

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 5 July 2011

on a proposal for a directive of the European Parliament and of the Council on credit agreements relating to residential property**(CON/2011/58)**

(2011/C 240/04)

Introduction and legal basis

On 18 April 2011, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a directive of the European Parliament and of the Council on credit agreements relating to residential property ⁽¹⁾ (hereinafter the 'proposed directive').

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 since the proposed directive contains provisions affecting the contribution of the European System of Central Banks (ESCB) to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) 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. General observations

The ECB welcomes the proposed directive, which is aimed at facilitating the emergence of a smoothly functioning internal market with a high level of consumer protection in the area of credit agreements relating to residential property. From a financial stability perspective, the ECB supports the measures aimed at ensuring responsible borrowing and lending and restoring consumer confidence. It also supports the proposals related to the regulatory and, where applicable, supervisory framework that applies to non-credit institutions providing the credit agreements covered by the proposed directive and to credit intermediaries.

2. Foreign currency lending

- 2.1. One of the issues identified by the European Commission in connection with irresponsible lending in Union mortgage markets concerns loans denominated in a foreign currency that consumers take out in that currency to take advantage of the interest rate offered, without having an adequate understanding of the currency risk involved ⁽²⁾.
- 2.2. In its Financial Stability Review, the ECB pointed out in 2010 that the recent financial crisis underlined the potential systemic risks associated with the prevalence of foreign currency lending in some Member States, and highlighted the need to monitor and to address the issue, to prevent a further increase in the stock of foreign currency loans ⁽³⁾. The ECB noted that high levels of foreign currency loans to unhedged borrowers may constitute an important vulnerability in certain Member

⁽¹⁾ COM(2011) 142 final.

⁽²⁾ See recital 4 of the proposed directive.

⁽³⁾ ECB Financial Stability Review, June 2010, p. 167.

States, as such lending converts direct exchange rate exposure of the banking system into credit risk and exposes the economy to significant macro-financial risks. Furthermore, a high level of foreign currency debt may restrict the room for monetary policy manoeuvre and its effectiveness. Given these negative side effects associated with foreign currency lending, the ECB noted the importance for policy makers to take measures to avoid its excessive build-up in the banking system ⁽⁴⁾.

- 2.3. In the above context, the ECB pointed out that the adoption of regulatory and supervisory policy measures can play an important role in mitigating the risks stemming from foreign currency lending ⁽⁵⁾. As a general principle, to contain foreign currency lending, policy makers are strongly encouraged to create an overall operating environment for economic agents, which encourages prudent and well-informed decision-making by lenders and borrowers. This involves the pursuit of sound stability oriented macroeconomic policies and policies to strengthen financial literacy, as well as appropriate financial regulation and supervision ⁽⁶⁾. In this respect, the proposed directive specifies the information to be provided to consumers where a loan is to be granted in a currency that is different from the borrower's national currency ⁽⁷⁾. The ECB considers that the information provided should also include an explanation of the potential risks for consumers where the credit is denominated in a foreign currency ⁽⁸⁾.

3. Access to databases and public credit registers

- 3.1. Under the proposed directive, each Member State should ensure non-discriminatory access for all creditors ⁽⁹⁾ to databases used in that Member State in order to assess the creditworthiness of consumers, and to monitor consumers' compliance with their credit obligations over the life of the credit agreement. Furthermore, under the proposed directive, powers would be delegated to the Commission to define uniform registration criteria and data processing conditions to be applied to the databases, including the registration thresholds and agreed definitions for key terms used by such databases ⁽¹⁰⁾.

- 3.2. On these aspects, apart from one technical drafting suggestion (see Amendment 1), the ECB would like to make the following comments regarding the powers delegated to the Commission.

- 3.2.1. First, the databases to which the proposed directive refers comprise databases operated by private credit bureaux or credit reference agencies and public credit registers which, in the respective Member States, serve to assess consumer creditworthiness and monitor their compliance with the credit obligations during the life of the credit agreement. Central credit registers are maintained by national central banks (NCBs) in a number of Member States, and some of them serve the above purposes. The ECB, which acts as a catalyst in this area ⁽¹¹⁾, supports the cooperation, exchange of information and harmonisation of definitions and concepts among central credit registers at cross-border level ⁽¹²⁾. Recurrent turbulence in the banking and financial sector has underlined the importance of central credit registers in helping credit institutions to monitor and manage credit risk efficiently by granting them access to information on the indebtedness of borrowers. Central credit registers are beneficial for the exercise of prudential supervision, the central bank task of

⁽⁴⁾ See in this respect, ECB Opinion CON/2010/62 of 4 August 2010 on amendments to various laws regarding the reduction of financial imbalances, paragraph 3.1.1. All ECB opinions are published on the ECB's website at <http://www.ecb.europa.eu>

⁽⁵⁾ See footnote 3.

