



**BULGARIAN NATIONAL BANK**

**145 YEARS**

**GOVERNING COUNCIL**

**DECISION No 340**

of 16 July 2024

The Governing Council of the Bulgarian National Bank (BNB), having taken note of a report from the Governor of the BNB with a proposal to establish grounds for the early relief of Andrey Gurov, Deputy Governor, Head of the Issue Department at the Bulgarian National Bank on the basis of Art. 14, para. 2 of the Law on the Bulgarian National Bank (BNB), the written statement, received on 16.07.2024 from Andrey Gurov, addressed to the members of the Governing Council, and the hearing held pursuant to Art. 24b, para. 4 of the Rules of Procedure of the BNB Governing Council, and a subsequent discussion, found the following:

On 27.06.2024, by letter ex. No. КПК-8004/26.06.2024/int. No. БНБ-81826/27.06.2024 the Anti-Corruption Commission (the ACC/the Commission) notified the Bulgarian National Bank and the National Assembly of the Republic of Bulgaria regarding its Decision No. PH-КПК-КН-16-23-18 of 24.06.2024, with which on the basis of Art. 13, para. 1 (8) of the Anti-Corruption Act (ACA) the Commission establishes incompatibility with regard to Andrey Atanasov Gurov in his capacity as Deputy Governor of the Bulgarian National Bank and a person holding a public office under Art. 6, para. 1 item 12 of ACA, in connection with his participation as a partner in Yontech Engineering OOD, as well as in connection with his activity as a member of the management bodies of non-profit legal entities – the association Balkanski-Panitsa Institute for Advanced Study and the association Blagoevgrad Golf Club, without a decision of the BNB Governing Council under Art. 12, para. 5, sentence two, of the Law on the BNB. With the specified letter, the Commission also sent a copy of the decision to take appropriate actions.

On the same date, in order to avoid any doubts regarding compliance with the legal framework until subsequent legal actions are taken, Mr. Gurov was granted unpaid leave at his request.

By letter int. No БНБ-83271/01.07.2024 Andrey Gurov notified the members of the BNB Governing Council that with a complaint No. КПК-6254-10/01.07.2024 he contested the said decision of the ACC before the Administrative Court - Sofia with a request to declare the decision null and void or to cancel it entirely as incorrect and illegal, and with objections of absence of incompatibility.

On 16.07.2024, on the basis of Art. 24b, para. 3 of the Rules of Procedure of the Governing Council, Andrey Gurov submitted a written statement to the members of the BNB Governing Council with allegations of: 1) absence of grounds for initiation of proceedings pursuant to Art. 14, para. 2 of the Law on the BNB, a request to suspend the proceedings and procedural requests in connection with the initiated proceedings, as well as 2) incorrectness and unfoundedness of the alleged two alternatively specified grounds under Art. 14, para. 1 of the Law on the BNB. In Section I, item 3 of the statement, Andrey Gurov makes evidentiary requests. In Section I, item 4 of the statement, a request is made that Mr. Gurov be heard in the presence of a lawyer. In Section I, item 5 of the statement, a request is made that minutes of the meeting of the Governing Council be taken.

#### **I. On the admissibility of the administrative proceedings**

After carrying out the due official verification, the Governing Council of the BNB established that all prerequisites for the admissibility of the current proceedings are present. The Governing Council also considered the following:

According to Art. 13, para. 1, item 8 of ACA, in case of established incompatibility, the ACC brings the case to the selecting or appointing authority to take appropriate action. According to Art. 12, para. 2 of the Law on the BNB, the National Assembly of the Republic of Bulgaria elects the Deputy Governors - heads of the main departments under Art. 19 of the Law on the BNB, at the proposal of the Governor. In view of this and on the basis of Art. 14, para. 1 of the Law on the BNB, the competent authority that can decide on the early relief of a Deputy Governor of the National Bank of Bulgaria is the National Assembly of the Republic of Bulgaria. At the same time, the Law on the BNB provides for a special procedure for establishing grounds for an early relief of a deputy governor or another member of the Governing Council, raising as

a prerequisite for an early relief the adoption of a decision by the BNB Governing Council in accordance with a procedure determined by it, which is subject to challenge before the Supreme Administrative Court within 7 days.

In accordance with the requirements of Art. 13, para. 1 item 8 of ACA and the Law on the BNB by letter ex. No. КПК-8004/26.06.2024/ int. No. БНБ-81826/27.06.2024, the ACC brought the case to the National Assembly and the BNB, thereby initiating the current proceedings to issue a decision pursuant to Art. 14, para. 2 of the Law on the BNB regarding the establishment of grounds for early relief of Andrey Gurov.

