



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 7 June 2017

on macro-prudential measures to limit systemic risks

(CON/2017/21)

### Introduction and legal basis

On 21 April 2017 the European Central Bank (ECB) received a request from the Austrian Ministry of Finance (MoF) for an opinion on a draft law regarding macro-prudential measures to limit systemic risks in real estate financing (hereinafter the 'draft law')<sup>1</sup>.

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 on the third, fourth and sixth indents of Article 2(1) of Council Decision 98/415/EC<sup>2</sup>, as the draft law relates to the Oesterreichische Nationalbank (OeNB), the collection of financial statistics and 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 purpose of the draft law is to create a legal basis for macro-prudential tools to counteract systemic risks arising from third-party financing of property in Austria. In this respect, the draft law enables the Austrian Financial Market Authority (FMA) to impose certain measures if increased systemic risks arising from real estate financing are identified.
- 1.2. The application of the macro-prudential measures by the FMA requires a recommendation from the Austrian Financial Market Stability Board (FMSB). Before taking the relevant measures, the FMA must establish the necessary evidence and conditions for systemic risks arising from third-party financing of property threatening financial market stability. For these purposes, the FMA has to obtain an expert opinion from the OeNB on the existence of the necessary evidence and conditions. The FMA also needs to obtain the MoF's permission before issuing the relevant measures. Lastly, the FMA has to inform the European Systemic Risk Board (ESRB) about the

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<sup>1</sup> Bundesgesetz, mit dem ein Bundesgesetz über die Errichtung eines Registers der wirtschaftlichen Eigentümer von Gesellschaften, anderen juristischen Personen und Trusts (Wirtschaftliche Eigentümer Registergesetz – WiEReG) erlassen wird und das Finanzmarkt-Geldwäschegesetz, das Finanzstrafgesetz, das Wirtschaftstreuhandgesetz, das Bilanzbuchhaltungsgesetz 2014, das Devisengesetz, das Zentrale Gegenparteien-Vollzugsgesetz, das Zentralverwahrer-Vollzugsgesetz, das Börsegesetz 1989, das Bankwesengesetz und die Bundesabgabenordnung geändert werden. The draft law is part of a larger legislative package mainly aimed at implementing Directives (EU) 2015/849 and 2016/2258.

<sup>2</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).

- existence of the relevant systemic risks.
- 1.3. The FMA may take macro-prudential measures, by way of a regulation, setting limits for all or some credit institutions. For these purposes, the FMA may establish the following provisions:
- upper limits for the ratio of the total credit obligations of a borrower resulting from third-party financing of property with respect to the relevant credit institution to the total market value of the property acting as security for the borrowing, less prior liens on the property (loan-to-value ratio – LTV);
  - upper limits for the ratio of the total of a borrower's repayment obligations to income in the case of natural persons, or to cashflow or another suitable financial indicator in the case of legal entities, within a particular period (debt-to-income ratio – DTI);
  - upper limits for the ratio of the total interest payments and repayments to service all of the borrower's credit obligations falling due in a particular period to income in the case of natural persons, or to cashflow or another suitable financial indicator in the case of legal entities, within this period (debt service-to-income ratio – DSTI); in the case of interest-only loans, for calculation purposes a regular repayment is to be assumed, distributed equally over the term of the loan;
  - requirements on the maximum term of third-party financing of property (term restriction), subject to the proviso that the term restriction must be not less than ten years;
  - periods within which a specified proportion of the entire loan disbursed to the borrower must be repaid (i.e. a repayment requirement); and
  - provisions for the purposes of the national application of measures from other Member States and third countries that serve to limit systemic risks arising from third-party financing and are comparable to the national measures.
- 1.4. The FMA may restrict the material and geographical scope of the measures in particular to certain types of property use, the property location or the purposes of the property financing. The FMA may also: (a) determine different upper limits according to the type and amount of financing; (b) determine a proportion of new business relating to third-party financing of property by a credit institution that is excluded from the application of the measures (known as the new business exception); and (c) exclude third-party financing of property up to a specified maximum amount from the application of measures (known as the lower limit threshold). Furthermore, the FMA may determine specific calculation methods, in particular in respect of ratios, the new business exception and lower limit threshold, interest-only loans, foreign currency loans or loans with repayment vehicles.
- 1.5. A regulation issued by the FMA may apply for up to two years. Prior to the expiry of the measures, the FMA must evaluate them and, if the conditions for the application of the measures still exist, may extend the regulation by one year.
- 1.6. The draft law also amends the Law of 2004 on foreign exchange to provide that the relevant statistical reports submitted to the OeNB must be made in a standardised format and by electronic means only, subject to minimum requirements set by the OeNB. Under existing law, the OeNB does not have the power to require notifications relating to foreign currency statistics to be provided

in electronic form only. The processing of notifications in paper form is currently causing a considerable amount of additional effort which will be avoided by introducing this new requirement for electronic form.