⁽⁶⁾ ECB Opinion CON/2010/62 of 4 August 2010 on amendments to various laws regarding the reduction of financial imbalances, paragraph 3.1.2.

⁽⁷⁾ For instance, the formula used to calculate the exchange rate spreads and the frequency of their adjustment or numerical examples illustrating how changes to the relevant exchange rate may affect the amount of the instalments (see Annex II of the proposed directive, 'European Standardised Information Sheet (ESIS)', and in particular its Part B, Section 2(2) and Section 5).

⁽⁸⁾ Article 9(1)(f) of the proposed directive.

⁽⁹⁾ In the context of the proposed directive, this notion covers both credit institutions and non-credit institutions providing agreements relating to residential property.

⁽¹⁰⁾ Article 16(2) of the proposed directive.

⁽¹¹⁾ See 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), April 2010, pp. 1-18.

⁽¹²⁾ See ECB Opinion CON/2001/12 of 31 May 2001 at the request of the Spanish Ministry of the Economy on a draft law introducing amendments to several laws governing the Spanish financial market.

contributing to the stability of the financial system and for statistical purposes. Developing cross-border synergies between central credit registers should also contribute to ensuring adequate access for creditors to the central credit registers.

- 3.2.2. Second, the ECB supports the proposed approach to confer delegated powers to the Commission to define uniform credit registration criteria and data processing conditions to be applied to the databases with a view to fostering harmonisation of the rules in this field. To ensure the data output is harmonised and accessible for sharing on a cross-border basis, the data processing conditions and credit registration criteria would require identifying a core set of attributes, common identifiers and a common definition of the underlying concepts and data content. Furthermore, confidentiality and data protection issues, as well as the aspects related to the interoperability of national databases, should be considered. The ECB also understands that the uniform credit registration criteria should be understood as minimum standards, allowing private credit bureaux or credit reference agencies and public credit registers, against the background of their purposes and business models, to collect additional information on these credits where appropriate.
- 3.2.3. Third, in view of their respective competences and expertise in this field, the ECB would recommend liaising closely with the European Banking Authority (EBA), the ECB and those central banks of the ESCB that operate the above databases. For reasons of consistency and comprehensiveness, the ECB would also recommend conferring upon the Commission equivalent delegated powers in the context of the databases referred to in Article 9 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ⁽¹³⁾ with regard to credit agreements for consumers. If the legislator decides not to confer delegated powers upon the Commission, the ECB would recommend, building on the work already undertaken ⁽¹⁴⁾, exploring possibilities for further harmonisation of rules and practices at Union level, also taking into account the recommendations of the international fora, for instance with regard to effective oversight of credit reporting systems ⁽¹⁵⁾.

4. Other technical observations

Unlike Directive 2008/48/EC ⁽¹⁶⁾ or the proposal for a directive of the European Parliament and of the Council on consumer rights ⁽¹⁷⁾, the proposed directive does not address a harmonised right of withdrawal for consumers throughout the Union. Given the significance of consumer financial commitments under credit agreements relating to residential property, and in order to contribute to financial stability and responsible lending and borrowing, the ECB would recommend examining, already in the course of the ongoing legislative process, the necessity to include provisions on the right of withdrawal in the proposed directive ⁽¹⁸⁾.

Where the ECB recommends that the proposed directive is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 5 July 2011.

The President of the ECB

Jean-Claude TRICHET

⁽¹³⁾ OJ L 133, 22.5.2008, p. 66.

⁽¹⁴⁾ See the Report of the Expert Group on Credit Histories, DG Internal Market and Services, May 2009, available on the Commissions website at <http://ec.europa.eu>

⁽¹⁵⁾ See, for instance, the World Bank report on credit reporting of March 2011, available on the World Bank's website at <http://siteresources.worldbank.org> (p. 8, 25 and 53 to 59) or the Financial Stability Board Peer Review Report, 'Thematic Review on Mortgage Underwriting and Origination Practices', 17 March 2011, available on the Financial Stability Board's website at <http://www.financialstabilityboard.org>

⁽¹⁶⁾ Article 14 of Directive 2008/48/EC.

⁽¹⁷⁾ COM(2008) 614 final. The outcome of the European Parliament's first reading is available at the Council's website at <http://register.consilium.europa.eu>

⁽¹⁸⁾ The Commission suggests to undertake an examination of the necessity to introduce rights and obligations with regard to the post-contractual stage of credit agreements on the occasion of the review of the future directive (see Article 31(f) of the proposed directive).

