



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 28 October 2014**  
**on specific settlement rules for consumer loan agreements**  
**(CON/2014/76)**

**Introduction and legal basis**

On 10 October 2014, the European Central Bank (ECB) received a request from the Magyar Nemzeti Bank (MNB) for an urgent opinion on a draft decree laying down specific rules on the methodology to be used for the settlement of certain consumer loan agreements, stemming from a decision of the Supreme Court (hereinafter the ‘draft decree’).

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<sup>1</sup>, as the draft decree relates 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 Background and purpose of the draft decree**

- 1.1 In 2014, the Hungarian Supreme Court delivered a uniform decision<sup>2</sup> outlining the basic parameters of certain standard terms that could be prescribed by Parliament for inclusion in consumer loan contracts entered into by natural persons and denominated in forint or in foreign currency.
- 1.2 The Hungarian Parliament subsequently adopted Law XXXVIII of 2014 on measures to address the Supreme Court’s decision on consumer loan contracts<sup>3</sup> and Law XL of 2014 on the rules of settlement related to such contracts<sup>4</sup>. The ECB delivered opinions CON/2014/59 and CON/2014/72 on these laws<sup>5</sup>. Law XL of 2014 authorised the Governor of the MNB to adopt a decree prescribing relevant details related to the settlement of certain consumer loan contracts. The draft decree has been prepared to this end by the MNB.
- 1.3 The provisions of the draft decree include detailed rules on the implementation of the new obligations, the date on which such obligations should be performed and, in certain limited cases,

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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> Uniform Decision 2/2014 of the Supreme Court of 16 June 2014.

<sup>3</sup> Published in *Magyar Közlöny* 98/2014 on 18 July 2014.

<sup>4</sup> Published in *Magyar Közlöny* 137/2014 on 6 October 2014.

<sup>5</sup> All ECB opinions are available on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

the dates of the applicable exchange rates to be used for the recalculation of the consumer loan contracts, as well as the date by which any financial obligations should be performed in full.

- 1.4 The draft decree applies to those consumer loan contracts which have not been affected by delayed payment, and to consumers who have not participated in any relief schemes offered to them. It does not cover consumer loan contracts declared void by a final and binding court order prior to the draft decree taking effect.
- 1.5 The draft decree offers three methods for the calculation of the amount either payable to each consumer or to be deducted from their overall liability under the consumer loan contract to which they are party. The financial institutions may exercise their discretion as to which of the calculation method detailed in the annexes to the draft decree they use, so that they may choose the method that is compatible with their internal accounting system. The explanatory memorandum attached to the draft decree indicates that these methods are mathematically equivalent to each other in the sense that each produces the same result from the same set of figures.

## **2. Observations**

- 2.1 As mentioned in the explanatory memorandum, the draft decree does not lay down rules for the implementation of Article 46(b), (c) and (f) to (h) of Law XL of 2014. The detailed rules relating to the following main issues will therefore be laid down in a separate MNB decree: (a) the methods available to determine both the calculation of benefits granted by financial institutions to consumers that are deductible from a consumer claim, and the formula to be used; (b) the detailed requirements for the content and format of the settlement of each claim; (c) in respect of financial institutions subject to dissolution or liquidation proceedings, the assessment method to be used to achieve settlement of a claim; and (d) the detailed requirements for the content and format for publication of details of settlements of claims. The ECB expects to be consulted in a timely manner on future draft legislative provisions relating to these issues proposed by the Governor of the MNB, provided that they fall within the ECB's scope of competence in accordance with Decision 98/415/EC.
- 2.2 On 29 July 2014, the MNB published guidance on the best practice to be followed by affected institutions as to the methodology to be used when recalculating a consumer's payment obligations under a consumer loan contract. As this guidance was not legally binding on the affected institutions, the adoption of a decree on the subject matter provides for more legal certainty.
- 2.3 In Opinion CON/2014/72, the ECB welcomed that Law XL authorised the Governor of the MNB to prescribe detailed rules pursuant to the new legal measures introduced by Law XXXVIII of 2014, since the MNB is both the national competent authority responsible for micro-prudential supervision and the macro-prudential supervisory authority in Hungary. It is the responsibility of the MNB to establish the methods to be used for recalculation, write-off and repayment following a thorough assessment of the terms and conditions on which consumers entered into loan contracts, and the impact of the new legal measures on financial institutions, including an assessment of the

## ECB-PUBLIC

benchmarks with regard to the methods that could be used to determine the fairness of conditions set by credit institutions. This would ensure that the suggested methods of calculation would meaningfully contribute to the effective performance of the settlement obligation to which the financial institutions are subject.

- 2.4 In previous opinions<sup>6</sup>, the ECB has stressed that the measures taken following the decision of the Supreme Court will place a significant strain on the banking sector. It has also commented, *inter alia*, on the need for meaningful dialogue between the Hungarian authorities and all relevant stakeholders, as well as the need for due consideration of the public interest. The explanatory memorandum attached to the draft decree does not contain any information about whether the MNB, when laying down the calculation methods, has carried out a thorough impact assessment with the involvement of the affected financial institutions. The ECB recommends that such an assessment is performed before the adoption of the draft decree in order to contribute to the prevention and mitigation of systemic risks to financial stability.

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

Done at Frankfurt am Main, 28 October 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>6</sup> Opinions CON/2014/59 and CON/2014/72.