



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 16 July 2021

on the Corporate Credit Register

(CON/2021/24)

### **Introduction and legal basis**

On 27 May 2021 the European Central Bank (ECB) received a request from the Belgian Minister for Finance for an opinion on a draft law (hereinafter the 'draft law') and an accompanying draft royal decree (hereinafter the 'draft royal decree') on the Corporate Credit Register (CCR) (hereinafter collectively referred to as the 'draft legislation').

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/EC<sup>1</sup>, as the draft legislation relates to the Nationale Bank van België/Banque Nationale de Belgique (NBB/BNB) 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 legislation**

1.1 The draft legislation amends and replaces the current legal framework, including the Law of 4 March 2012 on the Central Corporate Credit Register (CCCR)<sup>2</sup> and the Royal Decree of 15 June 2012 on the CCCR<sup>3</sup>, under which credit institutions established in Belgium must report certain data concerning credits granted to beneficiaries to the NBB/BNB. According to the report accompanying the draft royal decree, the main purpose of the draft legislation is to end the double reporting that exists currently for credit institutions under the existing legal framework in Belgium. At the moment, the NBB/BNB operates two different databases: one is used to collect credit data reported under the national legal framework and the other is used to collect statistical credit data under Regulation (EU) 2016/867 of the European Central Bank (ECB/2016/13)<sup>4</sup> (hereinafter the 'AnaCredit Regulation'), under which credit institutions are obliged to report certain credit data to the relevant national central bank (NCB)<sup>5</sup>. As noted in the report, the information reported to the two

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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> Wet betreffende de Centrale voor Kredieten aan Ondernemingen/ Loi relative à la Centrale des Crédits aux Entreprises.

<sup>3</sup> Koninklijk besluit betreffende de Centrale voor Kredieten aan Ondernemingen/ Arrêté royal relatif à la Centrale des Crédits aux Entreprises.

<sup>4</sup> Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13) (OJ L 144, 1.6.2016, p. 44).

<sup>5</sup> Article 3 of the AnaCredit Regulation.

databases overlaps. The draft legislation creates a framework whereby only one of the two databases will be retained, i.e. the one maintained for the purposes of the AnaCredit Regulation, obliging reporting agents to only report data once.

- 1.2 In addition, the draft legislation proposes to supplement the data to be collected under the AnaCredit Regulation with additional data in three ways. First, unlike the AnaCredit Regulation, which contains a reporting threshold of the debtor's commitment amount, equal to or larger than EUR 25 000, on any reporting reference date within the reference period<sup>6</sup>, the draft legislation does not contain any reporting threshold. Second, the draft legislation includes leasing companies within the definition of 'reporting agents' that are obliged to collect and report data under the draft legislation<sup>7</sup>, whereas the actual reporting population under the AnaCredit Regulation consists of credit institutions and resident foreign branches of credit institutions. Third, while the AnaCredit Regulation does not provide for the collection of information concerning natural persons, the draft legislation provides for the mandatory collection of data by reporting agents when the counterparty to credit for a professional purpose, excluding credit for private purpose like mortgage credit or consumption credit, is a natural person, whether acting within the framework of his or her professional activities or not<sup>8</sup>. These provisions are in line with the existing reporting requirements under the current national framework in Belgium.
- 1.3 The draft law authorises the NBB/BNB to exchange the collected information on credit granted to legal entities with the ECB, allowing the ECB and Eurosystem NCBs to use the data in compliance with the AnaCredit Regulation and with other institutions in Belgium such as the Financial Services and Markets Authority, the Belgian Data Protection Authority and the Economic Inspection<sup>9</sup>. For each institution the draft law precisely stipulates the purposes for which data may be shared with that specific institution. Each institution must take the necessary measures to ensure the confidentiality of such data and their exclusive use for the purposes provided for in the draft law. The ECB and the NCBs, in particular, may consult and use the communicated data in accordance with the AnaCredit Regulation, including for the establishment and maintenance of feedback loops by NCBs for their reporting agents, provided that the recorded data and legal protection of confidentiality are equivalent to those of the CCR and that they provide their data on a reciprocal basis<sup>10</sup>. Under the draft royal decree, the NBB/BNB is required to transmit all data recorded in the CCR to the ECB, with the exception of (1) data disclosed by leasing companies; (2) data relating to natural persons; (3) data relating to legal entities for off-balance-sheet commitment-type instruments; and (4) data relating to legal entities for which the amount owed by the debtor for 'credit and deposit' type instruments with the same reporting agent is less than EUR 25 000<sup>11</sup>. Thus, the NBB/BNB will transfer all data that is to be collected under the AnaCredit Regulation to the ECB and the NCBs, as also laid out in that Regulation<sup>12</sup>.
- 1.4 Under the draft legislation, reporting agents also have the possibility to access the CCR, either prior

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6 Article 5 of the AnaCredit Regulation.

