EUROPEAN CENTRAL BANK

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# OPINION OF THE EUROPEAN CENTRAL BANK

## of 21 January 2019

## on the Central Bank of Malta's supervision of credit reference agencies and its oversight of payment services

## (CON/2019/2)

**Introduction and legal basis**

On 7 November 2018 the European Central Bank (ECB) received a request from the Central Bank of Malta (CBM) for an opinion on a draft law amending the Central Bank of Malta Act (the 'draft law amending the CBM Act') and on a draft directive No 15 on the supervision of credit reference agencies (the 'draft directive on credit reference agencies'). The CBM also informed the ECB that it intends to amend Directive No 14 on the Central Credit Register (the 'draft amendments to the Directive on the Central Credit Register'), together with the draft law amending the CBM Act and the draft directive on credit reference agencies, collectively referred to as the 'draft law'. On 23 November 2018, the ECB received a revised version of the draft law.

The ECB's competence to deliver this opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the second, third and fourth indents of Article 2(1) of Council Decision 98/415/EC[1], as the draft law relates to means of payment, the CBM, the collection, compilation and distribution of financial and balance of payment statistics and the ECB's tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty.

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 has three main purposes. *First*, it extends the oversight powers of the CBM with regard to the provision of payment services by credit institutions and financial institutions[2]. *Second*, it confers on the CBM new supervisory powers with respect to credit reference agencies. *Third*, it extends access to the Central Credit Register operated by the CBM to credit reference agencies

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).

2 The CBM Act defines the term 'financial institution' as having the same meaning as that assigned to it by Article 2 of the Financial Institutions Act (Act XXII of 1994, Chapter 376 of the Laws of Malta), and including any branch in Malta of an institution not incorporated in Malta. A 'financial institution' as defined in the Financial Institutions Act means any person who regularly or habitually acquires holdings or undertakes the carrying out of any activity listed in First Schedule to the said Act, for the account and at the risk of the person carrying out the activity, and includes payment institutions within the meaning of Directive (EU) 2015/2366 of the European Parliament and of the Council, as well as electronic money institutions within the meaning of Directive 2009/110/EC of the European Parliament and of the Council.

and to other institutions to which the CBM decides to grant access.

1.2 *Oversight of payment services*

1.2.1 The CBM Act currently authorises the CBM to issue, amend or revoke directives on the provision of payment services in order to promote the stable and sustainable development and provision of payment instruments[3]. The draft law amending the CBM Act extends (i) the scope of the CBM's activity to cover the provision of payment services, payment applications, payment card schemes and payment transactions by credit and financial institutions; and (ii) the CBM's oversight and regulatory powers in this regard (see paragraph 1.2.2 below). For this purpose, a payment service is defined in accordance with Directive (EU) 2015/2366 of the European Parliament and of the Council[4]. A payment application is defined as computer software or equivalent, loaded on a device enabling payment transactions to be initiated and allowing the payer to issue payment orders. A payment card scheme is defined as a single set of rules, practices, standards and/or implementation guidelines for the execution of card-based payment transactions. Finally, a payment transaction is defined as an act, initiated by the payer or on his behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

1.2.2 Pursuant to the draft law amending the CBM Act, no credit or financial institution may provide a payment service in Malta unless it notifies the CBM. The CBM would have the power to review the rules and procedures of any payment service, payment application, payment card scheme and payment transaction in Malta. It would be authorised to make an order restraining a credit or financial institution from engaging in activities which it deems to go against the stable and sustainable development of the payments landscape in Malta. The CBM would also be authorised to suspend the provision of any payment service, payment application, payment card scheme or payment transaction where the credit or financial institution fails to comply with a lawful order or requirement of the CBM. Finally, it would be empowered to publicise non-compliance with its order or requirements and to impose administrative penalties.

1.2.3 Pursuant to the draft law amending the CBM Act, the CBM would be required to discuss with the competent authority the promotion of the stable and sustainable development of the payments landscape in Malta. A competent authority is defined as any authority or authorities nominated to regulate the business of credit institutions, financial institutions or financial services institutions under any law listed in the Schedule to the CBM Act. In the context of the provision of payment services by credit or financial institutions, the competent authority under the Banking Act[5] and the Financial Institutions Act is the Malta Financial Services Authority (MFSA).

