



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 12 September 2014**  
**on the regulation of the business of owning credit**  
**(CON/2014/69)**

Introduction and legal basis

On 11 August 2014, the European Central Bank (ECB) received a request from the Irish Department of Finance for an opinion on the Consumer Protection on the Sale of Loan Books Bill 2014 (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<sup>1</sup>, as the draft law relates to the Central Bank of Ireland (CBI) 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**

According to the public consultation paper, the draft law seeks to ensure that borrowers whose loans are sold by a regulated entity to a currently unregulated entity continue to have the benefit of the same regulatory protections as they had prior to sale, including those protections in various CBI codes, e.g. the Code of Conduct on Mortgage Arrears.

The ownership of credit, defined in the Central Bank Act 1997 as a ‘cash loan’<sup>2</sup>, is to be a newly regulated financial activity requiring authorisation by the CBI. This is to be implemented by extending the definition of ‘retail credit firm’ in section 28 of the Act to cover, inter alia, both the business of providing credit directly to ‘relevant persons’<sup>3</sup> and the business of owning such credit.

An entity that is a ‘Securitisation Special Purpose Vehicle’ (SSPV) will be excluded from the effect of this expanded definition of ‘retail credit firm’. As proposed, the definition of the term ‘SSPV’ appears to be based on the definition of Securitisation Special Purpose Entity in Article 4(66) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>4</sup>. However, if the entity carries out ‘loan

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<sup>1</sup> 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).

<sup>2</sup> See section 28 of the Central Bank Act 1997.

<sup>3</sup> Defined, with certain exceptions, as ‘natural persons within the State’.

<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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book servicing activities', such as communicating with borrowers to notify the borrower of changes in interest rates or payments due under a loan contract, making decisions in relation to contracts including enforcement and changes to interest rates, taking any necessary steps for the purposes of collecting or recovering payments due under a contract from the borrower, or taking any necessary steps for the purposes of enforcing the security on a loan, it will not fall within the definition of the term 'SSPV' and therefore will not benefit from this particular exclusion. Furthermore, the existing exclusion of 'regulated financial service providers' from the definition of retail credit firm will be narrowed. Under the draft law, such providers are only excluded if they are authorised by the CBI or another European Economic Area regulator 'to provide or own credit otherwise than under this Part [of the Central Bank Act 1997]'.

Transitional provisions will apply to relevant entities that are currently unregulated while the CBI assesses their application for authorisation.

### **2. Observations**

The ECB welcomes the measures to be introduced by the draft law, as they aim to strengthen consumer protection and thereby contribute to preserving confidence in the marketplace<sup>5</sup>.

The ECB understands that this newly regulated financial activity, requiring authorisation from the CBI, will not affect the principle of central bank independence, which requires Member States to ensure that national central banks have sufficient financial resources to perform Eurosystem-related tasks as well as their national tasks<sup>6</sup>.

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

Done at Frankfurt am Main, 12 September 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>5</sup> See Opinion CON/2013/14, paragraph 2.1. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>6</sup> See the ECB's Convergence Report 2014, p. 31.