7 Article 2, 3° b) of the draft law and Article 3, 2° and Article 4, 3° and 4° of the draft royal decree.

8 Article 2, 14° and 15° of the draft law and Article 4, 4° of the draft royal decree.

9 Article 11, §2 of the draft law.

10 Article 11, § 3 of the draft law.

11 Article 10 of the royal decree.

12 Recital 15 of the AnaCredit Regulation

to the conclusion of a credit or lease agreement either in the context of undertaking risk assessment on a potential counterparty or in the context of managing an agreement<sup>13</sup>.

- 1.5 The draft law provides that when a reporting agent does not comply with the obligation to collect and report data as determined in the draft legislation, the NBB/BNB can impose daily penalties on that reporting agent. The NBB/BNB is required, when deciding to impose daily penalties, to take into account the sanctions already imposed or to be imposed by the ECB in the context of infringement proceedings concerning the same facts, and must consult the ECB in that regard. Furthermore, in determining the amount of the daily penalty, particular account must be taken of the sanctions already imposed or to be imposed by the ECB in the context of infringement proceedings concerning the same facts<sup>14</sup>. The explanatory memorandum clarifies that the maximum amounts and the criteria for determining the amount of the daily penalty payment are aligned with the provisions of Council Regulation (EC) 2533/98<sup>15</sup> concerning the powers of the ECB in the field of sanctions, to which Article 18 of the AnaCredit Regulation refers. The maximum amount of the daily penalty per day of delay is in line as well with the same provisions.
- 1.6 The draft law authorises the NBB/BNB to ask reporting agents to reimburse the costs incurred by it in order to collect, record, manage, verify and disseminate the data recorded in the CCR<sup>16</sup>.

## 2. General observations

- 2.1 The ECB welcomes the draft legislation since it amends and replaces the existing national legal framework on reporting obligations related to information on credit granted to legal entities in order to obtain a comprehensive and efficient centralisation of granular credit data needed for national purposes and for the purposes of the AnaCredit Regulation. The draft legislation allows for financial institutions to better evaluate the risks of granting credit and enables supervisory authorities to evaluate the risks borne by the financial sector more easily. In addition, the draft legislation incorporates, to the extent possible, the reporting obligations that have direct effect by reason of the AnaCredit Regulation with additional obligations imposed by national law into one legal framework. Indeed, it is one of AnaCredit's key long-term objectives to harmonise reporting requirements and implementation practices. The ECB especially welcomes in this respect the efforts of the Belgian legislator to prevent double reporting by reporting agents in the future. It is worth noting that in the event that where the scope of the AnaCredit Regulation is extended to include the supplementary data described in paragraph 1.2 above, the draft law would need to be revisited.
- 2.2 The supplementary data to be reported under the draft legislation are in line with the AnaCredit Regulation. In this respect, the AnaCredit Regulation clarifies that the NCBs in the European System of Central Banks (ESCB) are allowed to extend the reporting of credit data beyond the scope outlined in the AnaCredit Regulation for their own statutory purposes, in line with relevant national law<sup>17</sup>. Further, the AnaCredit Regulation provides that the statistical reporting requirements it establishes

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<sup>13</sup> Article 11, § 1 of the draft law.

<sup>14</sup> Article 20, §1 and §2 of the draft law.

<sup>15</sup> Council Regulation (EC) 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

<sup>16</sup> Article 22 of the draft law.

<sup>17</sup> Recital 15 of the AnaCredit Regulation.

are without prejudice to any other current or future reporting requirements with regard to credit data in accordance with national law or other reporting frameworks<sup>18</sup>.