1.3 *Supervision of credit reference agencies*

1.3.1 Under the draft law amending the CBM Act, the CBM is designated as the supervisory authority of

3 See Article 34A(1) of the CBM Act.

4 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p.35). In particular, a payment service is defined as any business activity set out in Annex I thereof.

5 Banking Act, Act XV of 1994, Chapter 371 of the Laws of Malta.

credit reference agencies solely for the purpose of overseeing and regulating the task of issuing a credit score, defined as a measure of creditworthiness derived from credit information which must, under pain of nullity, include data derived from the Central Credit Register operated by the CBM. A credit reference agency is defined for this purpose as an undertaking licenced by the Trade Licensing Unit[6] the main business of which is to prepare, assemble and evaluate credit information and related credit and risk management services on legal and natural persons for the purpose of issuing credit scores to be furnished to third parties, provided that a credit reference agency is not precluded from carrying out other related tasks.

1.3.2 Under Legal Notice 213 of 2018[7], on which the ECB was not consulted, further provision is made for the application for a trading licence to the Trade Licensing Unit in order to carry out the business of a credit reference agency. The assessment and determination of such applications is made by the Trade Licensing Unit in consultation with the CBM, whereby the CBM is required to give its recommendation for the issue of such a licence to the Trade Licensing Unit. Such a licence may be suspended or cancelled by the Trade Licensing Unit on the recommendation of the CBM. Any director, manager, administrator, trustee or principal officer of a credit reference agency may be removed by the Trade Licencing Unit on the recommendation of the CBM. Any other restrictions may be imposed on a credit reference agency by the Trade Licensing Unit as the CBM, as the supervisory authority, may stipulate.

1.3.3 Under the draft law amending the CBM Act, the CBM is entrusted with levying supervision fees on licensed credit reference agencies. As part of its supervisory duties, the CBM may conduct on-site and off-site inspections.

1.3.4 The draft law amending the CBM Act empowers the CBM to issue directives for the carrying into effect of its supervisory duties in relation to credit reference agencies. In this context, the draft directive on credit reference agencies lays down detailed rules concerning the supervision of licensed credit reference agencies. In particular, it establishes specific obligations of credit reference agencies with regard to the issue of credit scores, notification requirements, the obligation to establish a complaints resolution unit, maximum periods of retention of central credit register data and credit scores, and obligations with regard to conflicts of interest and confidentiality. The rules set out in the draft directive on credit reference agencies also relate to the powers of the CBM as supervisor of credit reference agencies. In particular, they provide for the imposition of an annual supervisory fee, powers relating to the CBM's on-site and off-site inspections, powers in relation to accessing documentation held by the agencies, powers with respect to the governance of the agencies and the power to impose penalties on agencies.

1.4 *Access to Central Credit Register*

1.4.1 The draft amendments to the Directive on the Central Credit Register predominantly cater for the modalities of access to the Central Credit Register by the main parties involved, notably credit institutions, natural or legal persons whose credit is being rated and credit reference agencies. The

6 See Part VIIA, Regulations 47A to 47H of the Trading Licences Regulations, Legal Notice 420 of 2016.
7 Trading Licences (Amendment) Regulations, 2018, which added Part VIIA to the Trading Licences Regulations.

draft amendments also regulate the modalities of access to the Register by the Malta Development Bank and by other institutions to which the CBM grants access.

1.4.2 The existing provisions of the CBM Act provide that the CBM may grant access to the Central Credit Register on the basis of reciprocity arrangements to central banks and other institutions of Member States of the European Union that create databases comparable to the Register[8]. The draft law amending the CBM Act amends this provision by laying down that access to the Register will be extended to: (i) Union institutions that create databases comparable to the Register and which conclude reciprocity arrangements with the CBM; (ii) the Listing Authority; (iii) the Malta Stock Exchange; and (iv) any other institution as the CBM may consider necessary.

1.4.3 Furthermore, the draft law amending the CBM Act introduces a new provision to cater for instances where the carrying out of the CBM's statistical functions under the CBM Act necessitates the transfer of statistical and other information by the CBM to any person in general or any entity which is licensed, authorised or registered by a competent authority.

