Introduction and legal basis

On 28 November 2023 the European Central Bank (ECB) received a request from the Marshal of the Polish Parliament for an opinion on a draft law amending the Law on crowdfunding for business ventures and assistance to borrowers as it relates to mortgage holidays (hereinafter the ‘first draft law’).

On 1 December 2023 the ECB received a second request from the Marshal of the Polish Parliament for an opinion on a second draft law amending the Law on crowdfunding for business ventures and assistance to borrowers, again as it relates to mortgage holidays (hereinafter the ‘second draft law’ and, together with the first draft law, the ‘draft laws’).

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 sixth indent of Article 2(1) of Council Decision 98/415/EC, as the draft laws relate to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets, and the ECB’s tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty. 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 laws

1.1 The Law on crowdfunding for business ventures and assistance to borrowers (hereinafter the ‘Law’) introduced in Polish law the concept of ‘mortgage holidays’ to alleviate the burden on borrowers with outstanding mortgage loans following several increases in interest rates by Narodowy Bank Polski. The Law gives consumers with outstanding mortgage loans in Polish zloty (PLN) the right to suspend mortgage payments resulting from one loan agreement, concluded before 1 July 2022, for eight months in 2022 and 2023, comprising four months in 2022 and one month during each quarter in 2023. The only eligibility criteria specified in the Law are that the loan must be denominated in PLN and satisfy the borrower’s housing needs. To exercise this right, borrowers must simply submit a request notice to their lender, which has no discretion to decline to grant the requested suspension.

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1 The ECB understands that on 5 December 2023 the second draft law was withdrawn from the Parliament by the group of parliamentarians who submitted it. However, the Marshal of the Polish Parliament has not withdrawn the consultation request of the ECB, so this opinion will cover the second draft law.


3 Ustawa z dnia 7 lipca 2022 r. o finansowaniu społecznościowym dla przedsiębiorstw gospodarczych i pomocy kredytobiorcom (consolidated text: Dziennik Ustaw z 2023 r., poz. 414).
The loan period is extended by the repayment suspension period. During the repayment suspension period, borrowers are not required to pay principal and interest instalments, although they are required to pay insurance charges linked to their respective contracts. The borrowers’ right to suspend the payment of loan instalments expires on 31 December 2023.

1.2 The draft laws amend the Law by extending the borrower’s right to benefit from a mortgage holiday also in 2024. Under the draft laws borrowers may suspend loan repayments for one month in each quarter in the period from 1 January to 31 December 2024.

1.3 The first draft law also lays down eligibility criteria to limit the scope of borrowers entitled to request a mortgage holiday, under which this right is available to any borrower the total amount of whose loan did not exceed PLN 400,000 at the time the loan was granted. According to the explanatory memorandum accompanying the first draft law, this amount was assessed, based on data from the Polish Financial Supervision Authority, to correspond to the average amount of a mortgage loan granted for the purchase of a flat, subject to suspension under the Law.

1.4 In addition, under the first draft law, if the principal amount of the mortgage loan was higher than PLN 400,000 at the time the loan was granted, but not higher than PLN 800,000, suspension of the loan repayment will also be possible for a borrower for whom the ratio between expenses related to servicing the monthly instalment of principal and interest on the loan and average monthly household income exceeds 50%. As clarified in the explanatory memorandum accompanying the first draft law, this solution reflects one of the conditions enabling the borrower to benefit from the assistance of the Borrower Support Fund, which is regulated under the Law on support to home loan borrowers in a difficult financial situation⁴, with the difference that the borrower’s income taken into account will be their average income over the period of three months preceding the submission of the application for a mortgage holiday, and not their income for the last month. In this respect, the first draft law introduces the requirement for the borrower, when applying for a mortgage holiday, to submit an appropriate declaration of household income and the number of members of the household contributing to the fulfilment of this condition.

1.5 The second draft law also lays down eligibility criteria to limit the scope of borrowers entitled to request a mortgage holiday, under which this right is available to all borrowers for whom the ratio between expenses related to servicing the monthly principal and interest instalment of the loan and average monthly household income in the last three months preceding the submission of the application exceeds 40%.

2. General observations

2.1 In March 2023 the ECB issued an own-initiative opinion on the Law⁵. This opinion focused on the impact of the Law on the banking system and financial stability in the euro area, and did not address its impact on Poland’s financial stability, banking system or economy.

