need to be solved. With regard to the *provisions of the Public Administration Act regarding appeals against individual decisions*, the question has not been settled as to whether a decision on extending loans on special terms (S-loan) pursuant to Section 19, third paragraph, and Section 22, first paragraph, of the Norges Bank Act is to be regarded as an individual decision pursuant to Section 2, first paragraph, litra b, of the Public Administration Act. Reference is made to page 367 and page 372 of the Report. As noted by the Commission, the same issue may be raised "regarding the central bank's decisions to accept or refuse to accept deposits from individual institutions or allow them to hold an account, or other decisions pursuant to the proposed Section 3-1" (cf page

372). Another such decision may be to limit or suspend a bank's access to borrowing and deposit facilities pursuant to Section 11 of the Lending Regulation.[5]

If the Bank's decisions as referred to above are to be regarded as individual decisions under the Public Administration Act, the rules in Section 28 ff of the Act related to appeals against individual decisions will apply. The Commission is of the opinion that a right to appeal such decisions would be undesirable, and proposes in Section 5-1, first paragraph of the new act that "Norges Bank's decisions in matters pursuant to Section 3-1 may not be appealed".

The Executive Board would like to point out that here the Commission raises an important long-standing moot legal point. The Executive Board agrees with the Commission's assessments on pages 372-373 and supports the proposed provision of Section 5-1 under which Norges Bank's decisions in matters pursuant to Section 3-1 may not be appealed. There are strong arguments against allowing the application of the appeal rules in the Public Administration Act to decisions of this type, even if they should be regarded as individual decisions in the sense of the Public Administration Act. Such decisions are a key element of the central bank's core tasks in the areas of monetary policy and financial stability. In the words of the Commission, "decisions in such cases will solely be justified by social considerations related to the importance of the measure for financial markets in general – in order to promote financial stability – and not by considering the institution requesting liquidity support" (page 372). The central bank's legal independence in its use of instruments is a further argument in favour of an exemption to the appeal rules in the Public Administration Act in this area (cf the Commission's opinion that "a general right of appeal to the Ministry under administrative law could, in the view of the Commission, curtail the central bank's de facto independence and alter the division of competence between the Ministry and the central bank in the conduct of monetary policy and promotion of financial stability in an unintended manner", inter alia because this pertains to "instruments over which the power of instruction may only be exercised by the King in the Council of State in accordance with the procedure in the proposed Section 1-4, second paragraph" (loc cit). Moreover, the requirement for appeals to be decided quickly is another argument against a right of appeal (loc cit). The Commission points out that the institution that is dissatisfied with the central bank's decision may have its case tested by the courts in the ordinary manner, and that this will help to "safeguard the legal protection of those at whom such decisions are directly aimed" (loc cit). The Executive Board concurs.

The provisions of the Public Administration Act regarding appeals against individual decisions also raise questions as to whether the Bank's decisions in the area of appointments, termination, suspension, dismissal or transfer of employees may also be appealed. Under Section 2, second paragraph, first sentence, of the Public Administration Act, such decisions are to be regarded as individual decisions. Administrative decisions relating to appointments are expressly exempted from the appeal rules under Section 3,

[5] Regulation No. 240 of 25 February 2009 on the Access of Banks to Borrowing and Deposit Facilities in Norges Bank etc.

second paragraph, second sentences, but no exemptions have been made for other decisions of this type. The employees of the Bank are subject to the provisions of the Working Environment Act, and for that reason the Bank is in a different position from other administrative bodies, which are subject to the Act relating to central government employees. Under Section 33, first paragraph, of this act, employees may appeal "decisions relating to termination, disciplinary sanctions, suspension or dismissal" in accordance with the rules in the Public Administration Act. The decision by the appeals body may then be brought before the courts in a lawsuit pursuant to Section 34 of the Act relating to central government employees. Under the Working Environment Act, there is no right of appeal. Decisions of this type are brought directly before the courts (cf Section 17-4).