## 2. Scope of the opinion

This opinion focuses on the following areas of the draft law of interest to the ECB: the oversight of payment services by the CBM (**Section 3**); the CBM's new supervisory powers with respect to credit reference agencies (**Section 4**); and access to the Central Credit Register (**Section 5**). Finally the opinion examines the new tasks conferred on the CBM against the prohibition of monetary financing (**Section 6**). This opinion does not address the question of whether the draft law, if adopted as proposed, would represent an effective means of implementing Directive (EU) 2015/2366 or other relevant Union legal acts in Malta.

## 3. Oversight of payment services provided by credit and financial institutions

3.1 The oversight of payment services provided by credit and financial institutions is already carried out by the CBM under the provisions of the CBM Act[9].

3.2 In Malta, the CBM and the MFSA are both competent authorities under Directive (EU) 2015/2366. The MFSA is, with a few exceptions, largely responsible for Title II (Payment service providers) thereof, whereas the CBM is, with a few exceptions, largely responsible for Titles III (Transparency of conditions and information requirements for payment services) and IV (Rights and obligations in relation to the provision and use of payment services). Furthermore, some provisions of Directive (EU) 2015/2366, such as those relating to incident reporting, as well as more general provisions such as those on, inter alia, data protection and penalties, fall within the remit of both the CBM and the MFSA. In practical terms, the MFSA is, under the Directive, responsible for the granting and withdrawal of authorisation of payment institutions, the supervision of payment institutions and issues relating to, inter alia, shareholding, own funds, safeguarding requirements and

8 See Article 24(4) of the CBM Act.
9 See Article 34A of the CBM Act.

governance[10]. On the other hand, the CBM, as the overseer and regulator of the operation of, and participation in, domestic payment systems, is responsible for, inter alia, the Directive's provisions on the authorisation and execution of payment transactions, authentication, framework contracts, information requirements and applicable charges in relation to, inter alia, credit institutions and payment institutions[11].

3.3 The ECB notes that the draft law proposes to extend the CBM's existing oversight and regulatory powers in relation to payment services providers, including credit and financial institutions. Under the draft law the CBM is required to discuss with the 'competent authority' the promotion of the stable and sustainable development of the payments landscape in Malta. The definition of 'competent authority' under the CBM Act does not, however, include the ECB. Furthermore, it should be noted that, with regard to the oversight of international payment card schemes that provide services on the Maltese market, there is no reference in the draft law to the distribution of oversight responsibilities within the Eurosystem.

3.4 Pursuant to relevant Union law[12] the ECB is competent to carry out specific tasks for the purpose of prudential supervision of credit institutions established in the Member States. In view of its competence in this area, the ECB considers that the CBM should inform the ECB and the MFSA, within their respective fields of competence for the prudential supervision of credit institutions, on an *ex ante* basis, whenever the exercise of the CBM's oversight and regulatory powers in relation to payment service providers which are credit institutions could risk pre-empting the powers that the ECB and the MFSA may have for the purposes of carrying out the prudential supervision of credit institutions, including the power to restrict or limit their business and operations. Furthermore, the ECB understands that any powers exercised by the CBM in this regard are without prejudice to such powers of the ECB and the MFSA[13]. Similarly, the ECB wishes to recall the pre-agreed distribution of oversight responsibilities within the Eurosystem with regard to payment schemes[14], and that the extended powers of the CBM should not affect in any way the powers that the ECB or the other Eurosystem central banks have as overseers of payment card schemes.

## 4. Supervisory powers with respect to credit reference agencies

4.1 The definition of credit reference agencies pursuant to the draft law falls outside the scope of Regulation (EC) No 1060/2009 of the European Parliament and of the Council[15] particularly because this regulation does not apply to credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships[16].

10 See the Financial Institutions Act.
11 See Central Bank of Malta Directive No 1 on the provision and use of payment services, available at: www.centralbankmalta.org.
12 In particular, Article 127(6) of the Treaty concerning policies relating to the prudential supervision of credit institutions and 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).
13 See Regulation (EU) No 1024/2013.
14 See Eurosystem oversight policy framework, July 2016, section 5.2 'Allocation of roles within the Eurosystem'.
15 Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p.1).
16 Article 2(2)(b) of Regulation (EC) No 1060/2009.

As credit reference agencies fall outside the scope of this regulation, the European Securities and Markets Authority would not have supervisory powers over such entities.

