EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK
of 8 April 2024
on borrower support and mortgage holidays
(CON/2024/10)

Introduction and legal basis

On 18 March 2024 the European Central Bank (ECB) received a request from the Marshal of the Polish Parliament for an opinion on a draft law amending (1) the Law on support to home loan borrowers in a difficult situation as it relates to the Borrower Support Fund[1] and (2) the Law on crowdfunding for business ventures and assistance to borrowers as it relates to mortgage holidays[2] (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 sixth indent of Article 2(1) of Council Decision 98/415/EC[3], as the draft law relates 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 law

1.1 *Law on support to home loan borrowers in a difficult situation*

1.1.1 The Law on support to home loan borrowers in a difficult 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 (BGK), from a special Borrower Support Fund funded by credit institutions. The Law on support to home loan borrowers in a difficult situation covers any home loans that are secured by a mortgage arrangement, regardless of the currency in which they were granted. The funding of the Borrower Support Fund was increased in 2022 by the Law on crowdfunding for business ventures and assistance to borrowers (hereinafter the 'Law on mortgage holidays').

1 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*).

2 Ustawa z dnia 7 lipca 2022 r. o finansowaniu społecznościowym dla przedsięwzięć gospodarczych i pomocy kredytobiorcom (consolidated text: *Dziennik Ustaw z 2023 r., poz. 414*).

3 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).

1.1.2 Under the Law on support to home loan borrowers in a difficult 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 Polish zloty (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)[4].

1.1.3 The duration of financial aid is 36 months, and the maximum amount of financial aid is equal to PLN 2 000 per month, up to a maximum of PLN 72 000 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.

1.1.4 The draft law proposes to liberalise the granting of, and the conditions of use of, the financial aid. In particular, with respect to the eligibility criteria, the draft law proposes to: (1) lower the proportion of the borrower's expenditure allocated to paying monthly instalments of principal and interest on a home loan by reference to the borrower's household income from 50 % to 40 %; and (2) increase the amount resulting from deducting from the monthly household income any monthly costs related to the home loan from PLN 1552 to PLN 1940 for a single-person household and from PLN 1200 to PLN 1500 per person for a multi-person household.

1.1.5 In addition, the draft law proposes to: (1) extend the duration of financial aid from 36 to 40 months; (2) increase the maximum monthly amount of financial aid from PLN 2 000 to PLN 3 000 and consequently increase the maximum over the entire duration of the financial aid from PLN 72 000 to PLN 120 000; and (3) increase the number of monthly repayments from 144 to 200 with the consequential amendment that if the borrower repays 134 instalments (as opposed to 100 under the current version of the Law on support to home loan borrowers in a difficult situation) without delay the remaining 66 (as opposed to 44) instalments will be cancelled.

1.2 *Law on mortgage holidays*

1.2.1 The Law on mortgage holidays introduced the concept of mortgage holidays into Polish law to alleviate the burden on borrowers with outstanding mortgage loans following several increases in interest rates by Narodowy Bank Polski. The Law on mortgage holidays gave consumers with outstanding mortgage loans in 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 on mortgage holidays were that the loan must be denominated in PLN and satisfy the borrower's housing needs.

4 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).

1.2.2 The draft law proposes to extend the borrower's right to benefit from a mortgage holiday also in 2024. Under the draft law borrowers may suspend loan repayments for two months in the period from 1 May to 30 June 2024 and for one month in each quarter in the period from 1 July to 31 December 2024.

1.2.3 The 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 does not exceed PLN 1 200 000. According to the explanatory memorandum, this amount, which is three times the average value of a home loan in 2023, will ensure that borrowers who do not need them will not use mortgage holidays and, on the other hand, take into account real estate prices in big cities.

1.2.4 In addition, under the draft law, suspension of the loan repayment will only be possible for a borrower (1) for whom the arithmetic average ratio between expenses related to servicing the monthly instalment of principal and interest on the loan and monthly household income exceeds 30 % in the last three months before the submission of the application for a mortgage holiday; or (2) who at the time of submission of such application has at least three dependent children.

