



OPINION OF THE EUROPEAN CENTRAL BANK

of 4 September 2012

on credit unions

(CON/2012/68)

Introduction and legal basis

On 18 July 2012, the European Central Bank (ECB) received a request from the Irish Minister for Finance for an opinion on the General Scheme of the Credit Union Bill 2012 (hereinafter the 'General Scheme').

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 General Scheme 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 General Scheme

- 1.1 The General Scheme proposes wide-ranging measures to strengthen the regulatory framework for credit unions, including more effective governance and regulatory requirements.
- 1.2 The publication of the General Scheme was a structural benchmark of the EU-IMF Financial Support Programme for Ireland.
- 1.3 The General Scheme's regulatory requirements framework for credit unions includes requirements in respect of reserves, liquidity, borrowing, lending, savings, investments, operations, risk management, records management, information systems and outsourcing. Credit unions will also be required to prepare a strategic plan. The CBI is given the power to make regulations relating to the above matters after consulting with the Minister and other bodies.
- 1.4 The General Scheme sets out a statutory governance code with minimum governance standards for credit unions. Credit unions will be required to submit an annual compliance statement to the CBI certifying compliance with these governance standards. The General Scheme sets out the roles and

¹ OJ L 189, 3.7.1998, p. 42.

responsibilities of the chair, board and management of credit unions. It also deals with fitness and probity, skills, conflicts of interest and the need for robust systems, processes and controls.

- 1.5 The General Scheme establishes a statutory stabilisation regime for credit unions. It sets out the conditions under which stabilisation support will be available to viable but undercapitalised credit unions. In particular, the CBI may, subject to the consent of the Minister, provide stabilisation support to a credit union. The General Scheme provides that credit unions contribute to a stabilisation fund that will meet all costs of stabilisation support. The implementation by the CBI of the stabilisation regime will be examined by a Stabilisation Committee, whose members will be appointed by the Minister.
- 1.6 The General Scheme establishes a process for the restructuring of credit unions. It sets out the process under which funding will be available to facilitate the restructuring of credit unions and establishes a restructuring fund. The Minister may provide financial support from the Restructuring Fund to a credit union. Credit unions will contribute to the Restructuring Fund to meet the cost of restructuring. The Minister will be reimbursed for any funds advanced to the Restructuring Fund. The restructuring process will be facilitated and overseen by a Credit Union Restructuring Board (the 'Rebo'), whose members will be appointed by the Minister. Any restructuring plan approved by the Rebo must be submitted to the CBI for approval.

2. General observations

- 2.1 The EU-IMF Financial Support Programme requires reform of Irish credit union law and strengthening of the regulatory framework applying to credit unions, including effective governance and stabilisation requirements. The ECB notes that the General Scheme is in line with the requirements of the EU-IMF Financial Support Programme for Ireland.
- 2.2 As specified in the ECB's Convergence Reports² and opinions, any involvement of a national central bank (NCB) in the application of measures to strengthen financial stability must be compatible with the Treaty, i.e. NCBs' functions must be performed in a manner that is fully compatible with their functional, institutional, and financial independence so as to safeguard the proper performance of their tasks under the Treaty and the Statute³. To the extent that national legislation provides for a role of an NCB that goes beyond advisory functions and requires it to assume additional tasks, it must be ensured that these tasks will not affect the NCB's ability to carry out its ESCB-related tasks from an operational and financial point of view⁴. Additionally, the inclusion of NCB representatives in collegiate decision-making supervisory bodies or other

² See 2012 Convergence Report p. 26. All ECB reports and opinions are available on the ECB's website at www.ecb.europa.eu.

³ Opinion CON/2010/31.

⁴ Opinion CON/2009/93.

authorities would need to give due consideration to safeguards for the personal independence of the members of the NCB's decision-making bodies⁵.