4.2 In the vast majority of Member States, credit reference agencies remain unregulated except for data protection aspects[17]. As the subjects of data protection are normally only natural, and not legal, persons[18], this implies that in most Member States credit reference agencies remain entirely unregulated so far as the credit scoring of legal persons is concerned. Moreover, it seems that it is only in a few Member States that credit reference agencies are regulated with regard to the way their credit scoring is made[19].

4.3 Credit reference agencies are currently one of the four accepted credit assessment sources on which the Eurosystem bases its eligibility assessment of assets eligible as collateral for Eurosystem credit operations. Credit reference agencies accepted as credit assessment systems are referred to as third-party rating tool providers and their acceptance and monitoring follows the applicable provisions of Guideline (EU) 2015/510 (ECB/2014/60)[20]. The use of third-party rating tools' credit assessments in Eurosystem monetary policy operations is however very limited, particularly when compared to the other three accepted credit assessment sources.

## 5. Access to the Central Credit Register and to other information held by the CBM

5.1 The ECB welcomes the provisions of the draft law extending access to the Central Credit Register to (i) Union institutions that create databases comparable to the Register and which conclude reciprocity arrangements with the CBM; and (ii) any other institution as the CBM may consider necessary.

5.2 As previously noted by the ECB[21], as the ECB does not currently have a comparable register, it cannot be provided with information in the Register on the basis of reciprocity. The draft law does not contain an explicit provision allowing the information on the Register to be accessed by the ECB or the MFSA, even though the ECB has previously identified channels through which it or the MFSA could obtain access to data contained in the Central Credit Register[22].

5.3 The ECB welcomes that the draft law provides that the CBM may provide access to the information held in the Central Credit Register to any other institutions as the CBM may consider necessary.

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17 A January 2011 report of the European Credit Research Institute indicates that the principal national regulators of credit bureaus in many Union Member States are the national data protection offices. See M. Rothemund and M. Gerhardt, European Credit Research Institute, The European Credit Information Landscape: An analysis of a survey of credit bureaus in Europe, January 2011, p. 7.

18 See the definition of 'personal data' in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5. 2016, p. 1), which is confined to natural persons.

19 In the UK the Financial Conduct Authority is designated as the competent authority in this respect. See Briefing Paper Number 04070, House of Commons Library, of 17 March 2014 on credit reference agencies, pp. 5-6. In Hungary, the Magyar Nemzeti Bank is designated as the competent national authority for the supervision of financial institutions, *inter alia* credit reference agencies. See Act CXXII of 2011 on the Central Credit Information System.

20 Guideline (EU) 2015/510 of the European Central bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91 2.4.2015, p. 3).

21 See paragraph 3.1 of Opinion CON/2015/20.

22 See paragraphs 3.1 to 3.2 of Opinion CON/2015/20.

The ECB considers that, if necessary for the fulfilment of its tasks, this provision could give the ECB an additional legal basis for accessing the Register.

## 6. New tasks conferred on the CBM

6.1 In relation to the oversight of the provision of payment services by credit and financial institutions, the ECB notes that the draft law does not confer genuinely new tasks on the CBM, but rather extends the CBM's powers to facilitate the exercise of a task already assigned to it. By contrast, the supervision of credit reference agencies is a new task entrusted to the CBM by the draft law as currently the CBM does not perform the function of supervisory authority for the purpose of overseeing and regulating the issuing of credit scores by credit reference agencies.

6.2 The ECB underlines that a proposed conferral of new tasks on a national central bank (NCB) of the European System of Central Banks (ESCB) must be assessed against the criteria for determining what constitutes a government task from the perspective of the monetary financing prohibition laid down in Article 123 of the Treaty.

6.3 For the purposes of that prohibition, Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93[23] defines 'other type of credit facility', inter alia, as 'any financing of the public sector's obligations vis-à-vis third parties'. To determine what might be assimilated with the financing of the public sector's obligations vis-à-vis third parties, which can be interpreted as the financing provided by an NCB outside the scope of central bank tasks, it is necessary to assess whether the new task to be undertaken by that NCB is a government task, i.e. a task within the responsibility of the public sector of Member States, rather than a central bank task. In other words, adequate safeguards against circumventions of the objective of the monetary financing prohibition of maintaining a sound budgetary policy of Member States must be put in place.

