



OPINION OF THE EUROPEAN CENTRAL BANK
of 10 October 2014
on further rules applicable to specific consumer loan contracts
(CON/2014/72)

Introduction and legal basis

On 12 September 2014 the European Central Bank (ECB) received a request from the Hungarian Ministry of the National Economy for an opinion on a draft law on the rules applicable to specific consumer loan contracts (hereinafter the ‘draft law’).

The draft law was adopted by the Hungarian Parliament on 24 September 2014¹ following amendments². The ECB has adopted its opinion based on the draft law submitted for consultation.

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 and sixth indents of Article 2(1) of Council Decision 98/415/EC³, as the draft law relates to the Magyar Nemzeti Bank (MNB) and 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 As referred to in Opinion CON/2014/59⁴, the Hungarian Supreme Court delivered a uniform decision⁵ outlining 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.

¹ Law XL of 2014, Published in *Magyar Közlöny* No 137/2014.

² See amendments Nos T/1272/4 and T/1272/6, available on the Hungarian Parliament’s website at www.parlament.hu.

³ 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).

⁴ Opinion CON/2014/59 on new general measures stemming from the Supreme Court’s decision on consumer loan contracts. All ECB opinions are available on the ECB’s website at www.ecb.europa.eu.

⁵ Uniform Decision 2/2014 of the Supreme Court of 16 June 2014. See also Decision 6/2013 of the Supreme Court of 16 December 2013.

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- 1.2 The Hungarian Parliament subsequently adopted Law XXXVIII of 2014 on measures to address the Supreme Court's decision on consumer loan contracts⁶. This legislation regulates loans issued in forint and foreign currency, as well as financial leases, entered into by natural persons. Amongst other things, the legislation: (a) declares that it is illegal for financial institutions to profit from exchange rate margins and requires financial institutions to calculate the amounts to be repaid to affected consumers using the official exchange rate published by the MNB; and (b) states that unilateral amendment of the general terms and conditions of a loan contract or a financial lease fails to satisfy the principles outlined in the Supreme Court's ruling and is therefore unfair, and thus void, unless proven otherwise by a financial institution in court proceedings. The adoption of Law XXXVIII of 2014 and the further detailed rules set out in the draft law are the beginning of a series of legislative measures aiming to address the Supreme Court's decision.
- 1.3 The draft law prescribes the procedures implementing the new legal measures introduced by Law XXXVIII of 2014, including the applicable timelines. The draft law specifies the rules applicable to write-offs or repayments, which depend on the status of the contract (i.e. whether or not obligations under the contract remain to be performed) and, in particular cases, the rules for determining the applicable exchange rate and the interest rate. Where the consumer has benefited from a discount or reduction of their payment obligations (e.g. as a result of the early repayment scheme or the exchange rate cap scheme), the draft law provides that a deduction will be made by the financial institution from the write-off or repayment, corresponding to the discount or reduction previously granted. Specific procedural rules are set out to govern adjourned legal proceedings, also temporarily prohibiting any unilateral increase in the interest rate, costs and fees applicable to consumer loan contracts until 30 April 2016. The draft law states that the financial institutions will ultimately bear the costs of implementing the draft law. Further provision is made for a formal dispute resolution procedure which will be available before the Pénzügyi Békéltető Testület (Financial Reconciliation Board), with support from the MNB. Additional tasks are given to the MNB in its supervisory capacity and the draft law also ensures consistency with other relevant legal acts. Finally, amendments are made to certain accounting and taxation rules to facilitate the performance of existing and future payment obligations by the financial institutions under the new rules.
- 1.4 In addition to determining the basic rules of procedure implementing the new legal measures introduced by Law XXXVIII of 2014, the draft law authorises the Governor of the MNB to adopt a decree prescribing certain relevant details to be provided by financial institutions. This includes details on the implementation of the new obligations, the date on which such obligations should be performed and, in certain limited cases, the date of the applicable

⁶ *Magyar Közlöny* 98/2014, 18.07.2014.

exchange rate to be used, as well as the date on which any financial obligations should be fully performed, the content and formalities involved, and the applicable rules of publication.

2 General observations

The appropriate time to consult the ECB

The draft law was adopted by Parliament on 24 September 2014, shortly after the ECB was consulted, and before the ECB could adopt its opinion. As a consequence, Parliament could not take the ECB's views into account before adopting the draft law. Moreover, the draft law, as adopted, differs substantially from the draft law on which the ECB has been consulted due to the amendments⁷ adopted by Parliament during the legislative process. This opinion is based on the draft law sent for consultation 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 consider this opinion, in particular with regard to the application and interpretation of the draft law, as adopted, and 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 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 the consulting authority honouring its obligation to consult the ECB, in accordance with Decision 98/415/EC, in the future.

3. Specific observations

- 3.1 The ECB would like to stress that all observations made in paragraph 3 of Opinion CON/2014/59 remain applicable. Of particular importance are the comments made in paragraphs 3.3 and 3.4 concerning the potential of the measures to: (a) place significant strain on the banking sector, potentially adversely affecting the stability of the Hungarian financial sector as a whole and the situation of individual financial institutions; and (b) create cross-border spill-over effects on banking groups' profits and capital positions, possibly resulting in adverse spill-over effects on the economy. These paragraphs in Opinion CON/2014/59 also comment on the need for a meaningful dialogue between the Hungarian authorities and all relevant stakeholders, as well as the need for due consideration of the interests of the general

⁷ See amendments Nos T/1272/4 and T/1272/6.

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public, including financial institutions and borrowers, as well as the interests of the authorities responsible for ensuring the stability of the financial system in Hungary.

- 3.2 On the issue of financial stability, the ECB welcomes the fact that the draft law empowers the Governor of the MNB to require certain relevant details relating to the new legal measures introduced by Law XXXVIII of 2014, since the MNB is both the national competent authority responsible for micro-prudential supervision and the macro-prudential supervisory authority in Hungary. The MNB is best placed to assess the terms and conditions of loan contracts entered into by consumers and the impact of the new legal measures on financial institutions. Within the scope of its tasks, the MNB can contribute to the prevention and mitigation of systemic risks to financial stability. As regards the legislative powers proposed to be granted to the Governor of the MNB under the draft law, which are more than technical in nature, the ECB expects to be consulted in a timely manner on any draft legislative provisions proposed by the Governor within the ECB's scope of competence in accordance with Decision 98/415/EC.
- 3.3 In view of the high proportion of financial institutions owned by foreign banking groups operating in the Hungarian banking sector, and in order to prevent contagion and threats to financial stability within the European Union, the MNB should also inform the ECB, the European Systemic Risk Board and other relevant stakeholders of any proposed implementing measures in the future.
- 3.4 In addition to its new supervisory tasks involving the verification of compliance with the new legal measures applicable to consumer loan contracts, the MNB will be tasked with the mediation of complaints and the initiation of legal proceedings in the public interest. In line with the principle of central bank independence, the MNB should be able to carry out these new tasks while having sufficient financial resources to carry out its tasks within the European System of Central Banks (ESCB). The principle of financial independence requires that a national central bank has sufficient financial resources to perform both its ESCB and national tasks, which in this case includes the new tasks given to the MNB.

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

Done at Frankfurt am Main, 10 October 2014.

[signed]

The President of the ECB

Mario DRAGHI