



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 September 2018

on the establishment of a national insurance claims database

(CON/2018/43)

Introduction and legal basis

On 20 July 2018 the European Central Bank (ECB) received a request from the Irish Minister for Finance (the 'Minister') for an opinion on the Central Bank (National Claims Information Database) Bill 2018 (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 fourth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to the Central Bank of Ireland (CBI) and the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics. 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 improve transparency in relation to non-life insurance claims in Ireland. As noted in the Minister's letter accompanying the consultation request, the overall purpose of the draft law is to improve the transparency around the causes of premium volatility and pricing in the Irish market for non-life insurance.² To this end, the draft law provides the CBI with the additional general function of collecting and studying data from insurance undertakings on the income and expenditure associated with the carrying on of business of certain relevant classes of non-life insurance business.³
- 1.2 The draft law constitutes the legislative response to the first report of the Irish Government's Cost of Insurance Working Group (the 'Working Group'). The Working Group's objective was to identify and examine the drivers of the cost of insurance, and recommend measures to address the increasing cost of insurance, taking account of the need to ensure a financially stable insurance

¹ 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).

² Letter from the Minister for Finance to President Draghi of 16 July 2018 requesting an opinion of the ECB in accordance with Articles 127(4) and 282(5) of the TFEU. See also the [Report on the Cost of Motor Insurance](#) of the Cost of Insurance Working Group (January 2017) (the 'Report on the Cost of Motor Insurance') published on the website of the Irish Department of Finance at www.finance.gov.ie.

³ See section 8 of the draft law.

sector⁴. One key recommendation of the report was to create a national claims information database in the expectation that greater transparency in the claims environment will allow for the identification of trends and appropriate policy responses. This in turn should lead to greater stability in the pricing of motor insurance and should help prevent cycles both up and down that have occurred regularly in the Irish market in the past. It should also better facilitate potential new entrants to the market⁵.

- 1.3 The draft law gives the CBI certain responsibilities to specify the scope of application of the draft law. The CBI is tasked with making regulations to specify which classes of non-life insurance should be deemed relevant for the purposes of the draft law.⁶ To assist in the exercise of this specification function by the CBI, the draft law provides policy guidance on the draft law's objectives and principles.⁷ In addition, the CBI is also given the function of making regulations to specify when non-life insurance risks should be categorised as being 'based in the State'.⁸
- 1.4 The draft law sets out examples of the types of data which the CBI may collect from insurance undertakings. These include data on insurance premiums and other income; the extent of the insurance undertaking's exposure to risks; the insurance undertaking's costs, such as business expenses and commissions; the number and nature of relevant claims; details of the costs borne and provisions associated with relevant claims; the amount paid to finally resolve or dispose of claims; the costs incurred when using various settlement channels, i.e. the different steps and proceedings to resolve or dispose of claims; and details of large claims with a settlement or award value which is not less than EUR 150,000.⁹ When providing this data to the CBI, the draft law requires insurance undertakings to use their best endeavours to transmit it in such a way that no individual is identifiable from it, and provides that, where an individual is identifiable, the CBI shall ensure that individual's identity is not disclosed.¹⁰
- 1.5 The draft law also provides for the CBI to publish a report on the data it collects at least annually.¹¹ The report should serve certain defined purposes set out in the draft law, which may include the following: increasing the level of information on the relationship between insurance premiums and related costs; identifying current and emerging trends within relevant non-life insurance business; identifying the factors that cause price movements; and presenting a series of statistical analyses of (i) income and costs related to providing relevant non-life insurance business; (ii) information on relevant claims; and (iii) each particular settlement channel used in respect of such claims.¹² The Working Group gave close consideration to the fact that the CBI's report would present aggregated rather than granular, claim-by-claim data. It was of the view that this would address anti-competitive issues by protecting commercially sensitive proprietary information on claims costs