6.4 As part of its discretion in the exercise of its duty, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute of the European System of Central Banks and of the European Central Bank (the 'Statute of the ESCB'), to ensure that NCBs honour the obligations laid down by the Treaty, the Governing Council has endorsed safeguards of that kind in the form of criteria for determining what may be seen as falling within the scope of a public sector's obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, what constitutes a government task as follows:

First, central bank tasks are in particular those tasks that are related to the tasks that have been conferred on the ECB and the NCBs by the Treaty and the Statute of the ESCB. These tasks are mainly defined in Article 127(2), (5) and (6) and 128(1) of the Treaty, as well as Article 22 and 25.1 of the Statute of the ESCB.

Second, as Article 14.4 of the Statute of the ESCB allows NCBs to perform 'other functions', new tasks that are not related to tasks that have been conferred on the ECB and the NCBs are not precluded per se. However, new tasks which are atypical of NCB tasks or which are clearly

23 Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

discharged on behalf of and in the exclusive interest of the government or of other public sector entities should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly discharged on behalf of and in the exclusive interest of the government or other public sector entities is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

(i) whether the performance of the new task would create conflicts of interest with existing central bank tasks which are not adequately addressed and does not necessarily complement those existing central bank tasks. If a conflict of interest arises between existing and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should be interpreted narrowly, so as to avoid leading to the creation of an indefinite chain of ancillary tasks. Such complementarity should be examined also in relation to the financing of those tasks;

(ii) whether without new financial resources the performance of the new task is disproportionate to the NCB's financial or organisational capacity and may have a negative impact on the capacity to perform properly the existing central bank tasks;

(iii) whether the performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations;

(iv) whether the performance of the new task harbours substantial financial risks;

(v) whether the performance of the new task exposes the members of the NCB decision-making bodies to political risks which are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute of the ESCB.

6.5 On the basis of the criteria set out above, the following paragraphs assess whether the new task conferred upon the CBM constitutes a government task in the context of the monetary financing prohibition.

6.5.1 *New tasks related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB*

The supervision of credit reference agencies is not among the basic tasks listed in Article 127(2) and (5) of the Treaty or otherwise conferred upon the NCBs by the Statute of the ESCB. Furthermore, while the proper operation of credit reference agencies may be valuable for credit institutions as they would be able to make a better assessment of the financial situation of the natural or legal persons to whom they are lending, this new task is not related to the specific tasks conferred upon the ECB on the basis of Article 127(6) of the Treaty concerning policies relating to the prudential supervision of credit institutions within the context of the single supervisory mechanism.

6.5.2 *Tasks which are atypical of NCB tasks*

The ECB notes that in the vast majority of Member States, credit reference agencies remain unregulated except for data protection aspects[24]. However, there are also Member States in which either the NCB is designated as the competent national authority responsible for the supervision of credit reference agencies[25] or in which the systems for the exchange of data concerning creditworthiness is a matter regulated by the NCB[26]. In addition, a number of NCBs have functions in relation to the collection and use of credit risk data, including in connection with the operation of central credit registers[27]. Furthermore, credit reference agencies may play a role in the Eurosystem's credit operations, as they are one of the four sources which may be accepted for the eligibility assessment of assets eligible as collateral. Consequently, although the direct supervision of credit reference agencies by NCBs as such remains rare among Member States, it is common for NCBs to be involved in activities relating to the management of credit risk. It follows that the new task proposed to be conferred on the CBM in relation to the supervision of credit reference agencies is not atypical for a central bank in those Member States which have chosen to regulate and supervise credit reference agencies with respect to their credit scoring.

6.5.3 *Tasks clearly discharged on behalf of and in the exclusive interest of the government*

The ECB understands that the supervision of credit reference agencies in Malta is being introduced on the one hand to protect the interests of the legal and natural persons being scored to ensure that their credit scoring is fair and transparent and, on the other, to ensure that credit reference agencies rely on correct data, particularly data contained in the Central Credit Register, to ensure that their scoring is fair and reliable. In view of the credit risk-related activities of central banks, including in the operation of central credit registers, the new task proposed to be conferred on the CBM does not appear as a task clearly discharged on behalf of and in the exclusive interest of the government.

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24 A January 2011 report of the European Credit Research Institute indicated that the principal national regulators of credit bureaus in many EU Member States are the national data protection offices See M. Rothemund and M. Gerhardt, European Credit Research Institute, The European Credit Information Landscape: An analysis of a survey of credit bureaus in Europe, January 2011, p. 7.

