



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 August 2022

on the reporting to the Central Bank of Ireland of certain insurance data

(CON/2022/27)

Introduction and legal basis

On 1 July 2022 the European Central Bank (ECB) received a request from the Chairman of the *Oireachtas* (Irish National Parliament) Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach (hereinafter the 'Cathaoirleach') for an opinion on the Judicial Council (Amendment) Bill 2021 (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 indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to the Central Bank of Ireland (CBI). 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 As noted in the Cathaoirleach's consultation request, the purpose of the draft law is to make provision for the reporting of the effects of the personal injuries guidelines adopted by the Irish Judicial Council² on the cost of insurance. These personal injuries guidelines contain general guidelines as to the level of damages that may be awarded or assessed in relation to personal injuries³.
- 1.2 The draft law allows the Minister for Finance to make regulations that shall require insurance providers to provide information to the CBI about the effect of the personal injuries guidelines on individuals who hold insurance policies with insurance providers. The regulations may specify the information to be provided under the draft law each year for a period of four years. This information may include, for example, amounts paid under relevant insurance policies or charged by providers by way of premiums under such policies. The draft law requires the CBI to present a report, at least annually, that relates to information collected under the draft law, to the Minister for Finance, who must lay that report before each House of the *Oireachtas*⁴.

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 These guidelines have been given effect under the Judicial Council Act 2019.

³ See section 90(1) of the Judicial Council Act 2019.

⁴ See section 2 of the draft law, setting out a new section 100 to be inserted into the Judicial Council Act 2019.

2. Assessment of the CBI's task under the draft law

- 2.1 The ECB understands that the CBI will be tasked with collecting and managing the information collected under the draft law and analysing it in order to ascertain whether reductions in personal injury awards and corresponding impact on the costs of claims are being passed on by insurers to policyholders.
- 2.2 The draft law does not substantially extend or change the existing tasks of the CBI. Under the Central Bank (National Claims Information Database) Act 2018, the CBI is given the general task to provide for the collection and study of data from insurance undertakings on the income generated by, and costs associated with, the carrying on of relevant non-life insurance business⁵. The same Act sets out examples of the type of data which the CBI may collect from insurance undertakings⁶. In addition, under the same Act, the CBI is tasked with, at least annually, publishing a report about that data for the purpose of, inter alia, increasing the level of information as concerns the relationship between insurance premiums and related costs, identifying the factors that cause movements in the price of relevant non-life insurance business, presenting statistical analyses of income and costs related to providing relevant non-life insurance business, and presenting a statistical analysis of each particular settlement channel used in respect of such claims⁷.
- 2.3 It follows that the draft law does not confer a new task on the CBI, but rather specifies further examples of the type of information that the CBI shall collect. Consequently, it is not necessary to assess whether the conferral of a new task on a national central bank complies with the prohibition of monetary financing in this case.

3. Reimbursement of the CBI

- 3.1 The ECB recalls that in a previous opinion it assessed the conferral on the CBI of the general task of studying and reporting data under the Central Bank (National Claims Information Database) Bill 2018 for its compliance with the prohibition of monetary financing under Article 123 of the Treaty. For the purposes of that prohibition, Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93⁸ defines 'other type of credit facility', inter alia, as "any financing of the public sector's obligations vis-à-vis third parties". 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 national central banks (NCBs) in the European System of Central Banks (ESCB), must not be entrusted to NCBs. Applying the criteria endorsed by the Governing Council for determining what may be seen as falling within the scope of a public sector obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93, the ECB found that the CBI's task under the Central Bank (National Claims Information Database) Bill 2018 is a government task, i.e. a task within the responsibilities of the Member State, not a central bank task⁹.

⁵ See section 8(2) of the Central Bank (National Claims Information Database) Act 2018.

⁶ See section 8(4) of the Central Bank (National Claims Information Database) Act 2018.

⁷ See section 8(6) and (7) of the Central Bank (National Claims Information Database) Act 2018.

⁸ 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).

⁹ See paragraphs 2.2 to 2.10 of Opinion CON/2018/43. All ECB Opinions are available on EUR-Lex.

- 3.2 Consequently, in order to ensure compliance with the monetary financing prohibition, the CBI had to be fully and adequately remunerated for carrying out the task 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. Because of this, the ECB invited the consulting authority to clarify that any anticipated or actual shortfall of funds to defray the CBI's expenses will always be granted by the Minister for Finance 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 from its own funds. In addition, the ECB suggested that it could be helpful to clarify that repayment terms for amounts advanced by the Minister for Finance are, in all cases, subject to the overarching principle that the CBI may not use funds from its own resources to defray its expenses with respect to this task¹⁰.
- 3.3 The ECB notes that under existing Irish law, the CBI shall not provide any funds from its own resources to defray the CBI's expenses incurred in the performance of the general task under the Central Bank (National Claims Information Database) Act 2018. Rather, the CBI's expenses are defrayed by levies to be paid by insurance undertakings or by advances from the Minister for Finance¹¹.
- 3.4 Since the task of CBI set down in the draft law is a specification of the CBI's general task in relation to information collected from non-life insurance undertakings under the Central Bank (National Claims Information Database) Act 2018, which in turn is a government task, the requirement of full and adequate remuneration of CBI also applies to the draft law. As the draft law is drafted as a standalone bill, the reimbursement mechanism set out in section 11 of the Central Bank (National Claims Information Database) Act 2018 would not apply directly to the specifications developed in the draft law. The draft law does not introduce a comparable reimbursement mechanism. In order to ensure compliance with the prohibition of monetary financing under Article 123 of the Treaty, and in order to ensure consistency in the financing of the CBI's existing general task and its proposed specifications under the draft law, the ECB suggests introducing a comparable reimbursement mechanism in respect of the latter.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 25 August 2022.

[signed]

The President of the ECB

Christine LAGARDE

¹⁰ See paragraph 2.6.3 of Opinion CON/2018/43.

¹¹ See section 11 of the Central Bank (National Claims Information Database) Act 2018.