4 See the [Report on the Cost of Motor Insurance](#), p. 9.

5 See the [Report on the Cost of Motor Insurance](#), p. 11.

6 See section 6(3) of the draft law.

7 See section 6(1) of the draft law.

8 See section 7(1) of the draft law.

9 See section 8(4), together with sections 4(1) and 4(2) of the draft law.

10 See section 8(3) of the draft law.

11 See section 8(6) of the draft law.

12 See section 8(7) of the draft law.

whilst providing useful information to potential new market entrants without acting as a barrier to entry. The Working Group also recognised that the CBI's reporting and analysis of collected data would need to be delivered in a way that mitigated the risk of insurance undertakings directly using the report to derive prices. This consideration could detract from the public benefit of such a report¹³. As such, the ECB understands that the CBI's report under the draft law will enhance transparency regarding claims costs and trends but it is not intended that the CBI would directly address pricing and/or competition issues in the insurance market.

- 1.6 The draft law makes the necessary adjustments to the CBI's supervision and enforcement powers to permit it to designate breaches and contraventions of the draft law and to ensure that it can require by notice the information it needs to collect to carry out its functions thereunder.¹⁴
- 1.7 The draft law expressly provides that the CBI may not use funds from its own resources to defray expenses it incurs when collecting and studying data from insurance undertakings.¹⁵ Rather, these expenses are to be met, in the first place, by the industry levies to be paid by insurance undertakings¹⁶ and, if necessary, supplemented by monies requested from the Minister. The draft law lays down the process by which the CBI may request additional funding from the Minister, in the event that it is unable to defray all of its expenses from the industry levies. Where the CBI reasonably apprehends that there will be a shortfall between the industry levies and its data collection and analysis expenses or there is an insufficiency of funds for another reason, it may request the Minister to advance the amount of the shortfall. The Minister in turn may advance the sums he or she thinks proper to enable the CBI to defray all of its expenses arising from its function under the draft law. Sums advanced by the Minister can be subject to repayment, interest and other terms set by the Minister after consulting the CBI.¹⁷
- 1.8 Finally, the draft law also permits the CBI to disclose data it has collected to persons upon request unless the data would identify an insurance undertaking or individual or where the CBI considers that the legitimate interests of consumers or an undertaking would be prejudiced, where the data is not complete or sufficiently verified or where there are any other exceptional circumstances.

2. Conferral of new task on the CBI

2.1 New task of the CBI

- 2.1.1 The draft law confers on the CBI the general function of collecting, studying and reporting data from insurance undertakings on the income and expenditure associated with the carrying on of business of certain relevant classes of non-life insurance business¹⁸. The CBI is the relevant competent authority for the prudential supervision of insurance undertakings as well as for the supervision of their business conduct and collects a range of information from insurance undertakings in the

¹³ See the [Report on the Cost of Motor Insurance](#), pp. 81-82.

¹⁴ See sections 9 and 10 of the draft law.

¹⁵ See section 11(1) of the draft law.

¹⁶ See section 11(2) of the draft law and section 32D of the Central Bank Act, 1942.

¹⁷ See sections 11(3) and 11(4) of the draft law.

¹⁸ See section 8 of the draft law.

exercise of its supervisory functions. It also has a consumer protection mandate with respect to insurance undertakings operating in Ireland. However, the CBI currently has no specific responsibilities to ensure transparency regarding the volatility of non-insurance claims costs and how these relate to insurance premium levels or to collect and analyse this type of data in the non-life insurance sector. As such, the draft law creates a new responsibility of the CBI in relation to insurance undertakings and the transparency of costs and pricing in the non-life insurance market. The draft law therefore confers a new task upon the CBI.

- 2.1.2 The ECB underlines that a proposed conferral of new tasks on a national central bank (NCB) in the European System of Central Banks must be assessed against the prohibition on monetary financing under Article 123 of the Treaty. For the purposes of that prohibition, Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93¹⁹ defines ‘other type of credit facility’, *inter alia*, as ‘any financing of the public sector’s obligations vis-à-vis third parties’.

