



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 5 October 2012**

**on new credit register measures in Ireland**

**(CON/2012/74)**

### **Introduction and legal basis**

On 24 August 2012, the European Central Bank (ECB) received a request from the Irish Department of Finance for an opinion on a General Scheme of Credit Reporting Bill 2012.

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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions<sup>1</sup>, as the General Scheme relates to the Central Bank of Ireland (CBI) and contains 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 General Scheme**

The General Scheme is intended to form the basis of the Credit Reporting Bill 2012. The publication of the Credit Reporting Bill by the Irish Department of Finance by the end of September 2012 is a structural benchmark commitment of the Irish Government under the EU/IMF Programme for Ireland. The objective of the General Scheme is to establish a comprehensive and reliable registry of credit information to assist in achieving public policy objectives and improving financial stability by providing information for credit applications and on outstanding credits. The General Scheme provides for the establishment and operation of a statutory credit register database called the Central Credit Register (CCR). Credit Information Providers (CIPs) will be under an obligation to report to the CCR operator on a comprehensive range of credit information in respect of credit information subjects (CISs) for all credit applications and credit agreements in excess of a prescribed minimum threshold. Access to credit information held in the CCR will be limited to specific purposes and restricted to CIPs and individuals entered on a register of credit information users (CIUs) to be maintained by the CBI. The General Scheme contains extensive provisions in relation to the accuracy, protection and security of data on the CCR.

---

<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

## 2. General observations

2.1 The General Scheme will improve financial institutions' credit risk management, as well as risk assessment for the financial sector as a whole. It will also be beneficial for the exercise of prudential supervision by the CBI, as well as for the CBI's tasks of:

- (i) providing for the collection and study of data dealing with monetary and credit problems and publishing information about that data;
- (ii) collecting data to provide advice and assistance to the Central Statistics Office about the collection, compilation, analysis and interpretation of statistics relating to the balance of payments, national accounts and other financial statistics;
- (iii) contributing to the stability of the financial system overall.

2.2 The ECB notes that some draft heads<sup>2</sup> have not been finalised. In addition, the ECB understands that the General Scheme remains subject to further review, including by the Irish Attorney General, meaning that the General Scheme may contain significant changes when its provisions are reflected in the Credit Reporting Bill. If this occurs, the ECB expects prompt consultation on the Credit Reporting Bill once it is published.

2.3 According to the General Scheme, the CBI is required to maintain a database of debtors containing information relating to their identity, payments and credit history, which is available to the CIUs. Further, the CBI is to collect and record credit information on CISs in the CCR. The definition of 'debtor' includes individuals and businesses with financial obligations to creditors under agreements within Ireland<sup>3</sup>. A CIS is defined as a person or entity to which the credit information collected by a CIP relates. The ECB recommends consistent use of defined terms to ensure clarity and transparency. It would also be useful to further clarify whether the terms 'debtor' and 'creditor' include natural or legal persons with residency or registration outside Ireland respectively.

In addition, the General Scheme contains an extensive list of the types of credit information that the CBI may collect and record for the CCR. It also sets out the types of identification information which the CBI is authorised to collect in respect of:

- (i) any CIS who is a natural person acting outside his or her business, trade or employment;
- (ii) any CIS who is not such a natural person.

CIPs must report on the on-going performance status of credit agreements, any rescheduling of credit agreements, arrears accumulation, default events and all relevant credit events in accordance with regulations made under the General Scheme. The ECB assumes that the CCR is intended to capture information about the credit histories and borrowings of both commercial and individual debtors. The ECB recommends reviewing the definition of 'default event', the content of credit

---

<sup>2</sup> For example, draft heads 30 and 33.

<sup>3</sup> This includes, but is not limited to, individuals, sole traders, partnerships, companies, branches, limited liability partnerships, trusts, charities and friendly societies (see the definition of 'debtors' under draft head 2 for the complete list).

information and the identification fields to ensure that all necessary information relating to all envisaged categories of debtor is in fact captured, to guarantee the functionality of the CCR.

### **3. Central bank statutory powers and obligations**

The ECB welcomes the provision of the General Scheme allowing the CBI to use the information stored in the CCR for the purpose of discharging its statutory powers and functions. The ECB welcomes that the General Scheme will allow the CBI to access this information for an indefinite period once the prescribed periods for retention of the CCR data set out in the General Scheme expire. This will provide the CBI with indefinite access to data for the purposes of its mandate and statutory obligations, including those related to membership of the European System of Central Banks (ESCB), the Eurosystem, macro- and micro- prudential supervision and consumer protection.