Like Norges Bank, municipal and county authorities are administrative bodies that are subject to the Working Environment Act. However, for decisions relating to termination or dismissal, an expressed exemption has been made in Section 3, second paragraph, third sentence, of the Working Environment Act from the appeal rules in the Act. No such exemption has been made for Norges Bank, and according to the Ministry of Finance, this provision cannot be interpreted by analogy to cover Norges Bank (cf letter of 13 September 2000 to Norges Bank). The implication is that in cases of termination or dismissal from Norges Bank, there is a two-track system where the employee may in parallel appeal against such decisions and bring them before the courts in a lawsuit. This is patently inappropriate and an unintended effect of Norges Bank being subject to the Public Administration Act. Therefore, the Executive Board request that a new second sentence be included in Section 5-1, first paragraph, of the new central bank act: "Nor may decisions relating to termination or dismissal be appealed".

In the new Section 5-1, second paragraph, the Commission proposes that a special exemption be made from the Freedom of Information Act, to wit: "The power to exempt documents from public disclosure pursuant to Section 15, first and third paragraphs, of the Freedom of Information Act applies correspondingly to preparatory correspondence between Norges Bank and the Ministry of Finance and Norges Bank and The Financial Supervisory Authority".

As the Commission argues on page 368 and page 373, there may be a need to exempt from public disclosure correspondence between Norges Bank and the Ministry of Finance in cases where the Ministry has obtained documents for use in its internal preparatory work. In a letter of 20 May 2010 to the Ministry of Finance, the Ministry of Justice finds that Norges Bank may not be regarded as a "subordinate body" in the sense of the Freedom of Information Act. With such an interpretation, documents may not be exempted from public disclosure under Section 15, first paragraph, first sentence. The Executive Board agrees that this may be problematic, and refers to the Commission's assessment that "a public disclosure may result in turmoil or instability in financial markets and the economy, eg during an introductory phase of measures to deal with financial instability" (s. 373). There is a "risk of an unintended and undesirable impairment of the preparatory dialogue between the Ministry and the central bank in the absence of authority to exempt such

correspondence from public disclosure" (loc cit), assuming that the other conditions for exemption from public disclosure in Section 15, first paragraph, first sentence, of the Freedom of Information Act are met. As the Commission points out, similar considerations apply to preparatory correspondence between The Financial Supervisory Authority and Norges Bank (loc cit).

The Executive Board endorses the Commission's proposed Section 5-1, second paragraph.

Apart from this, the Executive Board agrees that the rules in the Freedom of Information Act should continue to apply to Norges Bank, including retention of relevant exemptions in the Freedom of Information Regulation, primarily the exemption for "documents related to investment management by a legal entity that has such management as its purpose" (cf Section 1, third paragraph, litra b, of the Regulation). The Executive Board agrees that this exemption must be "retained for the management of the foreign exchange reserves that takes place in central banking operations", regardless of whether or not the GPFG remains in the Bank (cf page 373 of the Report).

2.5 Other

2.5.1 Duties under the Act relating to a debtor's right of discharge by deposit

The Commission has proposed a central bank act with a more clearly formulated purpose than the current Norges Bank Act, and under the proposal, Norges Bank's tasks are more closely related to the Bank's purposes and core tasks.

Under the Act of 17 February 1939 relating to a debtor's right of discharge by deposit, cash or securities may be deposited with Norges Bank on certain conditions as a way to discharge a debt. Depositing protects the interest of a debtor. The duties under this Act have nothing to do with the Bank's core tasks. The Commission points out that this duty is "foreign to a central bank" and proposes that a study be done on removing deposit cases from Norges Bank.

The Executive Board supports the Commission's proposal.

2.5.2 Obtaining a police certificate of good conduct

The proposed Section 2-13, fourth paragraph, generally retains the current Section 11, fourth paragraph. This provision authorises the Bank to obtain a police certificate of good conduct for personnel to be granted access to the Bank's information or access to the Bank's premises. This is important for the security of the Bank's information assets (confidentiality, integrity and accessibility), for the Bank's considerably physical assets and for the protection of critical personnel.

The building currently has one main tenant (The Financial Supervisory Authority) and will have additional space vacant for possible leasing to an external tenant (to NGIM or others), if the Commission's proposed model A is adopted. As part of a structural modification, it may be difficult to put in place internal security measures that fully provide the protection currently provided by the Bank's combination of barriers and personal access control. This suggest that the authorisation to obtain a police certificate of good conduct, as proposed in Section 2-13, fourth paragraph, should be expanded also to include tenants in the building.