Ensuring that Member States implement a sound budgetary policy is one of the key objectives of the monetary financing prohibition, which may not be circumvented²⁰. Therefore, the task of financing measures, which are normally the responsibility of the Member States, and which are financed from their budgetary sources rather than by the NCBs, must not be entrusted to NCBs. To decide what constitutes financing of the public sector’s obligations vis-à-vis third parties, which can be translated as the provision of central bank financing outside the scope of central bank tasks, it is necessary to carry out, on a case-by-case basis, an assessment of whether the task to be undertaken by an NCB is a central bank task or a government task, i.e. a task within the responsibility of the Member States. In other words, adequate safeguards must be in place to ensure that circumventions of the objective of the monetary financing prohibition of maintaining a sound budgetary policy of Member States do not take place.

- 2.1.3 As part of its discretion in the exercise of its duty, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’), to ensure that NCBs honour the obligations laid down by the Treaty, the Governing Council has endorsed safeguards of that kind in the form of criteria for determining what may be seen as falling within the scope of a public sector’s obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, what constitutes a government task as follows:

First, central bank tasks are in particular those tasks that are related to the tasks that have been conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB. These tasks are mainly defined in Article 127(2), (5) and (6) and Article 128(1) of the Treaty, as well as Article 22 and Article 25.1 of the Statute of the ESCB.

Second, as Article 14.4 of the Statute of the ESCB allows NCBs to perform ‘other functions’, new tasks, i.e. tasks that are not related to tasks that have been conferred upon the ECB and the NCBs,

¹⁹ Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

²⁰ Article 123 of the Treaty also serves the objective of maintaining price stability and reinforces central bank independence.

are not precluded per se. However, new tasks that are undertaken by an NCB and which are atypical of NCB tasks or which are clearly discharged on behalf of, and in the exclusive interest of the government or of other public sector entities should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly discharged on behalf of and in the exclusive interest of the government or other public sector entities is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

- (a) whether the performance of the new task creates conflicts of interest with existing central bank tasks which are not adequately addressed and does not necessarily complement those existing central bank tasks. If a conflict of interest arises between existing and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should not be interpreted broadly, so as to lead to the creation of an indefinite chain of ancillary tasks. Such complementarity should be examined in relation to the financing of those tasks;
- (b) whether without new financial resources the performance of the new task is disproportionate to the NCB's financial or organisational capacity, and may have a negative impact on the capacity to perform properly the existing central bank tasks;
- (c) whether the performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations;
- (d) whether the performance of the new task harbours substantial financial risks;
- (e) whether the performance of the new task exposes the members of the NCB decision-making bodies to political risks which are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute of the ESCB.

2.1.4 On the basis of the criteria set out above, the following paragraphs assess whether the new task of the CBI is in line with the prohibition of monetary financing.

2.2 *Tasks related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB*

The collection and analysis of data on the costs and income associated with insurance provision in order to ensure pricing transparency in insurance markets is not expressly mentioned among any of the basic central banking tasks listed in Article 127(2) or (5) of the Treaty or otherwise conferred upon the NCBs by the Statute of the ESCB. Under Article 127(6) of the Treaty, the Council may confer specific tasks upon the ECB concerning policies relating to the prudential supervision of credit institutions and other financial institutions but not insurance undertakings, and the new task proposed to be conferred upon the CBI does not concern the prudential supervision of insurance undertakings. Against this backdrop, the new task conferred on the CBI under the draft law is not directly related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB. Consequently, a careful assessment of the conferral of this task on the CBI is required

in order to determine whether it constitutes a government task, and whether the related funding gives rise to monetary financing concerns²¹.

2.3 *Tasks which are atypical of NCB tasks*

2.3.1 The new task conferred on the CBI by the draft law, i.e. to collect and analyse data on the costs and income associated with the non-life insurance sector, is related to the business of non-life insurance undertakings, the transparency and integrity of the non-life insurance market and, perhaps, the protection of consumers of non-life insurance services more broadly.