## 2. Observations

- 2.1 The draft law entails a role for the OeNB to advise on the presence of the necessary evidence and conditions for systemic risks arising from third-party financing of property threatening financial market stability. The draft law provides for no additional tasks other than this advisory role in the field of macro-prudential oversight. Under the current legal framework, the OeNB already has a broad financial stability mandate to monitor all circumstances that may have an impact on safeguarding financial stability in Austria<sup>3</sup>. This mandate includes reducing systemic and procyclical risk in Austria, in particular by analyzing the financial market facts relevant for maintaining financial stability and reducing systemic risk, identifying threats to financial stability, reporting observations and findings of a fundamental nature or of special significance to the FMSB and, on request, providing any factual clarifications and relevant documents that appear necessary, drafting opinions and proposing to the FMSB the adoption of recommendations and risk warnings to be submitted to the FMA.
- 2.2 The OeNB also assesses FMA's implementation measures and presents its assessment to the FMSB. It is required to draw up and provide to the FMSB an annual financial stability report on the situation and the developments with regard to financial stability<sup>4</sup>. In addition, the FMA may obtain expert opinions from the OeNB in relation to other macro-prudential measures provided for in the Law on banking, e.g. countercyclical capital buffers or systemic risk buffers. It follows that the provisions of the draft law that relate to the OeNB should be seen as falling within the same category of tasks as the other advisory tasks already discharged by the OeNB under its macro-prudential and financial stability mandate. Therefore, for the purpose of assessment against the monetary financing prohibition, the ECB concludes that the draft law does not confer a new task upon the OeNB.
- 2.3 The ECB welcomes that recommendations made by the FMSB aiming at creating macro prudential tools that establish restrictions on the third-party financing of real estate will be implemented by amending the Law on banking<sup>5</sup>. Imbalances in the residential immovable property sector that could result from overvaluation of residential property accompanied by excessive credit provision can have significant negative implications for financial stability and the real economy. Against this background, the core objectives of the draft law seem appropriate, namely to create instruments that enable the FMA to impose certain minimum standards upon lenders in connection with real-estate financing, with a view to strengthening the resilience of the financial system and to counteracting the cyclical build-up of systemic risks, when deemed necessary. The objectives of the draft law are also in line with the principles set out in the ESRB's Recommendation on

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<sup>3</sup> See section 44b(1) of the Law of 1984 on the national bank.

<sup>4</sup> See section 44b(3) and section 44c(1) of the Law of 1984 on the national bank.

<sup>5</sup> See paragraph 2.2 of Opinion CON/2017/11. All ECB opinions are available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

intermediate objectives and instruments of macro-prudential policy, in particular with regard to the objective to mitigate and prevent excessive credit growth and leverage<sup>6</sup>.

- 2.4 From a financial stability perspective, the ECB welcomes the implementation of a legislative framework for borrower-based measures in all euro area countries<sup>7</sup>. The measures contained in the draft law enabling the FMA to create macro-prudential tools to counteract potential risks to the stability of the national financial system seem appropriate to the extent that they aim at promoting responsible borrowing and lending, enforcing market discipline, reducing credit risk and increasing the transparency of credit institutions' activities. The ECB understands that the draft law establishes a legal basis for imposing certain minimum standards upon lenders in connection with the granting of property loans. The different instruments envisaged by the draft law would allow the FMA to activate only one, all or a combination thereof of instruments depending on the circumstances threatening financial stability. This would enable the FMA to respond in a flexible and proportionate way to potential risks to financial stability. Nevertheless, a thorough quantitative impact assessment would be relevant to ascertain the effect and appropriateness of the draft law. Also, a regular review of the LTV, DTI and DSTI ratios would allow to take into account the implications of changes in macro-economic and financial conditions. The scope of exemptions from the draft law or from specific provisions thereof should be proportionate to the overall objective to curb excessive lending for the construction and purchase of property and prevent over-indebtedness<sup>8</sup>.

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

Done at Frankfurt am Main, 7 June 2017.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>6</sup> See paragraph 2.2 of Opinion CON/2017/11 and Recommendation of the European Systemic Risk Board of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy (ESRB/2013/1) (OJ C 170, 15.6.2013, p. 1).

<sup>7</sup> See the Governing Council statement on macro-prudential policies of 15 December 2016 and paragraph 2.3 of Opinion CON/2017/11.

<sup>8</sup> See paragraph 2.3 of Opinion CON/2017/11.