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⁴ Ustawa z dnia 9 października 2015 r. o wsparciu kredytobiorców, którzy zaciągnęli kredit mieszkaniowy i znajdują się w trudnej sytuacji finansowej (consolidated text: Dziennik Ustaw z 2022 r., poz. 2452).
⁵ See Opinion CON/2023/8. All ECB opinions are published on EUR-Lex.
2.2 However, since the present opinion is issued in response to a request from the Marshal of the Polish Parliament for an opinion on the draft laws, it is not similarly restricted in scope.

3. Borrower Support Fund

3.1 In November 2017 the ECB issued an opinion on a draft law amending the Law on support to home loan borrowers in a difficult financial situation and amending the law on corporate income tax.

3.2 The Law on support to home loan borrowers in a difficult financial situation specifies the rules for the granting of, and the conditions of use of, repayable financial aid to natural persons in financial difficulties with a home loan (hereinafter ‘financial aid’). Financial aid is provided through a State-owned bank, Bank Gospodarstwa Krajowego, from a special Borrower Support Fund funded by credit institutions. The Law on support to home loan borrowers in a difficult financial situation covers any home loans that are secured by a mortgage arrangement, regardless of the currency in which they were granted.

3.3 Under the Law on support to home loan borrowers in a difficult financial situation, financial aid may be granted if: (1) when applying for financial aid at least one of the borrowers is an unemployed person; or (2) the proportion of the borrower’s expenses allocated to paying monthly instalments of principal and interest on a home loan exceeds 50% of the borrower’s household income; or (3) the monthly household income minus any monthly costs related to the home loan is lower than PLN 1552 for a single-person household or PLN 1200 per person for a multi-person household (these amounts are subject to adjustment every three years).

3.4 The duration of financial aid is 36 months, and the maximum amount of financial aid is equal to PLN 2000 per month, up to a maximum of PLN 72000 over three years. Persons receiving financial aid must start to repay the funds received, at the latest, in the month following the month that marks two years since the last tranche of financial aid was paid out. The funds are to be repaid in 144 equal and interest-free monthly instalments. However, if the borrower repays 100 instalments without any delay the remaining 44 instalments will be cancelled.

3.5 The ECB therefore understands that a special financial support mechanism for borrowers experiencing temporary problems in repaying their mortgage loans has existed since 2015, as these borrowers can benefit from financial aid from the Borrower Support Fund. Additionally, the funding of this support mechanism was increased in 2022 in the Law that introduced mortgage holidays.

3.6 The ECB suggests that before introducing new solutions that may raise financial stability concerns, it may be advisable to first make use of the instruments that are already available. Therefore, due to the existence of mechanisms under the Law on support to home loan borrowers in a difficult financial situation to support borrowers experiencing temporary difficulties in settling their liabilities arising from housing loans, the ECB encourages the Polish authorities to carry out a thorough analysis to

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7 Ustawa z dnia 9 października 2015 r. o wsparciu kredytobiorców, którzy zaciągnęli kredyt mieszkaniowy i znajdują się w trudnej sytuacji finansowej (consolidated text: Dz. U. of 2022, item 2452).
8 See Article 3(1), point (3), of the Law on support to home loan borrowers in a difficult financial situation in connection with Article 8(1) of the Law on social assistance (Ustawa z dnia 12 marca 2004 r. o pomocy społecznej, consolidated text: Dz. U. of 2023, item 901).
consider the active use of the Borrower Support Fund. This may be more advisable than extending mortgage holidays, which limits de facto the usage of the Borrowers Support Fund and imposes additional costs on credit institutions, which have already funded the Borrower Support Fund.

4. Eligibility criteria

4.1 Granting concessions, such as payment holidays, to borrowers facing financial difficulties can support financial stability under certain circumstances by, for example, allowing such borrowers to recover from temporary liquidity shortages, while enabling lenders to maintain client relationships and avoid selling collateral at depressed prices.

4.2 In this respect both draft laws lay down specific eligibility criteria to limit the scope of borrowers entitled to request a mortgage holiday. These criteria relate to the amount of the mortgage loan taken out (under the first draft law) or to the ratio between the borrower’s loan repayment burden and their average income in the last three months preceding the application for the mortgage holiday (this ratio is 50% for certain borrowers under the first draft law and 40% under the second draft law).