2.3.2 It is necessary to analyse whether this new task is atypical of NCB tasks. The role of prudential and conduct of business supervision of insurance undertakings is currently fulfilled by numerous ESCB NCBs.²² In addition, many ESCB NCBs fulfil consumer protection tasks in the area of financial services.²³ The CBI is already responsible for the prudential supervision of insurance undertakings as well as supervision of their business conduct. It also has a broad consumer protection mandate in the field of financial services, including insurance²⁴. The Central Bank Acts 1942 – 2015 provide the CBI with investigatory, supervisory and enforcement powers designed to ensure that it can carry out its prudential and consumer protection mandates. In the case of the draft law, it specifically expands the CBI's existing supervision and enforcement powers to permit it to designate breaches and contraventions of the draft law and to ensure that it can require by notice the information it needs to collect to carry out its function thereunder.

2.3.3 In addition, in the exercise of its supervisory functions, the CBI also collects a range of information from insurance undertakings. Indeed, it is required under Directive 2009/138/EC of the European Parliament and of the Council²⁵ ('Solvency II') to publish aggregate harmonised data on insurers that is consistent and comparable with other insurance supervisors in the European Union²⁶ and other ESCB NCBs which act as prudential supervisors of insurance undertakings are necessarily subject to the same obligations under their national laws implementing Solvency II. In addition, the CBI, like all other NCBs in the euro area, is responsible for collecting data under Regulation (EU) No 1374/2014 of the ECB on statistical reporting requirements for insurance corporations²⁷. In general, however, this data is merely derived from data already collected for supervisory purposes by national competent authorities for insurance undertakings pursuant to Solvency II. The scope of

21 See, for example, paragraph 3.4.1 of Opinion CON/2017/12, paragraph 2.2.1 of Opinion CON/2017/32, paragraph 3.1 of Opinion CON/2017/43 and paragraph 3.1 of Opinion CON/2017/52. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

22 See for example, paragraph 3.1 of Opinion CON/2012/61, paragraph 2.2 of Opinion CON/2011/46, paragraph 2 of Opinion CON/2010/33, paragraph 2 of Opinion CON/2010/4, and paragraphs 6 to 8 of Opinion CON/2003/23.

23 See also paragraph 3.3.4.2 of Opinion CON/2016/54, paragraphs 4.3 and 4.4 of Opinion CON/2016/34, paragraphs 3.3 and 3.4 of Opinion CON/2015/54 and paragraph 3.1 of Opinion CON/2015/21.

24 See, in particular, sections 5A(1)(f) and 6A(2)(b) of the Central Bank Act 1942 (as amended).

25 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 335, 17.12.2009, p. 1) ('Solvency II').

26 The first batch of Solvency II-based data was published by the CBI in August 2017 covering 2016 ([Aggregate Statistical Data](#)). The CBI previously published publically available data it collected from the insurance industry under the Solvency I regime, including on branches and individual firms, in the annual 'Insurance Statistics - Blue Book' ([link](#)).

27 Regulation (EU) No 1374/2014 of the ECB of 28 November 2014 on statistical reporting requirements for insurance corporations (ECB/2014/50) (OJ L 366, 20.12.2014, p. 36).

data collected and reported in this context is therefore no broader than that required under Solvency II.