- 2.3 The ECB notes the robust nature of the new measures and welcomes their substantial enhancement of the regulatory tools available to the CBI⁶ to improve protection for credit union members and stability in the credit union sector.
- 2.4 As regards the financing of these enhanced CBI powers, the ECB refers to the principle of financial independence under which an NCB must have sufficient means to perform its tasks related to the ESCB and its national tasks⁷. As pointed out in previous ECB opinions, when allocating specific non-ESCB related tasks to the NCBs, e.g. tasks in the area of financial supervision or consumer protection, an adequate amount of human and financial resources must also be allocated in order for these tasks to be carried out in a manner which will not affect the NCBs' operational capacity to perform their ESCB-related tasks⁸. The CBI should therefore possess sufficient human and financial resources to efficiently perform any additional tasks introduced by the General Scheme in addition to its current tasks, and should not be adversely affected in carrying out its ESCB-related tasks, from an operational or financial point of view, due to any additional tasks introduced by the General Scheme.
- 2.5 The ECB looks forward to further consultation on the Credit Union Bill 2012 once it is published.

3. Stabilisation Fund

- 3.1 The General Scheme specifies in Head 30(1) that nothing in the stabilisation part of the General Scheme prevents or restricts the performance by the Governor or the CBI of functions in relation to any credit union including functions under the Central Bank and Credit Institutions (Resolution) Act 2011. This provision should also specify that nothing in the General Scheme will prejudice the compliance by the CBI with the prohibition on monetary financing under Article 123 of the Treaty⁹.
- 3.2 Head 30(2) states that, subject to the consent of the Minister, the CBI may provide stabilisation support to a credit union and Head 30(2A)(a) states that before deciding to provide stabilisation support the CBI must have regard to the best use of the resources available in the Stabilisation Fund. Head 30(7) provides that the Stabilisation Fund should meet cost of the stabilisation support

⁵ Opinion CON/2010/94.

⁶ See also paragraph 2.1 of Opinion CON/2009/50.

⁷ See the ECB's Convergence Report, May 2010, p. 21, paragraph 3.1.5 of Opinion CON/2009/93, paragraph 3.2.1 of Opinion CON/2011/46 and paragraph 3 of Opinion CON/2011/69.

⁸ See, for example, paragraph 3 of Opinion CON/2007/8 and paragraph 3.3 of Opinion CON/2011/76.

⁹ The monetary financing prohibition in Article 123 of the Treaty is further clarified in Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of prohibitions in Article 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1) according to which overdraft facilities or any other type of credit facility with the ECB or the NCBs of Member States in favour of Union institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States are prohibited, as is any purchase directly from these public sector entities by the ECB or NCBs of debt instruments.

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and any other support, financial or otherwise, including costs incurred by the CBI in the exercise of its functions under this relevant part of the General Scheme, required as a condition of stabilisation support. The ECB understands that Head 30(2) in conjunction with Head 30(7) requires the stabilisation support to be provided directly from the Stabilisation Fund, and not from CBI's funds. This understanding is confirmed by Head 32(2) which specifies that the CBI does not provide any funds to the Stabilisation Fund from its own resources. In line with this understanding, and having regard to the principle of financial independence which is part of the principle of central bank independence referred to in Article 130 of the Treaty, the General Scheme should unambiguously state either that the CBI will not provide any funding to finance the stabilisation support to credit unions or that the CBI provides stabilisation support from the Stabilisation Fund and not from its own funds.

- 3.3 In addition, it is unclear how the Stabilisation Fund will be financed prior to contributions being made by the credit unions. It is also unclear how stabilisation support can be provided where there are insufficient resources in the Stabilisation Fund. The ECB would welcome clarifications on these points in the General Scheme.
- 3.4 Under Head 44(6) of the General Scheme, in conjunction with Section 61H of the Central Bank Act 1942, the CBI may collect levies on behalf of the Rebo from credit institutions in respect of the performance by the Rebo of its functions only if the CBI and the Rebo agree on an arrangement for this purpose. The ECB expects that if the CBI enters into such an arrangement with the Rebo, the CBI's role will remain consistent with the prohibition of monetary financing under Article 123 of the Treaty, as supplemented by Regulation (EC) No 3603/93, which prohibits, *inter alia*, any financing by a central bank of the obligations of the public sector vis-à-vis third parties and further requires an arrangement with the Rebo under Head 44(6) in conjunction with Section 61H(4) of the Central Bank Act 1942 to be without prejudice to the independence of the CBI, in particular its financial and institutional independence.

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

Done at Frankfurt am Main, 4 September 2012.

[signed]

The President of the ECB

Mario DRAGHI