4.3 However, the first draft law does not lay down any specific eligibility criteria for mortgage loans whose value does not exceed PLN 400,000 in order to limit the scope of borrowers entitled to request a mortgage holiday, other than that the loan must be denominated in PLN and satisfy the borrower’s housing needs. As previously noted by the ECB, the application of certain targeted eligibility criteria, such as linking the right to restructure a loan to the borrower’s actual income position, may be more appropriate. Additionally, governments are equipped with better tools to support the economy other than the mandatory restructuring of loans within the banking system, such as directly supporting distressed borrowers (e.g. through the Borrower Support Fund) or compensating banks for losses caused by a moratorium in the public interest.

5. Impact of the draft laws on the banking system and on financial stability

5.1 Widespread payment holidays give rise to financial stability concerns. On the one hand, where borrowers face debt sustainability problems, payment holidays may delay the recognition and resolution of non-performing debt, which increases its economic cost. On the other hand, if borrowers who are able to make payments benefit from a payment holiday, the negative financial impact will unduly reduce bank profitability and increase uncertainty. The impact of payment holidays on banks’ profitability is further exacerbated by a scheme under which the repayment period is extended in accordance with the number of deferred instalments. Under these circumstances, the value of the loan decreases due to the non-payment of instalments on it during the repayment suspension period.

5.2 Reduced bank profitability means in turn that banks have reduced capacity to retain earnings and thus to increase the capital needed to absorb losses and back future loan origination. This, together

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9 See also the opinion of Narodowy Bank Polski regarding the legislative procedure of the first draft law, published on the Polish Parliament’s website at www.sejm.gov.pl.
10 See paragraph 3.2 of Opinion CON/2023/8.
with increased uncertainty, ultimately limits prospective borrowers’ access to credit, including mortgage loans, and could therefore lead to adverse feedback loops between the banking sector and the real economy. In addition, large losses resulting from payment holidays may threaten banks’ solvency\(^\text{12}\), particularly if the loan portfolio subject to payment holidays constitutes a large proportion of their assets or if their profitability is already low.

5.3 In such circumstances, uncertainties arising from the impact of the draft laws on credit institutions may potentially decrease their franchise value. Consequently credit institutions may face increased difficulty in attracting investors in respect of the potential raising of equity or issuance of bonds to meet capital requirements and minimum requirements for own funds and eligible liabilities. Had banks known in advance that such a change to the legislation affecting their contractual agreements with borrowers would be made, they could (and most likely would) have protected themselves by charging higher mortgage interest rates or, in the last resort, not lending at all. This means that the draft laws not only allow mortgage borrowers a payment holiday, but that borrowers may in fact receive a financial transfer from their lenders\(^\text{13}\).

5.4 Additionally, the ECB has pointed out in several opinions that the ability of financial institutions to effectively manage credit risk depends on a reliable, predictable and stable legal framework that adequately balances the interests of both the creditor and the debtor\(^\text{14}\). Widespread payment holidays that disregard the actual financial position of the relevant debtors may contribute to increasing moral hazard among debtors, who may assume that such holidays will be extended and adjust their behaviour accordingly.

5.5 The Polish authorities are therefore invited to consider more targeted eligibility criteria for the application of future mortgage holidays to limit uncertainty and risks to financial stability, particularly under the first draft law. In addition, as indicated above, the ECB suggests that, before introducing new solutions, it may be advisable to first make use of the instruments that are already available, such as the Borrowers Support Fund.

5.6 Several systemically important euro area banks hold significant Polish mortgage loan exposures. Therefore, extended mortgage holidays as provided for in the draft laws may have negative consequences for financial stability in the euro area, as well as in Poland\(^\text{15}\).

This opinion will be published on EUR-Lex.

\(^{12}\) See paragraph 3.3 of Opinion CON/2023/8.
\(^{13}\) See paragraph 3.3 of Opinion CON/2023/8.
\(^{14}\) See paragraph 2.4 of Opinion CON/2010/8, paragraph 2.4 of Opinion CON/2012/40, paragraphs 2.1.1 and 2.2.3 of Opinion CON/2018/13, and paragraphs 2.3 and 3.1.4 of Opinion CON/2019/9.
\(^{15}\) See paragraph 3.11 of Opinion CON/2023/8.
Done at Frankfurt am Main, 19 December 2023.

[signed]

The President of the ECB
Christine LAGARDE