2.3.4 However, while the CBI, like other NCBs, already collects data on insurance undertakings supervised by it in the supervisory context and reports it for statistical purposes to the ECB pursuant to Regulation (EU) No 1374/2014, the draft law serves a very different purpose compared to the CBI's existing prudential supervision of non-life insurance undertakings or statistical reporting under Regulation (EU) No 1374/2014. In contrast to the CBI's supervisory goals of monitoring insurance undertakings' capital, governance and risk management, the ultimate goal of the draft law is to improve transparency in relation to pricing and trends in the non-life insurance market. The draft law is therefore related to the integrity of the non-life insurance business, and not the CBI's prudential supervision of those insurance undertakings or the statistical reporting to support the ECB in carrying out monetary and financial analysis under Regulation (EU) No 1374/2014. Indeed, no other Member State has assigned to an ESCB member a similar mandate for data collection in the non-life insurance sector institutions for the purposes similar to those under the draft law.²⁸ While the CBI's new task can, perhaps, be seen as related to its consumer protection mandate, the draft law's core purpose to improve pricing transparency is not primarily related to consumer protection. Rather, it will necessarily have implications for the operation of the market, including the competitiveness of pricing between non-life insurance undertakings. Although the CBI's data-collection and analysis tasks under the draft law do not give it any mandate with regard to ensuring or enhancing competition or creating policy on competition in the Irish non-life insurance market, which is welcomed by the ECB²⁹, the basic purpose of the draft law to enhance transparency of pricing in the Irish market for non-life insurance diverges from and extends beyond the purpose of the CBI's existing roles in prudential supervision and consumer protection.

2.3.5 Taking into account the fact that the purpose of the draft law is related neither to the CBI's role in the prudential supervision of insurance undertakings nor its existing data collection tasks in relation to insurance undertakings, and only partially and indirectly related to the CBI's role in consumer protection, as well as the fact that no other Member State has assigned to an ESCB central bank a similar task, it appears that, on balance, the new task under the draft law is atypical of NCB tasks.

2.4 *Tasks clearly discharged on behalf of and in the exclusive interest of the government*

For the same reasons, the new task conferred by the draft law appears to be only partially linked to the CBI's existing tasks and mandates. On balance, the new task under the draft law would therefore be regarded as being discharged primarily in the interest of the government.

²⁸ The Czech National Bank has responsibility for collecting data on non-life insurance claims pursuant to the Act No. 277/2009 Coll., on Insurance, as amended (the 'Insurance Act') in certain very specific circumstances. Following an extraordinary natural or other disaster and a declaration of a state of danger or emergency, the Czech National Bank may require insurance undertakings to provide it with general information on the number and amount of claims reported and on the amount of the indemnities paid out for the loss of or damage to property which serves to safeguard vital functions in the state (Section 132 (1) of the Insurance Act). The Czech National Bank passes the information in summary form to the Ministry of Finance. While the process of data collection on claims relating to natural disasters is somewhat similar to that proposed for the CBI under the draft law, the statistical collection on insurance claims in the Czech Republic does not appear to serve the same purpose as the draft law (to enhance transparency in the market), and does not involve the same analysis of the data on claims in the reporting phase.

²⁹ See paragraph 2.2 of Opinion CON/2018/10, paragraph 3.3.4.3.1 of Opinion CON/2016/54.

2.5 *Extent to which performance of the new task creates conflicts of interest with existing central bank tasks*

As noted in Section 2.3.2, the CBI is the competent authority responsible for the authorisation and prudential supervision of insurance undertakings and therefore already has insurance data collection obligations under the national implementation of Solvency II requirements. In addition, the CBI has a consumer protection mandate with respect to insurance undertakings operating in Ireland. Therefore, it is arguable that the new task partially complements other similar existing supervisory, insurance data collection and consumer protection tasks of the CBI. On the other hand, as noted in Section 2.1.3(a), the complementarity between a new task and existing central bank tasks should not be interpreted broadly, so as to lead to the creation of an indefinite chain of ancillary tasks. The assignment of new, long-term tasks to NCBs, including the CBI, should therefore be approached with a high degree of caution in order to avoid such an indefinite chain of ancillary tasks. In addition, as with other tasks related to consumer protection, sufficient mitigation measures must be put in place to ensure that in the event of a conflict of interest, supervisory considerations prevail³⁰.