Given the existence of a decision of the ACC and a valid referral according to the letter mentioned above, the Governing Council of the BNB, as a competent authority, has an obligation to initiate proceedings and in the course of the procedure to come up with a decision as to the existence of grounds for an early relief of Andrey Gurov as Deputy Governor and member of the Governing Council of the BNB, respectively.

With the submitted written statement under Art. 24b, para. 3 of the Regulations, Andrey Gurov makes a request based on Art. 54, para. 1 item 5 of APC for suspending the proceedings on the adoption of this decision until the completion of the instituted adm. case No. 6637/2024 on the inventory of the Administrative Court-Sofia, 25th chamber, with an effective judicial decision insofar as, according to him, the outcome of the same is of relevance for the current proceedings. In support of this statement, Andrey Gurov cites Ruling No. 11814 of 12.07.2024 on the same case, for which he claims that, with its adoption, the court panel assessed the regularity and admissibility of the appeal. He also presents a certificate issued by the court for the initiated legal proceedings.

The Governing Council of the BNB accepts that there are no grounds for suspending the current proceedings.

Decision No. PH-КПК-КН-16-23-18 of 24.06.2024 of the ACC does not trigger material legal consequences for legal subjects, including for Mr. Gurov. The ACC decision has all the features of a procedural act – it serves for referral to the BNB Governing Council, which, in turn, issues an administrative act subject to judicial appeal in view of the express rule of the Law on the BNB. The special Anti-Corruption Act does not introduce a legal fiction to declare the ACC decision an administrative act. In this sense is also the judicial practice – Ruling No. 5133 of 31.05.2022 under adm. case No. 2464/2022, Dept. VI. of the Supreme Administrative Court. In view of this and on the basis of Art. 21, para. 5 of APC, in connection with Art. 13,

para. 1 item 8 of ACA and Art. 14, para. 2 of the Law on the BNB, ACC Decision No. PH-KIIK-KII-16-23-18 of 24.06.2024 does not constitute an individual administrative act that is subject to legal challenge.

A different conclusion does not follow, either, from Ruling No. 11814 of 12.07.2024 issued under adm. case No. 6637/2024 according to the inventory of the ASSG. With this ruling, the court only scheduled the case for consideration in an open session, constituted the parties to the proceedings and ordered their summons. The ruling on scheduling does not make a final assessment as to the admissibility of the appeal, or whether the disputed act is an individual administrative act and is subject to independent appeal. Normally, the final assessment on the admissibility in administrative court proceedings is made with the final act in the case – after discussion of the evidence in the case and after taking the opinions of the parties to the case. Precisely because of this circumstance in Ruling No. 11814/2024 under adm. case. No. 6637/2024, the court does not state reasons for the admissibility of the appeal.

As already stated, the Governing Council of the BNB accepts that the act, which is subject to judicial appeal, is precisely its decision, and not the decision of the ACC. If the cases of issuing an individual administrative act were stopped after the appeal of each procedural act, this would render meaningless one of the main principles of the administrative process – that of speed (Art. 11 of APC), as well as the deadlines for completing the administrative proceedings. That is why the challenge of a procedural act cannot be a reason for suspending the administrative proceedings for the issuance of an individual administrative act.

Apart from that, it would be contrary to the principle of procedural economy under Art. 11 of APC to assume that the law would allow both acts of the ACC and the BNB Governing Council to be contested at the same time, because in such a case and when challenging the act of the BNB Governing Council, there would be no substantive legal issues that would be the object of the case. Besides, an individual administrative act is issued only in the presence of a substantive administrative right or obligation.

Given the absence of a preliminary administrative act, which has a material legal effect, the administrative act of the BNB Governing Council can be issued without the need to wait for the ruling on adm. case No. 6637/2024 of the ASSG with an effective court act and there is no reason to suspend the procedure within the meaning of Art. 54, para. 1 item 5 of APC.

**Given the above, there are no obstacles to a ruling by the BNB Governing Council and there is no reason to suspend the proceedings pursuant to Art. 54, para. 1 item 5 of APC until the court rules on the appeal filed by Mr. Andrey Gurov.**

Under Art. 14, para. 2 of the Law on the BNB, the procedure for adopting a decision to establish grounds for an early relief is the proceedings established in Section VIb of the Rules of Procedure of the BNB Governing Council. In connection with the request under Section I, Item 4 of the written statement, the Governing Council of the BNB accepts that Mr. Andrey Gurov be heard in the presence of attorney Nikolay Ivanov Nikolov from the Sofia Bar Association on the basis of a power of attorney dated July 16, 2024. In connection with the request under Section I, item 5 of Andrey Gurov's written statement and on the basis of Art. 17, para. 5 of the Law on the BNB, minutes are taken of the meetings of the BNB Governing Council.

