EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 19 June 2015

on a central credit register

(CON/2015/20)

Introduction and legal basis

On 8 April 2015, the European Central Bank (ECB) received a request from the Central Bank of Malta (CBM) for an opinion on a draft bill amending the Central Bank of Malta Act (Cap. 204 of the Laws of Malta) and a draft Central Bank of Malta Directive No 14 on a central credit register (hereinafter the 'draft bill' and the 'draft directive', respectively and together referred to as the 'draft laws').

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, fourth and sixth indents of Article 2(1) of Council Decision 98/415/EC[1], as the draft laws relate to the CBM, the collection, compilation and distribution of financial and banking statistics, and the 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 laws

1.1 *The draft bill*

1.1.1 The draft bill provides for the establishment and operation of a central credit register (hereinafter the 'Register') at the CBM. The Register will contain non-anonymised, granular information on the actual and contingent exposures of natural or legal persons, whether resident in Malta or not, arising from credit and other facilities granted to them by credit institutions. The Register will be used to support (a) the centralisation of information on credit exposures, (b) the analysis of the stability of the financial system, (c) the implementation of monetary policy, (d) the compilation of statistics and (e) the assessment of credit risk.

1.1.2 The draft bill authorises the CBM to provide access to the information held in the Register to national central banks and other institutions of Member States having comparable databases, on the basis of reciprocity. It also empowers the CBM to collect information from the National Statistics Office, when necessary for the discharge of the CBM's duties in relation to the Register. The draft bill ensures that borrowers have the right to obtain the information detailing their own exposures which is stored in the Register.

1 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).

1.1.3 The draft bill authorises the CBM to issue directives that impose requirements on credit and other institutions to provide information to the Register and set out the conditions for granting access to the data held in the Register, including the imposition of fees.

1.2 *The draft directive*

1.2.1 The draft directive requires credit institutions to report to the CBM, on a monthly basis, the end of month balances of exposures related to granting credit facilities. It also sets out rules regulating the right of access of credit institutions to the data held in the Register. These rules clarify that (a) the data to be accessed will not include a reference to the credit institution granting the credit facility[2], (b) the information accessed by credit institutions may not be transmitted to third parties and must only be used for the purpose of assessing credit risk[3], (c) retention periods will be established[4] and (d) the written consent of the borrower is required[5] before a credit institution may access data relating to his credit exposures. The draft laws are also without prejudice to laws on data protection[6] and each credit institution must designate a maximum of three employees as authorised representatives for the purpose of accessing the Register[7].

1.2.2 The CBM will charge fees to credit institutions for accessing the Register based on annual fees calculated on the basis of the cost incurred by the CBM in hosting the Register, alongside the credit institution's share in credit exposure over the previous calendar year, and access fees in respect of specific requests. The precise amount of fees has not yet been established.

2. General observations

2.1 The ECB welcomes the draft laws. The Register will enable the CBM to create a national granular credit database of the type referred to in Decision ECB/2014/6[8], in respect of which the CBM has a derogation until 30 June 2016 under Article 3(3). By virtue of Decision ECB/2014/6 addressed to Eurosystem central banks, preparatory measures are required to be taken by these central banks so that, within the given timeframe, the following is achieved: (a) national granular credit databases operated by all of them, and (b) a common granular credit database shared between all of them and comprising granular credit data for all Member States whose currency is the euro. In addition, in the Maltese context[9], the Register would also contribute to the CBM's function to ensure the stability of the Maltese financial system[10].

2.2 From the perspective of credit institutions, the Register will enable more informed assessments of credit risk, both in terms of the initial decision to grant a credit facility and in terms of ongoing

2 Article 8 of the draft directive.
3 Article 8 of the draft directive.
4 Article 7 of the draft directive.
5 Article 9 of the draft directive and Annex II thereof.
6 Article 3 of the draft directive.
7 Article 10 of the draft directive.
8 Decision of the European Central Bank ECB/2014/6 of 24 February 2014 on the organisation of preparatory measures for the collection of granular credit data by the European System of Central Banks (OJ L 104, 8.4.2014, p. 72).
9 Depending on the circumstances, this may also be the case for other euro area Member States and central banks.
10 Article 5(1)(c) of the Central Bank of Malta Act (Cap. 204 of the Laws of Malta).

assessments of existing exposures. The Register therefore enhances credit institutions' risk management capabilities.