In addition, the draft law's ultimate purpose to improve pricing transparency has a market-functioning focus, including the competitiveness of pricing between non-life insurance undertakings. Given the data-based nature of the CBI's function under the draft law to collect, analyse and report on data from the Irish non-life insurance sector, the draft law does not, on the face of it, give the CBI any role with regard to ensuring or enhancing competition or creating policy on competition in the Irish non-life insurance market. However, it is important to reiterate that the ECB discourages the concentration of decision-making powers in the areas of competition and banking supervision in one body³¹ and the same principles would apply to the promotion of transparency of pricing in the Irish market for non-life insurance products. In fact, the ECB has previously welcomed draft national laws transferring the responsibilities for the enforcement of competition policy in the banking sector away from the NCB to a national competition authority³² and discouraged the concentration of decision-making powers in the areas of antitrust and banking supervision in one body³³. In doing so, the ECB highlighted the need to balance the potentially conflicting objectives of market competition and financial stability³⁴, which applies equally to the promotion of transparency of pricing for non-life insurance products. While coordination is necessary to avoid an overly complex framework for supervised entities, it would seem appropriate to maintain a clear distinction between procedures that are pursuing distinct public interests,³⁵ in particular for procedures leading to antitrust and banking or insurance supervision decisions³⁶. For

30 See paragraph 3.4.3 of Opinion CON/2018/10, paragraph 3.1 of Opinion CON/2015/21 and paragraph 2.2.2 of Opinion CON/2016/31.

31 See paragraph 3.3.4.3.1 of Opinion CON/2016/54 and paragraph 4 of Opinion CON/2008/44.

32 See paragraph 3.3.4.3.1 of Opinion CON/2016/54 and paragraph 14 of Opinion CON/2004/16.

33 See paragraph 3.3.4.3.1 of Opinion CON/2016/54 and paragraph 4 of Opinion CON/2008/44.

34 See paragraph 3.3.4.3.1 of Opinion CON/2016/54 and paragraph 3.3 of Opinion CON/2006/51.

35 See paragraph 3.3.4.3.1 of Opinion CON/2016/54 and paragraph 14 of Opinion CON/2004/16.

36 See paragraph 3.3.4.3.1 of Opinion CON/2016/54 and paragraph 8 of Opinion CON/2005/58.

that reason the ECB considers that in these circumstances draft national laws should reflect the principle of allocating powers to authorities in accordance with their respective objectives³⁷.

2.6 *Extent to which performance of the new task is disproportionate to the financial or organisational capacity of the CBI*

2.6.1 The principle of financial independence requires that Member States may not put their NCBs in a position where they have insufficient resources to carry out both their ESCB-related tasks and their national tasks from an operational and financial perspective. In this regard, the ECB welcomes the fact that the draft law specifically addresses the financing of additional expenses resulting from the CBI's new function under the draft law. However, given that the new task is atypical of NCB tasks and performed primarily in the interest of the government, further clarifications are needed so as to ensure that the CBI is adequately remunerated on a regular and prompt basis as the costs arise from its collection and analysis of data on the costs and income associated with insurance provision.

2.6.2 The draft law expressly provides that the CBI may not use funds from its own resources to defray expenses it incurs when collecting and studying data from insurance undertakings.³⁸ Rather, these expenses are to be met by the industry levies to be paid by insurance undertakings under the Central Bank Acts 1942-2015³⁹. In addition, if the CBI anticipates that the industry levies will not suffice to defray all of its expenses from the data collection and analysis function under the draft law in any given year, it may request the shortfall from the Minister. The Minister in turn may advance such sums as he or she thinks proper to enable the CBI to defray all of its expenses, arising in that year, associated with the CBI's functions under the draft law. The draft law therefore retains an element of discretion for the Minister in the advancing of sums requested by the CBI to defray its costs. In addition, the draft law provides that sums advanced by the Minister can be subject to repayment, interest and other terms set by the Minister after consulting with the CBI.⁴⁰ It is understood that the provision for repayment terms may be intended to cover circumstances where the CBI anticipated shortfalls which did not materialise, or where levy payments were delayed but subsequently paid in full. These repayment, interest and other terms are, however, not specified further or limited in the draft law.