### **4. Central bank independence**

The CBI will establish, operate and own the CCR and its contents, with the possibility of outsourcing operations. It will also manage access to the CCR by authorised bodies. The General Scheme authorises the CBI to charge levies and fees to CIUs. The specific levels and methods of calculating these levies and fees may be prescribed by regulations to be made by the CBI with the consent of the Minister for Finance. The CBI may also, with the consent of the Minister, charge CIUs and CISs a fee for providing a record of all credit reports requested or issued on a particular CIS for a period of up to five years.

It is not clear whether all CBI expenses in connection with the establishment, operation and maintenance of the CCR will be financed by the levies and fees. The ECB refers to the principle of financial independence under which a national central bank must have sufficient means not only to perform its ESCB-related tasks, but also its national tasks, e.g. financing its administration and own operations<sup>4</sup>. As pointed out in previous ECB opinions<sup>5</sup>, when allocating specific non-ESCB related tasks to the national central banks (NCBs), e.g. tasks in the area of financial supervision or consumer protection, additional human and financial resources must also be allocated for these tasks to be carried out in a manner that will not affect the NCBs' operational capacity to perform their ESCB-related tasks.

### **5. Access to the CCR and statistical reporting**

5.1 The General Scheme provides that the CBI will maintain a register of CIUs authorised to access credit information held on the CCR, namely the CBI, credit providers, CISs and their authorised representatives. The ECB notes that the register of CIUs may be amended to include:

---

<sup>4</sup> See the ECB's Convergence Report, May 2012, p. 25, and in particular Opinion CON/2011/20, paragraph 3.1, Opinion CON/2011/47, paragraph 3.2 and Opinion CON/2011/69, paragraph 3. All ECB opinions are available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>5</sup> See, for example, Opinion CON/2007/8, paragraph 3, Opinion CON/2011/76, paragraph 3.3 or Opinion CON/2012/52, paragraph 2.3.

## ECB-PUBLIC

- (i) on direction by the Minister, any State body that requests from the CBI credit information on the CCR for the purpose of advancing the public good<sup>6</sup>;
- (ii) creditors from other Member States seeking information in accordance with Ireland's obligations under Article 9 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC<sup>7</sup>;
- (iii) with the consent of the Minister, any other State-owned credit register that meets sufficient data security standards, and where the CBI is satisfied that all data will be treated securely and that it will not be passed on to a third party without explicit agreement of the CBI. The ECB would welcome clarification in the General Scheme of who may access the credit information on the CCR. A reference to the tasks performed by the ESCB under Article 5 of the Statute of the European System of Central Banks and of the European Central Bank may be added. This also applies to accessing credit reports and credit scores that the CCR compiles. These reports and scores should be clearly stated as constituting credit information that may be accessed by CIUs. Further, draft head 13(8) on the CIU register provides that 'the register of credit information may be amended to include creditors from other Member States seeking information.' The ECB considers that creditors from other Member States should not be excluded from the outset, provided they meet the non-discriminatory access conditions, e.g. data protection rules. The ECB considers that these amendments would contribute to open, transparent and non-discriminatory access to the CCR.

5.2 According to draft head 10, paragraph 1, the CBI lists a minimum set of attributes to be collected and recorded in respect of each credit information subject, while paragraph 2 provides the flexibility for the CBI to expand this set for a specific credit provider for various purposes. The ECB would welcome if the General Scheme could also provide such flexibility for updating the overall CCR content, in particular when international or European standards require it, possibly via a regulation.

5.3 According to draft head 11(2), the CBI lists a number of attributes to be collected as regards the identification of entities, including the company and the VAT registration numbers. The ECB would recommend also including a reference to the necessity of identifying legal persons in compliance with international or European standards, facilitating cross-border access and use, provided that confidentiality is appropriately protected.

## 6. Compatibility of registers

The CBI will have the power to collect and record credit information in respect of CISs, including registered insolvency information, namely, registered (i) Debt Relief Certificates; (ii) Debt Settlement

---

<sup>6</sup> The State body concerned must submit to the Minister a justified request (draft head 13, paragraph 5).

<sup>7</sup> OJ L 133, 22.5.2008, p. 66.

## ECB-PUBLIC

Arrangements; (iii) Personal Insolvency Arrangements registered in accordance with the Personal Insolvency Act 2012<sup>8</sup>. The ECB recommends requiring the Insolvency Service to provide the registered insolvency information to the CBI for inclusion on the CCR. In addition, this registered insolvency information, as well as any information from other registers to be included on the CCR, should be provided in a manner consistent with the format and scope of the CCR, to ensure a level of consistency and compatibility across these registers.

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

Done at Frankfurt am Main, 5 October 2012.

[signed]

*The President of the ECB*

Mario DRAGHI

---

<sup>8</sup> The draft Personal Insolvency Bill 2012 is currently being debated in the committee stage in the Irish parliament.. The ECB understands that the Insolvency Service will be responsible under the Personal Insolvency Act 2012 for the establishment and maintenance of these insolvency registers.