The question has also been raised as to whether the Bank has sufficient authority to process personal information in police certificates of good conduct obtained from abroad, where for example a Bank employee is a foreign national. It is probable that sufficient authority to process this information under privacy legislation may be established by granting Norges Bank the authority in the new act under Norwegian law to obtain a police certificate of good conduct from abroad as well. In that case the provision in Section 2-13, fourth paragraph, first sentence, can be changed to "The board may decide that all persons rendering services to, or working for, **the Bank**, working for a supplier of services to the Bank, or **granted unaccompanied access to Norges Bank's building**, shall be required to submit a police certificate of good conduct (Criminal Record Certificate) pursuant to Section 41, subsection 1, of Politiregisterloven (Act relating to police records), or **equivalent foreign police certificate**, if security considerations so indicate […]" (proposed additions to the text of the law in boldface).

3 AMENDMENT OF THE GOVERNMENT PENSION FUND ACT AND THE NEW ACT ON NORWEGIAN GOVERNMENT INVESTMENT MANAGEMENT

3.1 The Government Pension Fund Act

The Government Pension Fund Act is a key component of Norway's economic policy framework. The savings in the fund have made it possible to decouple the spending of oil revenue from incoming cash flows, and the fund now helps finance a substantial share of government expenditure. The Commission proposes a number of changes to the Act to strengthen the fund's role in economic policy. For example, it recommends a clear formulation of the fund's objective, laying down in law that the fund is to be invested outside Norway, and specifying that the government may not borrow to finance government expenditure while there is capital in the fund. The Executive Board supports the Commission's proposed changes to the Government Pension Fund Act.

Within the current model and regardless of the future home of the management of the GPFG, it is important that the framework for the GPFG clearly defines, under Norwegian law, the owner of the fund and the role of the manager of the fund. This will be an important factor when foreign authorities are to assess the ownership and governance

model on the basis of local rules, for example when it comes to taxation. The Executive Board would therefore suggest that Section 1 of the Government Pension Fund Act is amended such that government ownership of the fund is stated explicitly in the Act (proposed change in bold):

Section 1. The ~~savings in~~ ***assets in the*** *Government Pension Fund* ***are owned by the Norwegian government, and its savings*** *shall support the financing of the National Insurance Scheme's expenditure on pensions. The savings shall support long-term considerations in the use of government petroleum revenue so that the nation's petroleum wealth benefits both current and future generations.*

3.2 The Norwegian Government Investment Management Act

Purpose

Under Section 2 of the Government Pension Fund Act, the Government Pension Fund Global is to be deposited in an account at Norges Bank. Section 1-2 of the Management Mandate for the Government Pension Fund Global requires the Bank to invest this deposit "in its own name".[6] The Commission proposes retaining this model, with the fund taking the form of a capital deposit with the manager, which is tasked with investing this capital in its own name, but that the latter now be included in the law.

This model entails certain challenges, both in the current framework and in the proposed new framework, which could usefully be resolved. These challenges arise when local authorities are to take a position on who owns the fund under the local rules applying in the countries where investments are made. If the new legislation can explicitly state that the fund is owned by the Norwegian government (see above) and that the manager's role is to manage the fund on behalf of the government, this will clarify the fund's role vis-à-vis external parties. It will emphasise that the government is the beneficial owner of the fund, while the manager is an agent that invests for the account and risk of the government.

The current provision (in the mandate) relating to management "in its own name" has presented challenges in certain jurisdictions, where there are requirements for accounts containing GPFG capital to be in the name of the beneficial owner (cf. Official Norwegian Reports NOU 2017:13, page 450, with reference to page 1 of the Memorandum of 20 September 2016 from Cleary Gottlieb Steen & Hamilton LLP). Thus, it does not appear to be especially appropriate to codify such an unconditional requirement. The Ministry's mandate to the manager may be amended to regulate this matter.

In the light of this, the Executive Board suggests that the objects clause in Section 1, first paragraph, of the draft new Norwegian Government Investment Management Act should state more clearly that the manager's role is to manage the fund on behalf of the

[6] Mandate No. 1414 of 8 November 2010 for the management of the Government Pension Fund Global.

government as represented by the Ministry and that an absolute requirement that the capital must be invested in the name of the manager not be codified in the new act.