2.6.3 As the CBI's new task under the draft law is not a central bank task and is performed primarily in the interest of the government, the ECB invites the consulting authority to clarify through appropriate amendments to the draft law that any anticipated or actual shortfall of funds to defray the CBI's expenses under the draft law will always be granted by the Minister on a regular and prompt basis as the costs arise to ensure that the CBI does not have to fund the cost of its task under the draft law from its own funds. In addition, it could be helpful to clarify that repayment terms for amounts advanced by the Minister are, in all cases, subject to the overarching principle that the CBI may not use funds from its own resources to defray its expenses arising under the draft law.

³⁷ See paragraph 3.3.4.3.1 of Opinion CON/2016/54 and paragraph 4 of Opinion CON/2007/17.

³⁸ See section 11(1) of the draft law.

³⁹ See section 11(2) of the draft law and section 32D of the Central Bank Act, 1942.

⁴⁰ See sections 11(3) and 11(4) of the draft law.

2.7 *Extent to which performance of the new task fits into the institutional set-up of the CBI, in the light of central bank independence and accountability considerations*

The potential impact of the new task on the institutional, financial and personal independence of the CBI must also be taken into consideration.

2.8 *Extent to which the performance of tasks harbours substantial financial risks*

The draft law does not contain any specific provisions on liability in relation to the exercise of the CBI's function under the draft law. Nonetheless, section 33AJ(2) of the Central Bank Act 1942 provides that specified officers and employees of the CBI are not liable for damages for anything done or omitted in the performance or purported performance or exercise of any of its functions or powers, unless it is proved that the act or omission was in bad faith. Given the data-based nature of the CBI's function, to collect, analyse and report on data in the Irish non-life insurance sector, the draft law does not appear to expose the CBI to substantial financial risks.

2.9 *Extent to which the performance of the new task exposes members of the decision-making bodies of the CBI to disproportionate political risks and impacts on their personal independence*

The performance of the function conferred under the draft law does not appear to expose the CBI's decision-making bodies to any disproportionate political risk or have an impact on their personal independence. As mentioned in paragraph 2.3.2, the CBI is already responsible for the prudential supervision of insurance undertakings, the collection of data from insurance undertakings and has a consumer protection mandate with respect to insurance undertakings in Ireland. In addition, it is understood that the draft law's allocation of data-collection and analysis tasks does not create any new mandate for the CBI to ensure or enhance competition or to create competition policy for the Irish non-life insurance market.

2.10 *Conclusion*

The new task of the CBI of collecting and studying data from insurance undertakings on the income and expenditure associated with the carrying on of business of certain relevant classes of non-life insurance business cannot be regarded as a central bank task, in the sense that the purpose of the draft law is not related to the CBI's role in the statistical reporting in relation to insurance undertakings to support the ECB in carrying out monetary and financial analysis, nor to the CBI's role in the prudential supervision of insurance undertakings, and is only partially and indirectly related to the CBI's role in consumer protection. The main purpose of the CBI's new task is to improve the transparency around the causes of premium volatility and pricing in the Irish market for non-life insurance. No other Member State has assigned a similar task to an ESCB central bank. As the CBI's new task under the draft law is not a central bank task, but rather a task that is related to the proper functioning of pricing in the non-life insurance market in Ireland, and is therefore performed primarily in the interest of the government, the consulting authority is invited to clarify through appropriate amendments to the draft law that any anticipated or actual shortfall of funds to defray the CBI's expenses will always be granted by the Minister on a regular and prompt basis as the costs arise to ensure that the CBI does not have to fund the cost of its task under the draft law from its own funds. In addition, it could be helpful to clarify that repayment terms for amounts

advanced by the Minister are, in all cases, subject to the overarching principle that the CBI may not use funds from its own resources to defray its expenses under the draft law.

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

Done at Frankfurt am Main, 28 September 2018.

[signed]

The President of the ECB

Mario DRAGHI