



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 21 January 2016

on the deposit guarantee scheme

(CON/2016/3)

Introduction and legal basis

On 8 January 2016 the European Central Bank (ECB) received a request from the Minister of Finance of the Hellenic Republic for an opinion on a draft law on the Deposit and Investment Guarantee Scheme (hereinafter the 'draft law'), which transposes into Greek law Directive 2014/49/EU of the European Parliament and of the Council¹.

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 sixth indents of Article 2(1) of Council Decision 98/415/EC², as it relates to the Bank of Greece (BoG) and to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 and overview of the draft law

- 1.1 The main purpose of the draft law is to recast and update the national legal framework governing the establishment and operation of the Hellenic Deposit and Investment Guarantee Fund (hereinafter 'HDIGF'), by bringing it in line with Directive 2014/49/EU. Once the draft law enters into force, the current national legal framework on the establishment and operation of the HDIGF³ will be automatically repealed, and several of the core provisions will be incorporated into the draft law.
- 1.2 Under the draft law, the HDIGF is to continue to operate as a private law legal entity, owned by the participating credit institutions and supervised by the Ministry of Finance of the Hellenic Republic⁴ while its tasks will remain the same⁵. Additionally, the HDIGF is to continue to comprise three separate schemes: (a) a deposit cover scheme, for the protection of depositors; (b) an investment cover scheme, for the protection of investors; and (c) a resolution scheme, for the financing of

¹ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

² 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).

³ The reference is to Law 3746/2009 (Official Government Gazette, Part A, 27), as amended, inter alia by laws 4021/2011 (Official Government Gazette, Part A, 218) and Law 4051/2012 (Official Government Gazette, Part A, 40).

⁴ See Article 4(1) of the draft law.

⁵ See Article 4(2) of the draft law. This requirement: (a) provides compensation to depositors in the event that their bank is unable to repay their deposits; (b) provides compensation to investors/customers of credit institutions in the event that their bank is unable to fulfil its obligations to them, and (c) finances bank resolution measures.

resolution measures, the assets of which are distinct⁶. With regard to its governance structure, the HDIGF is to continue being governed by a seven-member Board, appointed by the Minister of Finance of the Hellenic Republic, comprising a Chairperson, to be selected from amongst the BoG's Deputy Governors, and six other members, nominated by the Ministry of Finance (one member), the BoG (three members), and the Hellenic Bank Association (two members)⁷.

- 1.3 It follows from Article 25 of the draft law that the assets of the HDGIF's deposit cover scheme comprise (i) the regular, extraordinary and initial contributions payable by participating credit institutions; (ii) the HDGIF's registered capital; and (iii) revenues from other sources, such as the management of its cash reserves, the recovery or liquidation of its claims and donations. It also follows from Article 29 of the draft law that, should the funds available to the HDGIF's deposit cover scheme not suffice to cover depositor compensation claims, the HDGIF Board may decide (a) to borrow the necessary funds, whether from the participating credit institutions or from other sources, with or without a State guarantee and subject to terms and conditions stipulated by way of a decision of the HDGIF Board, or (b) otherwise borrow the necessary funds, so as to put the HDGIF in a position where it can ensure the short-term financing of its obligations.
- 1.4 Following the example of the Directive 2014/49/EU, the adoption of the draft law will mark a departure from the current situation as regards deposit guarantee schemes, particularly in relation to: (a) the temporary protection of certain deposits in excess of the EUR 100 000 harmonised level of coverage provided for in Directive 2014/49/EU⁸; (b) the reduction of the period necessary for the repayment of deposits from twenty to seven working days⁹; (c) the recognition of an actionable right to compensation, to be exercised directly by depositors against the HDGIF¹⁰; and (d) the introduction of a legal duty for credit institutions to provide depositors (and investors) with all relevant information with regard to the protection extended to their deposits and/or investments by the HDGIF¹¹.

2. General observations

- 2.1 The ECB welcomes the draft law, which codifies the legal framework governing the establishment and operation of the HDIGF.
- 2.2 At the same time, the ECB stresses that it does not opine on whether or not the draft law effectively discharges the obligations of the Hellenic Republic to implement Directive 2014/49/EU. Rather, the ECB focuses on those provisions that may affect the BoG's role as a member of the European System of Central Banks (ESCB) as well as on the likely implications of specific provisions of the draft law on the ECB's supervision of significant institutions and the preservation of financial stability in the Hellenic Republic.

⁶ See Article 4(3) of the draft law.

