



OPINION OF THE EUROPEAN CENTRAL BANK
of 21 December 2012
on new credit register measures in Ireland
(CON/2012/111)

Introduction and legal basis

On 6 November 2012, the European Central Bank (ECB) received a request from the Irish Minister for Finance for an opinion on the Credit Reporting Bill 2012 (hereinafter the ‘draft law’).

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/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law relates to the Central Bank of Ireland (CBI) and contains 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

The publication of the draft law is a structural benchmark commitment of the Irish Government under the EU/IMF Programme of Financial Support for Ireland. The objective of the draft law is to establish a comprehensive and reliable register of credit information, called the Central Credit Register (CCR), to assist in achieving public policy objectives and improving financial stability by providing information for the assessment of creditworthiness and other purposes. The CCR will be established, owned and operated by the CBI. The ECB was consulted on the General Scheme of the draft law and adopted its Opinion CON/2012/74².

2. General observations

2.1 The ECB refers to its Opinion CON/2012/74 and welcomes the fact that a number of the points made in that opinion have been addressed in the draft law. The ECB welcomes in particular the fact that, under the draft law, information about the credit histories and borrowings of both natural and legal persons will be recorded.

¹ OJ L 189, 3.7.1998, p. 42.

² All ECB opinions are published on the ECB’s website at www.ecb.europa.eu.

2.2 As the ECB has pointed out in previous opinions, the principle of financial independence requires that, when allocating specific non-ESCB tasks to the national central banks (NCBs), additional human and financial resources must also be allocated for these tasks to be carried out in a manner that will not affect the NCBs' operational capacity to perform their ESCB-related tasks³. Under the draft law the CBI may, with the consent of the Minister, make regulations prescribing a levy to be paid to the CBI by credit information providers (CIPs) for the purpose of meeting expenses properly incurred in the performance of its functions under the draft law that are not met through other means⁴. The ECB understands that this provision aims to clarify that all CBI expenses in connection with the establishment, operation and maintenance of the CCR will be covered by levies prescribed by the CBI.

3. Credit information providers and credit information subjects

3.1 The ECB considers that it would be useful to clarify whether the defined term 'credit information provider' includes financial service providers in other Union Member States, and whether the term 'credit information subject' (CIS) includes natural and legal persons with residency or registration outside Ireland.

3.2 Section 6 of the draft law lists a number of attributes to be collected as regards the identification of credit information subjects. The ECB reiterates its recommendation for including a reference to the need to identify legal persons in compliance with international or European standards, in order to facilitate cross-border access and use, provided that confidentiality is protected appropriately. In this regard, the ECB also recommends the use of a unique identifier for all natural and legal persons as well as for each loan agreement.

3.3 The ECB recommends the substitution of 'any value-added tax registration number' in Section 6(3)(d) with 'the value-added tax registration number' or 'all value-added tax registration numbers' in order to avoid any ambiguity.

4. Access to the register

4.1 The ECB notes that Section 16 of the draft law contains details of those who may access the register. The ECB recommends a general reference in this section to, e.g. the 'competent authorities' who may access the register, which access rights would be subject to change by order of the CBI or the Minister.

4.2 The ECB welcomes the fact that the draft law lists parties who have the power and the duty to access the information on the CCR, but reiterates that a reference to the tasks performed by the ESCB under Article 5 of the Statute of the European System of Central Banks and of the European Central Bank would be useful.

³ See paragraph 2.3 of Opinion CON/2012/52 and paragraph 4 of CON/2012/74.

⁴ See Section 25 of the draft law.

4.3 The draft law restricts access to information on the CCR to CISs for the purpose of accessing information relating to the CIS, to CIPs in the context of credit applications and credit agreements, and to the CBI for the purposes of meeting its statutory obligations or functions. Under the draft law in its current form, other NCBs operating a CCR will be able to access information on the CCR only in circumstances where the CBI, under its obligations and functions as part of the ESCB, is required to provide such data. The ECB recommends that those granted access to information on the CCR are expanded to include NCBs operating CCRs, similar to the provisions set out in the ‘Memorandum of Understanding on the exchange of information among national CCRs for the purpose of passing it on to reporting institutions’ (MoU)⁵. The MoU provides a framework for the regular exchange of information among national CCRs and allows a CIP to obtain a more complete overview of the indebtedness of a borrower on a cross-border basis.

5. Compatibility of registers

The CBI will have the power to collect and record credit information in respect of CISs, including registered insolvency information, namely (a) Debt Relief Certificates; (b) Debt Settlement Arrangements; and (c) Personal Insolvency Arrangements registered in accordance with the Personal Insolvency Act 2012⁶. The ECB recommends requiring the Insolvency Service to provide the registered insolvency information to the CBI for inclusion on the CCR. In addition, such registered insolvency information, as well as any information from other registers to be included on the CCR, should be provided in a manner consistent with the format and scope of the CCR, to ensure a level of consistency and compatibility across these registers.

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

Done at Frankfurt am Main, 21 December 2012.

[signed]

The President of the ECB

Mario DRAGHI

⁵ Available on the ECB’s website at www.ecb.europa.eu.

⁶ The Personal Insolvency Bill 2012 was passed by the Dáil (lower house of the Irish Parliament) on 7 November 2012 and is currently being debated in the Seanad (upper house of the Irish parliament). The ECB understands that the Insolvency Service will be responsible under the Personal Insolvency Act 2012 for the maintenance of the insolvency registers established under that Act.