EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 April 2013

on a consumer credit register

(CON/2013/29)

Introduction and legal basis

On 5 April 2013, the European Central Bank (ECB) received a request from the Minister for Economic Affairs and Finance for an opinion on a draft law on consumer credit (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1], as the draft law relates to the Banque de France. 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 draft law relates to consumer credit and in particular to the setting up of a new consumer credit register called 'registre national des crédits aux particuliers' (national register of consumer credit) (hereinafter the 'Register') which will be managed by the Banque de France. It aims to prevent natural persons becoming over-indebted and to supply credit institutions with information for assessing the solvency of persons applying for loans. The Register will record loans granted to natural persons for non-professional purposes. Included are consumer credit agreements and loans for house purchases. The Register will also record repayment incidents linked to those loans, as well as information relating to situations of over-indebtedness.

1.2 Under the draft law, credit institutions are required to record relevant information in the Register, and to consult the Register before granting loans. Committees on over-indebtedness and court clerks will be obliged to report to the Banque de France information relating to situations of over-indebtedness.

1.3 The draft law also contains rules on maintaining and deleting the information in the Register. The Banque de France and credit institutions will be authorised to collect, use and keep the individual's national identity number until the loan application has been refused or a unique identifier has been created by the Banque de France for that person. The Banque de France will not be subject to

1 OJ L 189, 3.7.1998, p. 42.

professional confidentiality requirements in respect of circulating information on identifiable persons contained in the Register to the credit institutions as well as to committees on over-indebtedness and court clerks. It shall be a criminal offence for the Banque de France, the credit institutions, the committees on over-indebtedness and court clerks to provide to anyone information contained in the Register. Exceptions to this rule are cases where information is provided to interested parties exercising their right to access the information[2], officials from the Prudential Control Authority, the Banque de France and the National Commission on Computer Technology and Freedom and, where applicable, credit institutions in the Union, other than in France, who receive loan applications from individuals resident in France.

1.4 Collection of the information contained in the Register by any entity other than the Banque de France and those specifically referred to in the draft law is punishable by law. Breach of the obligation to consult the Register and to report the relevant information is also punishable by law.

1.5 The draft law also provides for the abolition of the 'fichier national des incidents de remboursement des crédits aux particuliers' (national file of consumer credit repayment incidents), which is managed by the Banque de France and which records information on the opening of and dealing with over-indebtedness files, and on loan repayment incidents. Further provisions deal with deferred entry into force and transitory measures. The Register must be operational on a date specified by decree, and at the latest two years as from its publication.

2. General observations

The new consumer credit register will contribute to the improvement of the financial institutions' credit risk management, as well as risk assessment for the financial sector as a whole. It will also be beneficial for the exercise of prudential supervision by the 'Autorité de contrôle prudentiel'.

3. Prohibition of monetary financing

In the absence of any provision on the financing of the new task entrusted to the Banque de France in the draft law, the ECB underlines the importance of safeguarding compliance with the prohibition of monetary financing laid down in Article 123(1) of the Treaty. The prohibition is designed to prevent central banks from providing overdraft facilities or any other type of credit facility to the public sector, e.g. financing of the public sector's obligations vis-à-vis third parties. The ECB notes that the new task entrusted to the Banque de France under this amendment is not a central banking task in the French context. Rather, the ECB understands that the new task entrusted to the Banque de France is linked to a State task and is performed in the interests of the French State. Therefore, if the Banque de France is to be entrusted with such a task, it needs to be adequately remunerated in advance, in order to ensure compliance with the monetary financing prohibition[3].

2 Law no 78-17 of 6 January 1978.

3 See paragraph 2.1 of ECB Opinion CON/2011/30. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

4. Central bank independence

The financing of the operation and maintenance of the Register must comply with the principle of central bank independence, under which a national central bank (NCB) must have sufficient means not only to perform its ESCB-related tasks, but also its national tasks, e.g. financing its administration and own operations[4]. As pointed out in previous ECB opinions[5], when allocating specific non-ESCB related tasks to the NCBs, e.g. tasks in the area of consumer protection, additional human and financial resources must also be allocated for these tasks so that they may be carried out in a manner that will not affect the NCBs' operational capacity to perform their ESCB-related tasks. These requirements of financial independence would be satisfied if, as indicated by the Minister for Economic Affairs and Finance[6], the costs of setting up and operating the Register are covered by fees and charges levied on the credit institutions concerned.

5. Information contained in the Register

5.1 The ECB notes that national central credit registers (CCRs) provide useful additional information to supervisory authorities on credit concentration. The information contained in CCRs supports the analytical process, allowing early detection of potentially fragile institutions which are under supervision as set out in the Memorandum of Understanding on the exchange of information among national central credit registers for the purpose of passing it on to reporting institutions (MoU)[7].

5.2 The draft law contains a general prohibition on the dissemination of data contained in the Register, and provides for a limited number of exceptions. The ECB recommends that the exceptions[8] are expanded to include a general reference to 'competent authorities' as defined in Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions[9], and NCBs operating CCRs, to ensure that such data can be exchanged under the provisions set out in the MoU. This MoU provides a framework for the regular exchange of information among national CCRs and allows reporting institutions to obtain a more complete overview of the indebtedness of a borrower on a cross-border basis.

5.3 The ECB considers that it would be useful to differentiate between the retention of personalised and depersonalised information as recommended by the World Bank in its report entitled 'General Principles for Credit Reporting'[10]. Moreover, the ECB recommends that the information contained in the Register should not be immediately deleted after full repayment, as it constitutes positive

4 See the ECB's Convergence Report 2012, p. 25, and paragraph 2.2 of Opinion CON/2013/20.

5 See, for example, paragraph 4 of Opinion CON/2012/74.

6 See the letter of the Minister for Economic Affairs and Finance to the President of the ECB, dated 3 April 2013, requesting the opinion of the ECB on the draft law.

7 Available on the ECB's website at www.ecb.europa.eu.

8 New Article L. 333-15 of the Consumer Code.

9 Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, OJ L 177, 30.6.2006, p. 1.

10 See paragraphs 62 and 117 of the report, available on the World Bank's website at http://web.worldbank.org.

information on borrowers and their ability and willingness to pay back loans. Such positive information should be kept for a longer period than negative information.

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

Done at Frankfurt am Main, 26 April 2013.

[signed]

The President of the ECB

Mario DRAGHI