1.3 *Suspension of repayment of loans granted under the Law on social forms of housing development*

1.3.1 The draft law proposes to extend the right of social housing investors to request suspension of repayment of the preferential loan granted by BGK in accordance with the provisions of the Law on social forms of housing development[5]. In particular, investors may suspend loan repayments for two months in each of the periods from 1 May to 30 June 2024 and from 1 July to 31 December 2024. At the same time, the draft law proposes that the suspension of loan repayments should be linked to the restriction on rates that may be charged by investors to the tenants living in housing constructed with the benefit of the preferential loan. In particular, such charges may not exceed those in force on 31 December 2023 during the period of loan repayment suspension.

2. General observation

In March 2023 the ECB adopted an own-initiative opinion[6] on the Law on mortgage holidays and in December 2023 it adopted an opinion[7] on two draft laws amending the Law on mortgage holidays.

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5 Ustawa z dnia 26 października 1995 r. o społecznych formach rozwoju mieszkalnictwa (consolidated text: Dziennik Ustaw of 2023, item 790).

6 See Opinion CON/2023/8. All ECB opinions are published on EUR-Lex.

7 See Opinion CON/2023/46.

3. Borrower Support Fund

3.1 The ECB previously encouraged the Polish authorities to carry out a thorough analysis to consider the active use of the Borrower Support Fund before introducing solutions relating to mortgage holidays[8].

3.2 In that respect the ECB welcomes the draft law's objective of enabling the wider use of the Borrower Support Fund. However, the ECB cautions against an extensive widening of the eligibility criteria for access to the Borrower Support Fund. In particular, the scale of the proposed relaxation in the eligibility criteria would lead to a situation in which new loans granted in accordance with prudential recommendations on creditworthiness assessment[9] would immediately qualify for support from the Borrower Support Fund. This might in turn discourage banks from granting such loans, leading to limited access to credit for borrowers with a lower income. With that in mind, the ECB encourages the Polish authorities to reassess the effect the proposed eligibility criteria may have on access to credit. At the same time, the ECB questions whether further extension of mortgage holidays will, in practice, reduce incentives to use the Fund[10].

4. Eligibility criteria for mortgage holidays

4.1 As mentioned by the ECB on a number of occasions, 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[11].

4.2 The ECB welcomes that the draft law proposes to introduce specific eligibility criteria. At the same time, as previously noted by the ECB, 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 or compensating banks for losses caused by a moratorium in the public interest[12].

5. Impact of the draft law 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

8 See paragraph 3.6 of Opinion CON/2023/46.

9 "Recommendation S", FSC, published on the website of the Polish Financial Supervisory authority available at www.knf.gov.pl.

10 See also opinion of Narodowy Bank Polski on an earlier version of the draft law published on the website of the governmental legislation office available at https://rcl.gov.pl/.

11 See paragraph 3.2 of Opinion CON/2023/8 and paragraph 4.1 of Opinion CON/2023/46.

12 See paragraph 4.3 of Opinion CON/2023/46.

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[13].

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 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[14], particularly if the loan portfolio subject to payment holidays constitutes a large proportion of their assets or if their profitability is already low[15].

5.3 In such circumstances, uncertainties arising from the impact of the draft law 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 law not only allows mortgage borrowers a payment holiday, but that borrowers may in fact receive a financial transfer from their lenders[16].

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[17].

5.5 Considering that the payment holidays, albeit in a different form, are being applied for the third year in a row, the ECB highlights that continuous and widespread payment holidays, especially but not limited to those 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[18].

5.6 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[19].

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13 See paragraph 5.1 of Opinion CON/2023/46.

14 See paragraph 3.3 of Opinion CON/2023/8.

15 See paragraph 5.2 of Opinion CON/2023/46.

16 See paragraph 3.3 of Opinion CON/2023/8 and paragraph 5.3 of Opinion CON/2023/46.

17 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.

18 See paragraph 5.4 of Opinion CON/2023/46.

19 See paragraph 5.5 of Opinion CON/2023/46.

5.7 Several systemically important euro area banks hold significant Polish mortgage loan exposures. Therefore, extended mortgage holidays as provided for in the draft law may have negative consequences for financial stability in the euro area, as well as in Poland[20].

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 8 April 2024.

[signed]

The President of the ECB

Christine LAGARDE

20 See paragraph 3.12 of Opinion CON/2023/8 and paragraph 5.6 of Opinion CON/2023/46.