2.3 The ECB is currently developing a long-term legal framework for the collection of granular credit and risk data by the ECB and the European System of Central Banks. This framework will define harmonised reporting requirements for credit data in all reporting Member States. The finalisation of this long-term legal framework may impact the draft laws, for example by requiring additional data attributes to be collected and/or a different feedback loop to reporting agents. This means that the draft laws may need to be amended in the near future.

3. Exchange of information

3.1 The draft bill provides that the CBM may provide information held in the Register to national central banks and other institutions of Member States that have comparable databases, on the basis of reciprocal arrangements. In this respect, the ECB notes that the scope of the data collected by different credit registers will continue to vary across Member States until further harmonisation is achieved, with the result that the exchange of information under this provision may not be possible in certain cases. Moreover, as the ECB does not currently have a comparable register, it cannot be provided with information in the Register on the basis of this particular provision.

3.2 The ECB notes that the information in the Register constitutes a useful tool for the micro-prudential supervision of credit institutions. From a financial stability and macro-prudential perspective, the information in the Register would allow the monitoring and assessment of the build-up and appetite for credit risk in the banking system generally, thereby helping to calibrate the use of macro-prudential instruments. The draft law does not contain an explicit provision allowing the information on the Register to be accessed by the ECB or by the Malta Financial Services Authority (MFSA), the national supervisor of credit institutions. However, under Article 37(1) of the Central Bank of Malta Act, the CBM is required to pass on to the MFSA any information in its possession or to which it has access when so requested by the MFSA in the exercise of its duties under law[11]. The ECB also understands that, subject to data protection requirements, the ECB may, in the exercise of its supervisory duties relative to credit institutions, require the MFSA to request and pass on information contained in the Register[12]. This point is also relevant in the context of the macro-prudential tasks conferred on the ECB in Council Regulation (EU) No 1024/2013[13], which requires the ECB to take into account the specific situation of the financial system, economic situation and the economic cycle in the individual Member States or parts thereof.

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11 A similar provision is also found in Article 18(1) of the Malta Financial Services Authority Act (Cap. 330 of the Laws of Malta).

12 This understanding is based on Article 6(2) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63) and Article 21 of Regulation (EU) No 468/2014 of 16 April 2014 of the European Central Bank establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.05.2014, p. 1).

13 Article 5 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

3.3 Regarding the access of the ECB to the information contained in the Register for statistical and monetary policy (as distinct from supervisory) purposes, the ECB notes that it may be entitled to access certain information contained in the Register under Article 41 of the Central Bank of Malta Act, which provides that the CBM may disclose information to 'international or other bodies' when this is required pursuant to international obligations. Subject to data protection considerations, the ECB understands that this provision would limit the ECB's access to the Register to where the CBM is required to disclose information to the ECB. Consideration should therefore be given to amending the draft laws or the Central Bank of Malta Act to ensure a clearer legal basis for the ECB's access rights to the information contained in the Register, as has been done in other Member States[14].

4. Specific additional observations

4.1 The scope of the draft directive is restricted to credit institutions, whereas the draft bill allows the CBM to impose reporting requirements on 'credit and other institutions'. The CBM may wish to consider extending reporting obligations to financial institutions that are not credit institutions.

4.2 The ECB notes that some definitions of the data attributes to be reported under the draft directive, particularly credit data variables and credit data measures[15], could be defined in a more specific manner in order to ensure more consistent reporting by credit institutions. In particular, the data attribute 'specific credit risk adjustment' is defined very widely.

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

Done at Frankfurt am Main, 19 June 2015.

[signed]

The President of the ECB

Mario DRAGHI

14 See, e.g., Opinion CON/2013/93, paragraph 2.1 and Opinion CON/2014/57, paragraph 2.2.

15 Annex 1 of the draft directive.