



OPINION OF THE EUROPEAN CENTRAL BANK

of 20 February 2013

on the financial market supervision framework

(CON/2013/14)

Introduction and legal basis

On 14 January 2013, the European Central Bank (ECB) received a request from the Polish Parliament (Sejm) for an opinion on a draft law amending the Law on financial market supervision and certain other laws (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 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 provisions¹, as the draft law relates to the 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 The main aim of the draft law is to enhance consumer protection in the financial market supervision framework to address the rising importance of, and risks associated with, non-bank entities granting consumer credit that are not subject to financial supervision by the Financial Supervision Authority (*Komisja Nadzoru Finansowego*, KNF). To this end, the draft law amends the Law of 21 July 2006 on financial market supervision² and the Law of 12 May 2011 on consumer credit³ as follows:

- (a) the definition of financial market supervision objectives is extended, focusing on the provision of reliable information on the functioning of the financial market, to enhance consumer protection in financial supervision;

¹ OJ L 189, 3.7.1998, p. 42.

² Published in *Dziennik Ustaw* (Dz. U.) of 4 September 2006 No 157, item 1119.

³ Dz. U. of 2011 No 126, item 715.

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- (b) the KNF's task of informing and educating the public is further defined as encompassing information on the functioning of the financial market and the relevant risks, and on entities operating on the financial market, with a view to protecting legitimate interests of the financial market participants;
 - (c) the enhanced KNF informational and educational tasks will be carried out by means of broadcasting warnings and announcements on the public radio and television or, if necessary, other mass media;
 - (d) entities granting consumer credit will be obliged to inform the consumer whether or not they are subject to KNF's financial supervision;
 - (e) creditworthiness assessment-related provisions and respective definitions included in the Law on consumer credit are amended to ensure that the criteria for creditworthiness assessment applied by banks and non-bank lenders are aligned, and that such assessment is based on reliable information.
- 1.2 Additionally, the Law of 29 August 1997 on banking⁴ is amended to enable access by non-bank entities granting consumer credit to creditworthiness-related information held in the relevant databases created by banks, subject to the consent of the data subject.

2. Consumer protection

- 2.1 The draft law emphasises educating, informing and warning consumers of financial services about the risks associated with the operation of the financial market and its participants. The ECB understands that these measures are designed to address, in particular, the risks associated with loans granted by non-bank entities that are not subject to KNF's supervision. The ECB welcomes the measures introduced by the draft law as they aim to strengthen consumer protection and thereby contribute to safeguarding the stability of the financial system and preserving confidence in the marketplace. In this context, and from a broader perspective, the ECB also draws the Polish legislator's attention to the recent discussion on the need to properly monitor and supervise the shadow banking sector in Europe⁵.
- 2.2 Furthermore, the ECB would like to draw the consulting authority's attention to the need to bring national legislation into line also with anticipated Union legislation of relevance from an investor and consumer protection perspective, once such legislation is adopted. This includes: (i) the proposal for a directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council⁶,

⁴ Consolidated text published in Dz. U. of 2012, item 1376 (hereinafter the 'Law on banking').

⁵ See, for instance, the European Commission's Green Paper on shadow banking (COM(2012) 102 final) and the Eurosystem's reply to the European Commission's Green Paper on shadow banking. Available on the ECB's website at www.ecb.europa.eu.

⁶ COM(2011) 656 final.

(ii) the proposal for a regulation of the European Parliament and of the Council on key information documents for investment products⁷, and (iii) the proposal for a directive of the European Parliament and of the Council on credit agreements relating to residential property⁸.

3. Access and reporting to relevant databases

Under the draft law, non-bank entities granting consumer credit are granted access to information stored in databases created by banks and covered by banking secrecy. In this respect, the ECB makes the following observations.

First, it is noted that if both banks, and non-bank entities granting consumer credit, alike were required to report their lending data as regards consumers to databases such as those referred to above, this would ensure symmetry in terms of the reporting of and access to information on such databases, and would assist banks to better assess the creditworthiness of their customers, as well as to monitor and manage credit risk efficiently, thereby strengthening the stability of the financial system.

Second, the ECB notes that the following additional safeguards apply to the provision by means of the databases of information to non-bank entities granting consumer credit: (i) information is provided subject to the consent of the data subject; and (ii) information is provided only to the extent necessary for the purposes of assessing the creditworthiness of the consumer. While it is acknowledged that such safeguards will help to protect information covered by banking secrecy⁹, it should be ensured that adequate confidentiality requirements apply to non-bank entities granting consumer credit where information covered by banking secrecy is received and used by them under the proposed Article 105(4)(4) of the Law on banking.

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

Done at Frankfurt am Main, 20 February 2013.

[signed]

The President of the ECB

Mario DRAGHI

⁷ COM(2012) 352 final.

⁸ COM(2011) 142 final.

⁹ On the draft law's approach to the protection of banking secrecy, see also the explanatory memorandum to the draft law, p. 16.