### 3. Specific observations

- 3.1 In respect of the possibility for the NBB/BNB to share the collected data with various institutions, to the extent that it wishes to transmit confidential statistical information collected by other NCBs to other institutions, the ECB wishes to highlight that the rules on the protection and use of confidential statistical information collected by the ESCB are laid out in Regulation (EC) No 2533/98<sup>19</sup>. In particular, Article 8(1) of Regulation (EC) No 2533/98 allows for the use of confidential statistical information by the ESCB “exclusively for the exercise of the tasks of the ESCB”, except in a number of defined circumstances. Moreover, paragraphs 4, 4a and 5 of Article 8 of the same regulation allow for the transmission of confidential statistical information within and outside the ESCB, subject to the fulfilment of a number of requirements and conditions. These latter provisions are particularly important when it comes to information collected by other NCBs in accordance with the AnaCredit Regulation to which the NBB/BNB may have access.
- 3.2 The ECB also wishes to draw the attention of the Minister for Finance to the sanctioning regime which applies in respect of a failure by reporting agents to comply with the ECB’s statistical reporting requirements, and which is also referred to in the AnaCredit Regulation<sup>20</sup>. In particular, the ECB has the power to impose sanctions on reporting agents which fail to comply with the reporting obligations set out in the regulations adopted by the ECB, and specifically where (a) no statistical information is received by the ECB or an NCB by the established deadline; or (b) the statistical information is incorrect, incomplete or in a form not complying with the requirement<sup>21</sup>. The ECB understands that the sanctioning provisions in case of infringements under the draft law operate without prejudice to this separate sanctioning regime of the ECB under EU law. While the ECB’s sanctioning regime under the AnaCredit Regulation is referenced in the draft law, the draft law could usefully clarify, for the avoidance of doubt, that the sanctioning regime under the draft law operates without prejudice to the ECB’s sanctioning regime under EU law. At the same time, Article 18 of the AnaCredit Regulation clarifies that the ECB’s power to impose sanctions for non-compliance with the reporting obligations of the AnaCredit Regulation is independent of an NCB’s right to sanction, in line with its national law, non-compliance with statistical or other reporting obligations that apply to reporting agents under the respective national legal framework in line with Article 8(3) of the AnaCredit Regulation. Therefore, the ECB’s power to impose sanctions is independent of the right of the NBB/BNB to impose sanctions with regard to the information that the draft law requires to be reported that goes beyond the scope of the AnaCredit Regulation.
- 3.3 In addition, Article 2(1) of Regulation (EC) No 2157/1999 of the European Central Bank (ECB/1999/4)<sup>22</sup> provides that no more than one infringement procedure shall be initiated against the

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<sup>18</sup> Article 8(3) of the AnaCredit Regulation.

<sup>19</sup> Articles 8 to 8c of Regulation (EC) 2533/98.

<sup>20</sup> Article 18 of the AnaCredit Regulation.

<sup>21</sup> Article 7 of Regulation (EC) 2533/98.

<sup>22</sup> Regulation (EC) No 2157/1999 of 23 September 1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4) (OJ L 264, 12.10.1999, p. 21).

same undertaking based on the same facts. Further, no decision to initiate an infringement procedure may be taken by the ECB or the NCB until they have informed or consulted with one another<sup>23</sup>. This means that where the same facts indicate a failure to comply with a statistical reporting obligation under an ECB regulation and a failure to comply with a reporting obligation that an NCB is competent to enforce, there is no specific priority with respect to the action that must be taken. This is a matter that must be resolved by consultation between the ECB and the NCB to ensure not more than one infringement procedure is initiated against the same reporting agent for the same non-compliance. The ECB welcomes that this consultation procedure between the NBB/BNB and the ECB is explicitly foreseen in the draft law, both for the purpose of imposing a periodic penalty payment and for the purpose of determining the amount of the penalty payment<sup>24</sup>, in order to ensure compliance with the principle of *non bis in idem*, whereby no legal action may be instituted twice in respect of the same cause of action.

- 3.4 With regard to the supplementary data on natural persons, as noted in the recitals of the AnaCredit Regulation<sup>25</sup>, should the scope of reporting be extended to include personal data in subsequent stages, the protection of the rights of natural persons with regard to the collection and processing of their personal data should be ensured. It is important to ensure that the appropriate measures are taken for the protection of personal data collected under the new national framework in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>26</sup>. The ECB therefore welcomes that the draft law provides this protection of the processing of personal data collected concerning natural persons<sup>27</sup>.
- 3.5 As previously noted by the ECB<sup>28</sup>, the ECB has no concerns regarding the financing of the NBB/BNB's task of registering the data that reporting agents collect and report to the NBB/BNB in the CCR, as well as maintaining the CCR, as the NBB/BNB can reimburse the costs made via the reporting agents<sup>29</sup>.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 16 July 2021.

[signed]

*The President of the ECB*

Christine LAGARDE

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23 Article 2(1) of Regulation (EC) No 2157/1999 (ECB/1999/4).

24 Article 20 of the draft law.

25 Recital 12 of the AnaCredit Regulation.

26 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

27 Article 12 of the draft law.

28 See paragraph 3.1 of Opinion CON/2011/20. All ECB opinions are available on EUR-Lex.

29 Article 22 of the draft law.