The Commission proposes that Section 1, first paragraph, second sentence, of the draft act allows the manager not only to manage the Government Pension Fund Global but also other management assignments determined by the Ministry. The Commission refers to the current arrangement under which NBIM also manages portions of the Bank's foreign exchange reserves under an agreement with Central Banking Operations.

This proposal in Section 1 is formulated very broadly and could present regulatory challenges for a new manager, particularly concerning the position of the offices abroad. These can be expected to operate under local rules that permit a branch or representative office that manages only its own capital, and does not offer financial services to customers, to operate under a simplified regulatory regime that includes an exemption from local licensing requirements etc. Expanding the duties of the manager in the act to include tasks other than management of the Government Pension Fund Global would raise doubts about the scope of its operations and increase the regulatory challenges for the operation of the overseas offices.

A restriction of the manager's role to only managing the GPFG will also be advantageous in connection with tax treaties with other countries. In assessing who the beneficial owner of the fund is and whether the manager is a resident under the tax treaties, the tasks assigned to the manager and whether these tasks extend beyond the role of manager of the GPFG will be of importance. If more unrestricted authority to impose other management tasks is permitted, these questions will become more challenging. In any case, as a whole, the provision must be expressly limited so that it only covers the possible management of portions of the foreign exchange reserves on behalf of the central bank (see portion of proposed Section 19, first paragraph in square brackets below. However, this is a question that requires some further clarification. The Executive Board has not, however, considered how the foreign exchange reserves should be managed under this model.

Section 1 Purpose
(1) Norwegian Government Investment Management shall ~~in its own name~~ manage the countervalue of the capital contribution that is the Government Pension Fund Global at the behest ***and on behalf*** *of the Ministry (cf Section 3, second paragraph, of Act No. 123 of 21 December 2005 on the Government Pension Fund). ~~The company shall also perform other management tasks that the ministry assigns to the company~~. [****The company may also manage against reimbursement of actual expenses Norway's official foreign exchange reserves on behalf of the central bank and for the account and risk of the central bank. An agreement on such an engagement is subject to the approval of the Ministry.****]*

The Executive Board proposes a new Section 1, second paragraph. The purpose is to specify that the fund shall be managed for the account and risk of the government. Furthermore,

the last sentence specifies that the capital contribution will be adjusted up or down in accordance with the fund's income or losses. This implies that the fund's income is equal to the government's revenue, which will simplify tax treatment under both Norwegian and foreign law.

New Section 1, second paragraph:
The manager of the Government Pension Fund Global shall manage the countervalue of the capital contribution that is the Government Pension Fund Global for the account and risk of the government. All returns (positive or negative) automatically accrue to the government through the Government Pension Fund Global so that the capital contribution at all times is equal to the equivalent value of the investment portfolio.

The Commission's proposed Section 1, second paragraph, becomes, following this proposal, Section 1 new third paragraph. The Executive Board proposes adding a sentence to clarify that the manager is a non-profit entity, which will be of importance both with regard to taxation and to whether any exemption from taxation may be regarded as unlawful state aid.

Section 1 ~~(2)~~ (3) The manager of the Government Pension Fund Global shall ensure effective and prudent investment management. ***The actual management costs incurred by the manager of the Government Pension Fund Global will be defrayed in accordance with further rules laid down by the King, but the manager shall not be entitled to a profit from the investment assignment.***

The Executive Board proposes a new Section 1-A (which can be Section 2 in the final version) with more operational provisions that clarify the division of roles associated with the safekeeping of the capital in the fund and the exercise of ownership. The fund shall be kept separate from the manager's own assets, and a list shall be kept of the contents of the fund at all times. It is assumed that any regulatory requirements in this regard may be laid down pursuant to Section 18 of the draft act "Supplementary rules". The manager exercises ownership rights, may hereunder receive dividends, exercise voting rights etc. The fund shall be recognised as an asset on the manager's balance sheet and the countervalue as a liability to the government (cf. proposal for an amended Section 3, second paragraph, of the Government Pension Fund Act).