⁷ See Article 48(1) of the draft law. On the BoG's role in the governance of the HDGIF, see paragraph 4.2 of Opinion CON/2008/51. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

⁸ See Article 6(2) of Directive 2014/49/EU and Article 9(2) of the draft law.

⁹ See Article 8(1) of Directive 2014/49/EU and Article 11 of the draft law.

¹⁰ See Article 9(1) of Directive 2014/49/EU and Article 21 of the draft law.

¹¹ See Article 16 of Directive 2014/49/EU and Article 46 of the draft law.

3. Specific observations

3.1 *No provision of liquidity from the BoG to the HDIGF*

The ECB understands that there is nothing in the draft law that would expressly permit the BoG to provide liquidity to the HDIGF. Articles 25 to 29 of the draft law, which set out the sources for the financing of the tasks of the deposit cover scheme of the HDIGF, do not explicitly refer to the BoG's involvement in the provision of liquidity to the HDIGF. As the ECB has repeatedly stated in the past, any national legislation that provides for a deposit guarantee scheme to be financed by an ESCB national central bank (NCB) would only be compatible with the monetary financing prohibition under Article 123 of the Treaty where certain restrictive conditions are met, i.e. such financing is short-term, it addresses urgent situations, systemic stability issues are at stake and decisions are made at the NCB's discretion¹². The ECB expects these conditions to be fulfilled with regard to any potential involvement by the BoG in the short-term financing arrangements of the HDIGF, by way of the provision of loans by the BoG, as per Articles 29 (1) or (2) of the draft law.

3.2 *Role of the BoG in the operation of the HDIGF*

Under Article 27(4) of the draft law, which corresponds to Article 13(2) of Directive 2014/49/EU, the Board makes a recommendation on the type of methodology to use in calculating regular contributions to the HDIGF, after which a BoG decision will be taken, then notified to the Ministry of Finance of the Hellenic Republic. The ECB is satisfied that the BoG's responsibilities under the aforementioned provision of the draft law do not materially differ from the BoG's responsibilities under Articles 4(4)(a) and (b)(ii) of Law 3746/2009 on the establishment and operation of the current HDIGF¹³. It follows that the draft law does not, in the ECB's view, confer genuinely new tasks on BoG in connection with the operation of the HDIGF.

3.3 *Temporary protection of deposits in excess of the Union-wide harmonised level of coverage*

As noted in paragraph 1.4 of this opinion, Article 9(2) of the draft law allows certain deposits in excess of EUR 100 000 to be protected temporarily. In particular, the aforementioned provision states that certain deposits falling within the broad categories identified in Article 6(2) of Directive 2014/49/EU are to be protected up to an additional margin of EUR 300 000 for up to six months after the relevant amount has been credited to the relevant account, subject to the submission of an ex post application to the HDIGF by the account holder(s). The ECB understands that Article 9(2) of the draft law is the exercise of a national discretion under Article 6 of the Directive 2014/49/EU. The ECB also notes that, according to the accompanying Explanatory Memorandum, the exercise of this discretion is not backed by additional contributions from the participating credit institutions. The ECB stresses the importance of ensuring that the financing capacity of the HDIGF is, at all times, proportionate to its liabilities, and expects that the

¹² See the ECB's 2014 Convergence Report, p. 30, available on the ECB's website at www.ecb.europa.eu. See also paragraph 3.2 of Opinion CON/2015/40; paragraph 4.1 of Opinion CON/2015/17; paragraph 2.2 of Opinion CON/2014/86; and paragraph 3.1.3 of Opinion CON/2011/76.

¹³ Under the currently applicable legal regime, the BoG is responsible for allocating credit institutions to one of the several statutory bands, on the basis of which annual contributions are calculated, taking into account all relevant prudential supervisory criteria.

determination of the aforementioned additional margin of EUR 300 000 is the product of a prior impact assessment, to ensure that the HDIGF will be in a position to meet depositor and/or investor claims in the event of the insolvency of a credit institution holding protected deposits in excess of the Union-wide harmonised level of coverage.

3.4 *Suspension of extraordinary contributions jeopardising the liquidity or solvency of a credit institution*

In order to safeguard the soundness of the capital base of credit institutions, the ECB welcomes Article 28(4) of the draft law, where it is stated that the BoG may suspend extraordinary contributions to the deposit cover scheme if these contributions would jeopardise the liquidity or solvency of a credit institution. Where significant institutions are concerned, this competence is, however, to be exercised by the ECB.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 21 January 2016.

[signed]

The President of the ECB

Mario DRAGHI