25 In Hungary the Magyar Nemzeti Bank is responsible for the supervision of financial institutions, *inter alia* credit reference agencies under Act CXXII of 2011 on the Central Credit Information System as regards the authorisation for the setting up and operation of a financial enterprise operating the central credit information system, the supervision and withdrawal of authorisation, the obligation of confidentiality concerning trade secrets, banking and payment secrets and any exemptions from the obligation of confidentiality imposed by Act CCXXXVII of 2013 on credit institutions.

26 In Cyprus the Central Bank of Cyprus (CBC) is assigned with the task of supervising such systems with a view to ensuring the proper management of the data they possess (section 28(E) of Law 66(I)/1997 on the business of credit institutions).The CBC is empowered to issue secondary legislation to regulate the conditions and processes for the functioning of such systems, and may impose sanctions on the operators of such systems (sections 28(E), 41(6) and 42(3) of Law 66(I)/1997). This concept is closer to the notion of a credit register than to that of credit bureaus, in the sense that it presupposes the participation of credit institutions and some other categories of institutions (mainly credit providers) and no other persons are allowed to participate or benefit from its services except for the CBC.

27 See, e.g., Opinion CON/2011/20 (Belgium), Opinion CON/2011/47 (Latvia), Opinion CON/2012/74 (Ireland), Opinion CON/2013/29 (France), Opinion CON/2016/42 (Slovenia) and Opinion CON/2016/57 (Bulgaria). Central credit registers are operated by NCBs in other Member States, including, e.g., Italy.

6.5.4 *Extent to which performance of the new task creates conflicts of interest with existing central bank tasks*

The new task of supervising credit reference agencies does not create any conflicts of interest with existing central banking tasks performed by the CBM. On the contrary, it appears to be rather complementary to the existing task of maintaining a central credit register.

6.5.5 *Extent to which performance of the new task is disproportionate to the financial or organisational capacity of the CBM*

With regard to the principle that Member States may not put their NCBs in a position where they have insufficient financial resources to carry out not only their ESCB-related but also their national tasks, the ECB understands that the new task would not require the allocation of significant resources. However, as the ECB understands that the annual supervisory fees to be levied on credit reference agencies would not entirely cover the CBM's expenditure for carrying out its new task, the CBM should take the necessary measures to ensure it has sufficient resources for the performance of this task.

6.5.6 *Extent to which performance of the new task fits into the institutional set-up of the CBM, in the light of central bank independence and accountability considerations*

As already noted, the new task conferred on the CBM appears to be complementary to its task of maintaining a central credit register. The performance of this task would therefore appear to fit into the existing institutional set-up of the CBM.

6.5.7 *Extent to which the performance of tasks harbours substantial financial risks*

The ECB notes that the performance of this new task would not entail substantial financial risks for the CBM or its officials. Thus, pursuant to Article 15 of the CBM Act, the CBM, its directors, officers and servants may not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of its functions unless the act or omission is shown to have been done or omitted to be done in bad faith. Furthermore, in relation to the supervision of credit reference agencies, paragraph 4(1) of Directive No 14 on the Central Credit Register provides that the CBM is not responsible for the integrity and correctness of data that a credit institution provides to the Register. Moreover, credit reference agencies are fully responsible in respect of the public and non-public credit information that they possess, other than data in the Central Credit Register.

6.5.8 *Extent to which performance of the new task exposes members of the decision-making bodies of the CBM to disproportionate political risks and impacts on their personal independence*

The new supervisory task in relation to credit reference agencies does not appear to expose the members of the decision-making bodies of the CBM to disproportionate political risks, or to otherwise have an impact on their personal independence.

6.6 *Conclusion*

While the new task conferred on the CBM regarding the supervision of credit reference agencies is not among the tasks conferred on the ECB and the NCBs by the Treaty and the Statute of the ESCB, this task is not atypical of NCB tasks in those Member States which have chosen to regulate and supervise credit reference agencies with respect to their credit scoring. Moreover it is common for NCBs to be involved in activities relating to the management of credit risk. As the

CBM's new task is furthermore not discharged on behalf of and in the exclusive interest of the government, the CBM's new supervisory task in relation to credit reference agencies does not constitute a government task.

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

Done in Frankfurt am Main, 21 January 2019.

[signed]

*The President of the ECB*

Mario DRAGHI