## **II. On the substance of the raised question**

The grounds for an early relief of a member of the Governing Council of the BNB are comprehensively set out in Art. 14, para. 1 of the Law on the BNB, namely - if he does not meet the requirements for the performance of his duties, or if he is found guilty of serious misconduct within the meaning of Art. 14, para. 2 of the Statute of the European System of Central Banks and of the European Central Bank (Statute of the ESCB and of the ECB).

Pursuant to Art. 13, para. 1 item 8 of ACA, the ACC is the administrative body that has the exclusive competence to establish incompatibility with holding a public office. The BNB Governing Council can neither exercise control over the Commission's act, nor can it rule on its behalf, as this would lead to improper usurpation of another administrative body's competence. Considering the above, within the proceedings under Art. 14, para. 2 of the Law on the BNB, the BNB Governing Council pronounces solely on whether the incompatibility established by the ACC presents grounds for the early relief of the member of the BNB Governing Council and, more specifically, whether it leads to a conclusion that the latter does not meet the requirements for the performance of his duties, and/or that he has been found guilty of serious misconduct within the meaning of Art. 14, para. 2 of the Statute of the ESCB and the ECB.

Regardless of the specified impossibility of exercising control over the ACC act and the obligation to comply with the findings therein, in order to comply with the principles of objectivity and legality, the BNB Governing Council carefully took note of the legal and factual grounds behind the ACC Decision No. PH-KIHK-KI-16-23-18 of 24.06.2024. The BNB Governing Council accepts the Commission's factual findings as they are based on entries and

announced acts in the Commercial Register and RYULNC, which are considered known to all third parties (Art. 7 and Art. 9 of the Law on the TRRYULNC). The conclusions of the Commission should also be taken into account, which, as can be seen from the rationale behind the decision, are the result of a detailed and comprehensive assessment made by the competent authority before its pronouncement.

**1.** Within the competences granted by law, the BNB Governing Council accepts that the incompatibility established by the ACC constitutes grounds for the early release of Mr. Andrey Atanasov Gurov as a member of the BNB Governing Council under Art. 14, para. 1, proposition 1 of the Law on the BNB. The reasons for this are as follows:

Art. 11, para. 4 and Art. 12, para. 5 of the BNB Law lay down the conditions and restrictions that a person must meet in order to be a member of the BNB Governing Council.

With Decision No. PH-КПК-КН-16-23-18 of 24.06.2024, the ACC established incompatibility under Art. 13, para. 1 item 8 of ACA with regard to Andrey Gurov in his capacity as Deputy Governor, Head of the Issue Department of the BNB and a person holding a public office under Art. 6, para. 1 item 12 of ACA, relating to his engagement as a partner in Yontech Engineering OOD, and to his activities as a member of the management bodies of non-profit legal entities – the association Balkanski-Panitsa Institute for Advanced Study and the association Blagoevgrad Golf Club, without a decision of the BNB Governing Council under Art. 12, para. 5, sentence two, of the Law on the BNB.

Thus, Andrey Gurov's incompatibility established by the ACC presents grounds under Art. 14, para. 1, proposition one, of the Law on the BNB for his early dismissal, because it implies that Mr. Gurov "does not meet the requirements to perform his duties". This is a sufficient reason for Mr. Gurov's early dismissal as a member of the Governing Council of the BNB.

**2.** In addition and for the sake of completeness, the BNB Governing Council accepts that Mr. Andrey Atanasov Gurov's incompatibility established by the ACC constitutes grounds under Art. 14, para. 1, proposition two, of the Law on BNB for an early relief, namely "found guilty of serious misconduct".

**2.1.** In making its decision, the BNB Governing Council took into account that both the national legislation and the instruments of EU law do not establish the legal definition of the term "serious misconduct". The content of the term is derived from the practice of the Court of Justice of the European Union under Art. 14, para. 2 of the Statute of the ESCB and of the ECB, which should be applied analogously, taking into account the specifics of the particular case. According

to this practice, serious misconduct is a deviation from the norms of conduct related to the performance of the duties of a member of the Governing Council of a national central bank, which leads to a significant impairment of his independence. In this sense, the Decision of the Court of Justice of the European Union (CJEU) dated 26.02.2019 in the joint cases C-202/18 and C-238/18 states that a criminal act (receiving a bribe), if proven, would constitute "serious misconduct" within the meaning of Art. 14 para. 2 of the Statute. In the Opinion of the Advocate General in the same case it is expressly concluded that in the provisions of the EU disciplinary law, the concept of "serious misconduct" refers to misconduct by the holder of an office which is sufficiently serious to justify the removal of the person from office.

