EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 8 December 2014

on the general terms and conditions of consumer loan contracts

(CON/2014/85)

Introduction and legal basis

On 13 November 2014, the European Central Bank (ECB) received a request from the Hungarian Ministry of the National Economy (hereinafter 'the consulting authority') for an opinion on a draft law laying down specific rules on the general terms and conditions of consumer loan contracts (hereinafter the 'draft law').

The draft law was amended subsequent to the receipt by the ECB of the request for an opinion[1], but the ECB was not notified of these later amendments. The scope of the ECB's opinion is limited to the draft law as it was submitted by the consulting authority, without the later amendments. Furthermore, the draft law was adopted by the Hungarian Parliament on 25 November 2014.

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the sixth indent of Article 2(1) of Council Decision 98/415/EC[2], as the draft law relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1 Purpose of the draft law

1.1 The Hungarian Supreme Court, in a decision of June 2014[3], outlined the basic parameters of certain standard terms that could be prescribed by Parliament for inclusion in consumer loan contracts entered into by natural persons and denominated in forint or in foreign currency. As a result, the Hungarian Parliament adopted Law XXXVIII of 2014 on measures to address the

1 See amending proposal T/1997/4.

2 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

3 Uniform Decision 2/2014 of the Supreme Court of 16 June 2014.

Supreme Court's decision on consumer loan contracts[4], and Law XL of 2014 on the rules of settlement related to such contracts[5].

1.2 The draft law amends previous Hungarian legislation on this subject. It contains, inter alia, detailed rules as regards (a) the obligations of financial institutions in relation to consumers and the information provided to them; the amendment aims to ensure that sufficient information is provided to consumers prior to entering into a contract for a loan and to ensure that, during the lifetime of such a contract, sufficient and detailed information is provided to the consumers; (b) the possibility for consumers of terminating contracts for loans without incurring additional costs, in the event that the interest rate applicable to their payment obligations becomes less favourable during the lifetime of the loan agreement; (c) caps on: (i) the fee payable on the granting of the loan, and (ii) the interest rate applicable in the event of late payment by the consumer; and (d) termination or early repayment of contracts for loans.

1.3 Under the draft law different rules apply to loans for terms of less than three years and to loans for terms of more than three years. Similarly, different rules apply in the case of loans with fixed interest rates and for those with variable interest rates. Furthermore, the draft law lays down rules limiting changes to the interest rate and the interest rate premium, as well as fees and expenses payable during the lifetime of a loan agreement.

1.4 The draft law also contains provisions regarding foreign currency loans, which should be applied in conjunction with the draft law on the conversion of foreign exchange denominated loans[6].

1.5 The draft law provides that the terms and conditions relating to contracts for loans are to be amended by all financial institutions providing loans to consumers by 1 February 2015. The terms and conditions that apply under the draft law will apply retroactively to existing contracts for loans as well as to all future contracts.

2 General observations

2.1 *The appropriate time to consult the ECB*

The draft law was adopted[7] by the Hungarian Parliament on 25 November 2014, shortly after the ECB was consulted and before the ECB could adopt its opinion. As a consequence, the Parliament could not take the ECB's views into account before adopting the draft law.

The consulting authority did not indicate to the ECB that the opinion was urgent or that the draft law was to be adopted by the Hungarian Parliament under an urgency procedure. Moreover, due to amendments made to the draft law between the date of the consultation request and the date of

4 Published in Magyar Közlöny 98/2014 on 18 July 2014, see Opinion CON/2014/59. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

5 Published in *Magyar Közlöny* 137/2014 on 6 October 2014, see Opinion CON/2014/72.

6 See Opinion CON/2014/XX (currently under adoption, reference number to be updated).

7 Law LXXVIII of 2014, published in Magyar Közlöny 168/2014 on 5 December 2014.

adoption, which were not communicated to the ECB, the law as adopted differs substantially from the draft law submitted to the ECB.

The Hungarian authorities have again failed to comply properly with their duty to consult the ECB. The adoption of the draft law, as amended, does not relieve the authorities of their duty to give due consideration to this opinion, in particular with regard to the application and interpretation of the draft law as adopted, as well as any future amendments thereto.

The ECB would like to emphasise that, even in cases of particular urgency, or where the legislative process has reached an advanced stage, the national authorities are not relieved of their duty to consult the ECB. This should occur at an appropriate stage in the legislative process that allows sufficient time for: (a) the ECB to examine the draft legislative provisions and adopt its opinion in all required language versions; and (b) the national authorities to take into account the ECB's views in accordance with Decision 98/415/EC. The ECB would therefore appreciate it if, in future, the consulting authority would honour its obligation to consult the ECB in accordance with Decision 98/415/EC.

3. Specific observations

3.1 While recognising that Directive 2014/17/EU of the European Parliament and of the Council[8] does not apply to credit agreements existing before 21 March 2016, the specific observations in this opinion are without prejudice to the compliance of the draft law with the requirements set out in that Directive.

3.2 In the interests of preserving financial stability, it is important to ensure sufficient transparency so that consumers are clear about the nature of their commitments when there is an element of flexibility about the terms of a contract for a loan during the lifetime of that contract. Therefore, the ECB welcomes the fact that, under the draft law, more information on the pricing of interest rates applied by financial institutions is to be provided in contracts for loans. Similarly, the ECB is of the view that the provisions of the draft law which provide that, in certain specific cases, a contract for a loan cannot be amended to the detriment of the consumer, will bring about greater legal certainty and will enable consumers to obtain loans with greater caution and increased awareness of the financial burden involved.

8 Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

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

Done at Frankfurt am Main, 8 December 2014.

[signed]

The President of the ECB

Mario DRAGHI