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
Amendment 1 Article 16(1) and (2)	
<p>1. Each Member State shall ensure non-discriminatory access for all creditors to databases used in that Member State for assessing the creditworthiness of consumers and for monitoring consumers' compliance with the credit obligations over the life of the credit agreement. Such databases comprise databases operated by private credit bureaux or credit reference agencies and public credit registers.</p> <p>2. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to define uniform credit registration criteria and data processing conditions to be applied to the databases referred to in paragraph 1 of this Article.</p> <p>In particular, such delegated acts shall define the registration thresholds to be applied to such databases and shall provide for agreed definitions for key terms used by such databases.'</p>	<p>1. Each Member State shall ensure non-discriminatory access for all creditors from other Member States to databases used in that Member State for assessing the creditworthiness of consumers and for monitoring consumers' compliance with the credit obligations over the life of the credit agreement. Such databases comprise databases operated by private credit bureaux or credit reference agencies and public credit registers maintained by central banks or other public authorities.</p> <p>2. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to define, in consultation with the EBA, the ECB and those central banks of the European System of Central Banks that maintain the databases referred to in paragraph 1 of this Article, uniform credit registration criteria and data processing conditions to be applied to these databases referred to in paragraph 1 of this Article.</p> <p>In particular, such delegated acts shall define the registration thresholds to be applied to such databases and shall provide for agreed definitions for key terms used by such databases'.</p>

Explanation

The ECB suggests, consistently with Directive 2008/48/EC, referring in the proposed directive to 'creditors from other Member States'. Furthermore, the purpose of the proposed amendments to the second paragraph of Article 16 is to clarify that: (a) a number of public credit registers are operated by central banks and other public authorities; and (b) the Commission would benefit from the expertise of the EBA, the ECB and relevant NCBs of the ESCB for the preparation of the draft delegated acts in this field.

Amendment 2

Article 9(1)(f)

'(f) indication of the currency or currencies in which credits are available, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;'	'(f) indication of the currency or currencies in which credits are available, including an explanation of the implications and potential risks for the consumer where the credit is denominated in a foreign currency;'
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Explanation

The general information about credit agreements should also include information on the potential risks incurred when the loan is denominated in a foreign currency, for instance the impact of changes in the relevant exchange rate.

Amendment 3

Article 10(1)(c)

'(c) where he is acting as a tied credit intermediary he shall identify himself as such and, at the consumer's request, provide the names of the creditor(s) for which he is acting;'	'(c) where he is acting as a tied credit intermediary he shall identify himself as such and, at the consumer's request, provide the names of the creditor(s) for which he is acting;'
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Explanation

For transparency reasons, this information should be provided to the consumer in all circumstances.

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
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Amendment 4

Article 13(1)

'1. Member States shall ensure that the creditor informs the consumer of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall state the amount of the repayments to be made after the entry into force of the new borrowing rate and, in cases where the number or frequency of the payments change, particulars thereof.'

'1. Member States shall ensure that the creditor informs the consumer of any change in the borrowing rate, on paper or another durable medium, **as a rule at least one month** before the change enters into force. The information shall state the amount of the repayments to be made after the entry into force of the new borrowing rate and, in cases where the number or frequency of the payments change, particulars thereof.'

Explanation

It is important to provide the consumer sufficiently in advance with information on changes to the borrowing rate.

Amendment 5

Annex II, Part B, Section 6(4)

'[...] The creditor shall also include: (1) where relevant, the applicable caps and floors; (2) an example of how the amount of the instalment would vary where the interest rate increases or decreases by 1 % or by a higher percentage, where this is more realistic given the magnitude of normal changes to the interest rate and (3) where there is a cap, the instalment amount in the worst-case scenario.'

'[...] The creditor shall also include: (1) where relevant, the applicable caps and floors; (2) an example of how the amount of the instalment would vary where the interest rate increases or decreases by ~~2-1 %~~ **percentage points** or **more by a higher percentage**, where this is more realistic given the magnitude of normal changes to the interest rate and (3) where there is a cap, the instalment amount in the worst-case scenario.'

Explanation

The duration of a credit agreement relating to residential property can be of several decades. Consequently, there is a strong likelihood that, throughout this period, interest rates will increase by more than 1 percentage point. If the credit agreement is entered into during a period of low interest rates, such increase is almost certain. Borrowers should be provided with information sufficient to enable them to understand the impact of a prospective interest rate increase. As such, a 1 percentage point change is very benign when considering the impact of interest rate changes on installments. Against this background, a 2 percentage point increase would provide a better picture of how instalments would be impacted by interest rate increases.

⁽¹⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.