

LS/16/1114

LEGAL COMMITTEE

ECB-RESTRICTED

- THE CHAIR -

To the members of the Legal Committee  
(Extended composition)

12 October 2016

Contact person:

### Czech Answers

Dear Colleagues,

#### **Questionnaire on assigning powers to the NCB to assess competition and issue directions to lenders with regard to interest rates (2016/101/LEGCO) – First WP**

The ECB has been consulted on a draft Irish law which proposes to confer new powers on the Central Bank of Ireland (CBI) to assess competition in the market for mortgage loans and to issue directions to lenders with regard to variable interest rates<sup>1</sup>. The aim of the draft law is to provide for measures to address market failures in the market for principal dwelling house mortgage loans<sup>2</sup>.

The draft law confers new tasks on the CBI, which will be obliged, *inter alia*: to carry out assessments on the state of competition in the market for principal dwelling house mortgage loans on at least a quarterly basis; to form a conclusion whether the state of competition is such that a 'market failure' exists<sup>2</sup>; to issue directions to lenders not to charge a variable interest rate which exceeds certain thresholds; and to enforce such directions on lenders that fail to comply, by applying to the High Court for an Enforcement Order.

As these constitute new tasks conferred on a national central bank, the ECB would need to assess in its opinion the conferral of these tasks against the established criteria for assessing the compliance of new tasks with the prohibition of monetary financing under Article 123 TFEU.

---

<sup>1</sup> The *Central Bank (Variable Rate Mortgages) Bill* was first presented to the Oireachtas (Irish House of Parliament) on 16 May 2016. The ECB was consulted on the Bill on 6 October 2016.

<sup>2</sup> The draft law defines a 'market failure' as a situation in which market conditions are such that a lender is charging a variable interest rate which is 'higher than the Central Bank considers can be reasonably and objectively justified'.

#### **Address**

European Central Bank  
Sonnemannstrasse 20  
60314 Frankfurt am Main  
Germany

#### **Postal address**

European Central Bank  
60640 Frankfurt am Main  
Germany

Tel.: +49 69 1344 0  
Fax: +49 69 1344 6000  
E-mail: [info@ecb.europa.eu](mailto:info@ecb.europa.eu)  
Website: [www.ecb.europa.eu](http://www.ecb.europa.eu)

In this respect the ECB Legal Services would like to clarify the extent to which similar powers have been conferred on the NCB in your Member States and whether it is customary for ESCB central banks to assess competition in the financial services market, or to issue directions to lenders with regard to the interest rate charged to their customers. For this purpose the following questions have been prepared for your consideration:

1. Has your central bank been assigned with tasks relating to the **protection of competition**? Has it been assigned similar powers to regularly assess the state of competition? Please describe briefly the scope of those tasks, also referring to the legal basis.

**A: No.**

2. Has your central bank been assigned with powers to **regulate** the **interest rates charged** by banks in respect of loans and/or the **savings remuneration offered** by banks in respect of deposits; and/or the application of **usury laws** in your respective jurisdictions? Please describe briefly the scope of those powers, also referring to the legal basis.

**A: There is no regulation in respect of savings remuneration offered by banks.**

**The law on consumer and mortgage credits regulates maximum level of penalty interests and penalty fees be paid in case of debtor's failure. This obligation is supervised by Ceska narodni banka.**

3. Has another public authority, such as the **national competition or consumer protection authority**, been conferred with such tasks to assess competition, or to regulate interest rates on loans or deposit rates offered by financial institutions? How do these authorities interact with the central bank and/or the prudential supervisor in carrying out such tasks? Please describe briefly the scope of those powers, also referring to the legal basis.

**A: No. National competition authority (The Office for the Protection of Competition) has general power to supervise free market competition. (official web site: "The Office for the Protection of Competition is the central authority of state administration responsible for creating conditions that favour and protect competition, supervision over public procurement and consultation and monitoring in relation to the provision of state aid.")**

**The Office for the Protection of Competition acts independently on Ceska narodni banka (which is also the prudential supervisor).**

**Usury is governed by both Civil Code and Criminal Code and it is for a civil or criminal court of justice to decide whether level of interest rate in each particular case fulfils criteria to be considered as usury.**

We kindly invite you to provide us with your replies **by the close of business on Tuesday, 18 October**.

Yours sincerely,

*[signed]*

Christian Kroppenstedt

on behalf of Chiara Zilioli

Cc:  - Secretary to LEGCO