**2.2.** Regarding the concept of incompatibility, a legal definition is contained in § 1, item 4 of the Additional Provisions of the Anti-Corruption Act, according to which "incompatibility" is the holding of another position or the performance of an activity which, according to the Constitution or the law, is incompatible with the person's position as a public office holder.

The Constitutional Court has determined the main purpose of incompatibility, namely to ensure impartiality and objectivity, through the introduction of prohibitions for a person to hold other positions or perform other activities while that person holds the relevant public position. Their establishment in the Constitution and in the laws testifies that such double-hatting would violate the independence and impartiality of the public authorities or would serve private interests, which is in conflict with the requirement that the public office should be performed only in the public interest (Decision of the Constitutional Court No. 13 of 24 September 2020 under constitutional case No. 5 of 2020).

In his Opinion of 19 December 2018 in joined cases C-202/18 and C-238/18, the Advocate General states that, in any case independence constitutes a "firmly inviolable core" of the conditions required for the performance of the Governor's duties.

The independence of a national central bank and the members of its decision-making bodies is one of the main principles of central banking laid down in the foundations of European law, namely in Art. 130 of the Treaty on the Functioning of the European Union and in Art. 7 of the Statute of the European System of Central Banks and the European Central Bank.

The concept of "central bank independence" includes several types of independence: functional, institutional, personal and financial independence.

As stated in the ECB Convergence Report 2024 (including all previous reports), one of the criteria for personal independence is to ensure that no conflict of interest arises between the duties of the members of the decision-making bodies of national central banks. In principle, being a member of a NCB decision-making body involved in the performance of ESCB-related tasks is incompatible with the exercise of other functions that may give rise to a conflict of interest. In particular, the members of decision-making bodies may not hold positions or have participations that may influence their activities, whether in their capacity as employees of the executive or the legislature, or in a regional or local administration, or by being engaged in enterprises. In this sense, the conditions for incompatibility listed in Art. 11, para. 4 and Art. 12, para. 5 of the Law on the BNB constitute a guarantee for personal independence of the members of the BNB Governing Council.

**2.3.** With its Decision, the ACC finds that Andrey Gurov, four months after taking office, has not taken any action to remove the incompatibility before the body of his election within the period under Art. 50, para. 3 of ACA, nor has he notified in a timely manner the BNB Governing Council about his engagement in the management bodies of non-profit legal entities under Art. 12, para. 5 of the Law of the BNB.

The actions to eliminate incompatibility and the notification of the BNB Governing Council under Art. 12, para. 5, sentence two, of the Law on the BNB, so that the BNB Governing Council can make a unanimous decision, can only be done of Mr. Andrey Gurov's own accord. Mr. Andrey Gurov's failure to fulfil his obligation, established by the ACC, to promptly take action and remove the incompatibility and to notify the BNB Governing Council under Art. 12, para. 5 of the Law on the BNB constitutes a significant deviation from the norms of behaviour related to performance of the duties of a member of the decision-making body of a national central bank, which leads to significant impairment of his independence.

### **III. On Mr. Gurov's objections**

In accordance with the opportunity given to him, on 16 July 2024 Mr. Andrey Gurov filed a written statement.

In Item 1 of Section I of the written statement, he makes a request for suspending the proceedings, which, as indicated in Section I above, has been disregarded by the Governing Council of the BNB.

In item 3 of Section I of the written statement, evidentiary requests are made for collecting additional evidence, which Mr. Gurov finds relevant. The Governing Council of the



BNB accepts that these evidentiary requests relate to the incompatibility already established by the ACC, which is why they should be dismissed. The request under item 3.2. is discussed above. In items 4 and 5 of Section I of the written statement, requests are made for the hearing of Mr. Gurov in the presence of a lawyer and for the taking of minutes of the hearing. As specified in Section I above, the hearing of Mr. Gurov took place in the presence of a lawyer, and in accordance with Art. 17, para. 5 of the BNB Law, minutes are taken of the BNB Governing Council meetings.

In Section II of the written statement dated 16 July 2024, Mr. Andrey Gurov presents arguments about the incorrectness and unfoundedness of the above-mentioned in this decision in view of the absence of violation of Art. 11, para. 4 of the Law on the BNB, absence of violation under Art. 12, para. 5 of the Law on the BNB, absence of violation under Art. 50, para. 3 of ACA, nullity and irregularity of the ACC act, violation of Art. 142 of APC and inconsistency with the purpose of the law. Based on this, he claims that none of the two pre-conditions under Art. 14, para. 1 of the Law on the BNB is present.