New Section 1-A Investment portfolio (possibly new Section 2 of the final version)
(1) The manager of the Government Pension Fund Global is obliged to keep the assets managed under Section 1 (the investment portfolio) separate from the company's own assets.

(2) The manager of the Government Pension Fund Global shall maintain a register that at all times lists the assets comprising the investment portfolio.

(3) The manager of the Government Pension Fund Global exercises ownership rights to the assets comprising the investment portfolio, and may hereunder vote at general meetings, bondholder meetings etc.

(4) The manager of the Government Pension Fund Global is authorised to receive all income associated with the investment portfolio, even though it belongs to the government by virtue of its ownership of the Government Pension Fund Global.

(5) The investment portfolio shall be recognised as an asset on the manager's balance sheet, while the countervalue is recognised as a liability to the government.

Finally, the Executive Board proposes a new Section 16-A (which can become Section 18 of the final version, if the proposed Section 1-A becomes the new Section 2). Section 16-A, first paragraph, stipulates that the capital in the investment portfolio may only be used to cover, or be the object of netting etc. against, the government's claim to the capital contribution in the fund. Exemptions apply where the manager has entered into contracts for such coverage with counterparties as a natural part of management activities (eg an agreement under which a custodial bank holds a lien when it has made advance payments, collateral under repurchase agreements etc.).

In Section 16-A, second paragraph, the Executive Board proposes to regulate the ownership of the investment portfolio in the event of insolvency and/or a bankruptcy-like proceedings. Norges Bank cannot go bankrupt, but in this regard the new manager will be in a different (and more common) position. The proposed provision stipulates that the government has a separate and direct right to the assets in the investment portfolio (such assets would not form part of a bankruptcy estate), and that other creditors thereby do not have the right to seize or obtain other coverage from the investment portfolio to satisfy their claims. This reinforces the fact that it is the government (and not the manager) that owns the capital in the fund. These matters were not discussed by the Commission, and it is assumed that they will be considered further and clarified in the further work on the new act.

New Section 16-A Immunity from seizure etc (will possibly become new Section 18 in the final version, if Section 1-A becomes the new Section 2)
(1) Assets comprising the investment portfolio belong to the government and, except for under agreements entered into by the manager of the Government Pension Fund Global as part of the management of the investment portfolio, may not be used cover obligations to creditors, be subject to netting, seizure by creditor, execution, attachment or any other enforcement action for the benefit of other creditors.

(2) In the event of bankruptcy or other liquidation of the company, the investment portfolio in its entirely accrues to the government, except for the fulfilment of agreements entered into by the manager of the Government Pension Fund Global as part of the management of the investment portfolio.

Supervision, internal auditing and external auditing
The Commission proposes that the Ministry of Finance appoints the external auditor. The financial audit is to cover both the management organisation and the assets under management in the fund. The Executive Board supports this proposal.

In the Commission's model, the Ministry is to supervise whether the board has adequate management and control of the entity's resources and administration, and whether its activities are conducted in accordance with laws, agreements, decisions and other regulatory frameworks. The Commission notes that properly functioning internal control and internal auditing are important, and proposes to codify a requirement for the management entity to have an internal audit unit and an audit committee along the lines of the provisions in the current Norges Bank Act. It is also proposed that the act on the new management entity should include a provision authorising the issuance of regulations on risk management and internal control. The Executive Board supports the Commission's proposal.

The Commission proposes laying down in law that the Ministry's exercise of authority over the new management entity may only be exercised through the general meeting, which is to be held at least annually. The annual general meeting is to consider the income statement and balance sheet and may consider other matters. At the same time, the Commission notes that the Ministry's exercise of authority in the form of changes to the management mandate should be conducted through the existing procedures rather than through resolutions at such a meeting. The Executive Board is of the opinion that the Commission's proposal will contribute to an orderly and unambiguous division of roles and responsibilities in line with the current situation, and supports the Commission's proposal.

The fund's capital and the manager's equity
Like the Commission, the Executive Board is of the opinion that the manager must have adequate equity capital. This is to take the form of a cash deposit from the government and serve as a buffer vis-à-vis contractual parties and third parties against unforeseen events and losses. The size of this equity and requirements for its investment and return (dividends) are matters to which it would be natural to return if and when it is decided to set up a separate statutory entity.