EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 24 May 2013

on the status of credit institutions and the creation of financing companies

(CON/2013/36)

Introduction and legal basis

On 22 April 2013, the European Central Bank (ECB) received a request from the French Ministry of Economic Affairs and Finance for an opinion on a draft ordinance amending the status of credit institutions (hereinafter the 'draft ordinance').

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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1], as the draft ordinance 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 ordinance

1.1 In view of the expected adoption and entry into force of the Regulation on prudential requirements for credit institutions and investment firms (hereinafter the 'CRR')[2], the French government has decided to align the definition of 'credit institutions' under national legislation with the Union definition. Pursuant to Article 4(1)(a) of Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[3], a 'credit institution' means 'an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account'. The definition laid down in the CRR[4] contains both elements as well. From a French national law perspective, this requires aligning the definition of credit institution with the Union definition.

1.2 First, under French legislation, 'credit institutions' are defined as 'legal entities having as their customary activity the carrying out of banking transactions' which 'comprise the receipt of funds

1 OJ L 189, 3.7.1998, p. 42.

2 Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (COM(2011) 0452 final).

3 OJ L 177, 30.6.2006, p. 1.

4 Article 4(1) of the CRR provides that: 'credit institution' means 'an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account'.

from the public, credit transactions and bank payment services'[5]. The cumulative character of the criteria, i.e. receiving deposits and granting credits, was transposed as alternatives in the French national legislation. The draft ordinance proposes to redefine credit institutions as 'legal entities whose business consists of receiving repayable funds from the public[6] and granting loans for their own account'[7], with a view to making it clear that both activities are required for an entity to qualify as a 'credit institution'.

1.3 Second, the draft ordinance creates a new type of financial institution, i.e. the 'financing company'. Financing companies are defined as 'legal persons that are not credit institutions whose regular professional activity is to perform credit transactions in accordance with the conditions set out in their authorisation'[8]. Financing companies will be entitled to grant credit, but will not collect deposits or other repayable funds from the public. The draft ordinance provides that financing companies 'may provide payment services, issue and manage electronic money and provide investment services on condition that they have obtained the relevant authorisation'[9]. Financing companies, as well as credit institutions, will be authorised to issue negotiable debt securities under the conditions laid down by the Minister for the Economy, provided that the financial instruments issued are not repayable funds received from the public[10].

1.4 Finally, the draft ordinance makes reference to the national prudential regime applicable to financing companies. The French supervisory authority (*Autorité de contrôle prudentiel*) will supervise financing companies[11]. In particular, before starting their activities, financing companies, as well as credit institutions, will have to obtain approval from the French supervisory authority[12]. The draft ordinance is intended to empower the Minister for the Economy to enact implementing decrees under which financing companies will be subject to rules, equivalent to Union requirements for credit institutions, relating to solvency and large exposures. Additionally, the draft ordinance provides that liquidity and leverage requirements of financing companies will be specified in an implementing decree.

2. General observations

The ECB welcomes the harmonisation of the definition of credit institution under French law with the Union definition as the adjustments required by the CRR contribute to a more uniform application throughout the Union. This also ensures a level-playing field within the Union. In this context, the ECB

5 See Article L.511-1 in conjunction with Article L. 311-1 of the French Monetary and Financial Code (MFC).

6 'Repayable funds from the public' are defined in the new proposed Article L 312-2 as 'funds which an entity accepts from a third party with the right to assign them for its own account subject to its returning them. These funds are received in particular in the form of deposits or through the issuing of debt securities'.

7 Proposed Article L.511-1.-I of the MFC.

8 Proposed Article L.511-1.-II of the MFC.

9 Proposed Article L.515-1 of the MFC.

10 Proposed paragraph 1a of Article L.213-3 of the MFC.

11 Proposed 9th indent in paragraph A of Article L.612-2.-I of the MFC.

12 Proposed paragraph L.511-10 of the MFC.

would like to highlight the observations made in the context of its Opinions on the proposal for a Directive amending Directive 2006/48/EC[13].

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

Done at Frankfurt am Main, 24 May 2013.

[signed]

The President of the ECB

Mario DRAGHI

13 See for instance Opinion CON/2010/65 as regards capital requirements for the trading book and for resecuritisations, and the supervisory review of remuneration policies.