The Governing Council of the BNB has considered and discussed the objections and arguments cited in the written statement, and has found them groundless.

As stated above, the ACC is the administrative body that has the exclusive competence to establish incompatibility with the holding of public office. The Governing Council of the BNB can neither exercise control over the Commission's act, nor can it rule on its behalf, as this would lead to improper usurpation of another administrative body's competence.

Mr. Gurov's arguments that only the conviction for a serious intentional crime can be considered as a prerequisite for applying Art. 14, para. 1, proposition 2, of the Law on the BNB cannot be accepted. The CJEU and in particular the CJEU decision, cited in the statement, do not support such an understanding, which has been thoroughly substantiated above.

Mr. Gurov's arguments that the application of any of the two grounds would imply a request for a preliminary ruling from the EU Court, cannot be supported. The BNB Governing Council is not competent to request a preliminary ruling from the Court of Justice of the EU.

As already indicated, the arguments presented in Section II, item 2 concern the correctness of the ACC's judgement, which the BNB Governing Council is bound to fully comply with and fully accept. The objections under item 2.4 for contradiction with Art. 142, para. 1 of APC are groundless. First, Mr. Gurov's incompatibility has been established by a decision of the ACC. Second, Art. 142 of APC is applied in judicial and not in administrative proceedings.

Third, the possible subsequent elimination of Mr. Gurov's incompatibility does not lead to elimination of the legal consequences of that incompatibility. In this regard, the field of application of Art. 142 of APC includes new facts that retroactively change the legal meaning of the facts on the basis of which the authority has made its decision.

The BNB Governing Council does not accept Mr. Gurov's objections that the decision does not correspond to the purpose of the law. The purpose of the law is to ensure the independence of the members of the BNB Governing Council, and similarly this decision aims to achieve precisely this.

With regard to Andrey Gurov's allegations of disproportionality, considering the great responsibility entrusted to the members of the Governing Council of a national central bank, it is important that they adhere to the strictest standards of conduct. As the principle of independence of the members of central banks' decision-making bodies is of paramount importance, commensurate with the nature of the post in question and the protection of the public interest, the suspension is an adequate and proportionate measure in view of the established violation.

In addition, at the meeting of the BNB Governing Council, Mr. Gurov and his lawyer verbally repeated the procedural requests and considerations already presented in Mr. Gurov's written statement of 16.07.2024. The Governing Council of the BNB does not accept Mr. Gurov's objections for the reasons set forth in this decision.

Based on the above and pursuant to Art. 14, para. 2, sentence one, of the Law on the BNB in connection with Art. 14, para. 1, proposition one ("does not meet the conditions required for the performance of his duties"), and Art. 14, para. 1, proposition two ("found guilty of serious misconduct"), of the Law on the BNB, in connection with Art. 24, para. 1, last proposition, and Art. 57, para. 1 and para. 6 of APC, the Governing Council of the Bulgarian National Bank

**HAS DECIDED HEREBY:**

It has established the presence of grounds under Art. 14, para. 1, proposition one ("does not meet the conditions required for the performance of his duties"), and Art. 14, para. 1, proposition two ("found guilty of serious misconduct"), of the Law on the BNB for the early dismissal of Andrey Atanasov Gurov, Deputy Governor, Head of the Issue Department of the Bulgarian National Bank, on the basis of ACC Decision No. PH-KIHK-KI-16-23-18 of 24.06.2024 and his incompatibility established in that decision under Art. 13, para. 1 item 8 of ACA, in his capacity as Deputy Governor, Head of the Issue Department of the Bulgarian National Bank and a person

holding a public office under Art. 6, para. 1 item 12 of ACA, relating to his engagement as a partner in Yontech Engineering OOD, and to his activities as a member of the management bodies of non-profit legal entities – the association Balkanski-Panitsa Institute for Advanced Study and the association Blagoevgrad Golf Club, without a decision of the BNB Governing Council under Art. 12, para. 5, sentence two, of the Law on the BNB.

Pursuant to Art. 14, para. 2 of the Law on the BNB, from the date of this decision Mr. Andrey Atanasov Gurov ceases to exercise the powers of Deputy Governor, Head of the Issue Department and member of the Governing Council of the BNB.

According to Art. 14, para. 2 of the BNB Law, this decision can be appealed before the Supreme Administrative Court regarding its legality within 7 days. After the entry into force of this decision, under Art. 14, para. 2 of the Law on the BNB, it will be sent to the National Assembly for the early dismissal.