EDPS informal comments on the draft regulation of the European Central Bank on the collection of granular credit and credit risk data

The above captioned draft regulation (the "Proposal") provides for the reporting of granular credit and credit risk data by national credit institutions, through national central banks (NCB). Such data comprise detailed information about instruments giving rise to credit risk of credit institutions or other financial corporations providing credit in relation to their counterparts.

The collection of such data aims to ensure the establishment of: (a) national granular credit and credit risk datasets operated by all Eurosystem NCBs in accordance with common minimum standards; and (b) a common granular analytical credit dataset (AnaCredit) shared between the Eurosystem members, comprising input data for all Member States whose currency is the euro.

The Proposal should also allow NCBs to use the common granular analytical credit dataset to establish feedback loops addressed to reporting agents or to enrich existing central credit registers's (CCRs) return flows. This feedback loop will provide a broader basis for creditworthiness assessments, in particular with regard to cross-border debtors, and for the harmonisation of definitions and data attributes.

We have assessed the content and the data protection implications of the Proposal and would like to formulate the following considerations:

Processing of personal data

- The Proposal will set up a reporting system which will handle data concerning the financial situation and the creditworthiness of legal and natural persons. Under this system, certain data collected from NCBs will be reported to the ECB. We note that Article 13 of the Proposal provides that NCBs may decide to collect data either on an anonymised or on a non-anonymised basis from the reporting agents. Nonetheless, it also mandates that any data that would allow the identification of natural persons shall be anonymised prior to it being reported to the ECB. We underline that the initial collection of non-anonymised data from natural persons by NCBs entails the processing of personal data within the meaning of Article 2(a) of Directive 95/46/EC, which must be carried out in accordance with the provisions of Directive 95/46/EC and the national laws implementing it. Amongst others, this requires that there is an appropriate legal basis for the collection and processing of the personal data providing for adequate safeguards for the protection of the personal data being processed.

- We also note that anonymous data may be considered as such, only in the event that the anonymisation process is irreversible. To the contrary, if data processed may be de-anonymised, they shall be treated as personal data with application of appropriate safeguards.

- Also, we welcome that Article 13(2) recalls the application of Directive 95/46/EC and Regulation 45/2001 for respectively the NCBs involved in the data processing and the

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ECB. We suggest that the provision also mentions the applicability of national data protection rules implementing Directive 95/45 to CCRs and other reporting agents active at national level.

Purpose limitation and information obligations

- Recital 11 provides that NCBs should be allowed to extend the reporting of granular credit and credit risk data beyond the scope outlined in the Proposal, for their own statutory purposes. By the same principle, Article 19 of the Proposal provides that NCBs have the right to establish or enrich feedback loops to reporting agents, using a sub-set of the granular credit and credit risk data collected under the Proposal, in line with good practices and to the extent allowed by the applicable legal confidentiality regime.

- It also provides that reporting agents may use the data for improving the quality of credit information available to them. NCBs shall define the scope of data to be provided, the procedure for providing access and any restrictions on the use of such data, taking into account the national legal framework.

- We note, in relation to the above provision, that the collection of credit risk data for the purpose of providing feedback loops to reporting agents appears to be a separate purpose from that of collecting aggregate credit data for statistical purposes, as it might as well have commercial applications. In view of Article 6(1)(b) of Directive 95/46/EC, we recommend to justify in the Proposal the compatibility of such purpose with the original one, and to clearly indicate that the institutions processing personal data must comply with the principle of purpose limitation and define *ex ante* the purpose for which the data are collected and processed.

- Also, we recommend that the Proposal clearly states that actual and prospective debtors who are natural persons shall be informed that their personal data are processed for the purpose of assessing their creditworthiness or financial situation. Pursuant to Articles 10 and 11 of Directive 95/46/EC, they shall also be informed on the entity/ies in charge of processing their data and, in accordance with Article 15 of Directive 95/46/EC, be given the opportunity to comment on, and possibly rectify, any conclusion reached as to their creditworthiness. In addition, the Proposal should provide for a maximum retention period applicable to the personal data collected, which should be deleted once such term has expired. As to the drafting of Article 19, we suggest that, in parallel with the application of the confidentiality regime, the provision explicitly refers to the applicability of Directive 95/46/EC and its national implementing rules.

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