



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 9 January 2018

on markets in financial instruments

(CON/2018/2)

### Introduction and legal basis

On 3 November 2017 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft law on markets in financial instruments (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 third indent of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft law relates to the Bank of Greece. 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 The main purpose of the draft law is to implement Directive 2014/65/EU of the European Parliament and of the Council<sup>2</sup> in Greek law. To this end, the draft law also takes into account Commission Delegated Directive (EU) 2017/593<sup>3</sup>.
- 1.2 The draft law designates the Bank of Greece as one of the competent authorities responsible for carrying out certain duties provided for in Directive 2014/65/EU with respect to credit institutions that provide investment and ancillary services or perform investment activities. The draft law designates the Hellenic Capital Markets Commission as the competent authority responsible for carrying out all other duties provided for under Directive 2014/65/EU with respect to both investment firms and credit institutions that provide investment and ancillary services or perform investment activities.
- 1.3 Under the draft law, the Bank of Greece is responsible for supervising the enforcement of the requirements listed in Article 67 of the draft law, which include: (a) governance arrangements ensuring effectiveness and prudent management; (b) obligations relating to membership of an authorised investor compensation scheme; (c) organisational requirements ensuring adequate policies and procedures; (d) obligations relating to the appointment of tied agents; (e) obligations

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<sup>1</sup> 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).

<sup>2</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

<sup>3</sup> Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500).

relating to the provision of investment services in Member States other than the home Member State; (f) obligations relating to the provision of investment services through the establishment of a branch in a Member State other than the home Member State; and (g) obligations relating to the provision of investment services by credit institutions established in third countries.

- 1.4 As the competent authority, powers to grant and withdraw authorisations have been conferred on the Bank of Greece. These powers are in addition to those granted under Law No 4261/2014 on access to the activity of credit institutions and prudential supervision of credit institutions and investment firms<sup>4</sup>, which implements Directive EU/2013/36 of the European Parliament and of the Council<sup>5</sup>, and the Bank of Greece's supervisory powers. They include investigatory powers and powers to impose remedies and administrative sanctions that are necessary for the Bank of Greece to fulfil its competencies under the draft law, particularly in cases where there are indications of infringement. The Bank of Greece's investigatory powers include the power to access documents, carry out on-site inspections, conduct investigations and suspend the marketing or sale of structured deposits by credit institutions when certain conditions are met. The Bank of Greece is also required to cooperate and exchange information with the Hellenic Capital Markets Commission, the European Securities and Markets Authority and with the competent authorities of third countries.
- 1.5 Furthermore, the draft law confers on the Bank of Greece intervention powers with respect to structured deposits issued by credit institutions. Pursuant to Article 42 of Regulation (EU) No 600/2014 of the European Parliament and of the Council<sup>6</sup> the draft law designates the Bank of Greece as the competent authority responsible for prohibiting or restricting the marketing, distribution or sale of structured deposits by credit institutions when certain conditions are met, and notably where risks relating to investor protection, the orderly functioning of financial markets or the stability of the financial system have been identified<sup>7</sup>. Additionally, the draft law confers on the Bank of Greece the power to suspend the marketing or sale of structured deposits by credit institutions where (a) the credit institution has not developed or applied an effective product approval process or otherwise failed to comply with the organisational requirements set out in Article 16(3) of the draft law<sup>8</sup>; or (b) the conditions set out in Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met<sup>9</sup>.
- 1.6 The draft law also designates the Bank of Greece as the authority responsible for granting certificates to persons providing investment services or performing investment activities on behalf of credit institutions or insurance companies to confirm that they possess the required knowledge and competence. The Bank of Greece is accordingly assigned a number of tasks in relation to the

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4 Νόμος υπ' αριθμ. 4261 «Πρόσβαση στη δραστηριότητα των πιστωτικών ιδρυμάτων και προληπτική εποπτεία πιστωτικών ιδρυμάτων και επιχειρήσεων επενδύσεων (ενσωμάτωση της Οδηγίας 2013/36/ΕΕ), κατάργηση του ν. 3601/2007 και άλλες διατάξεις», ΦΕΚ Α 107/05.05.2014.

5 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

6 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

7 See Article 67(1) of the draft law.

8 See Article 67(3)(j) of the draft law.

9 See Article 67(3)(k) of the draft law.

certification procedure which include assessing the eligibility of candidates and determining the relevant eligibility criteria, setting out the examination syllabus, conducting the examinations and renewing or withdrawing certification.

- 1.7 The provisions of the draft law concerning the Bank of Greece enter into force on 3 January 2018.

## 2. General observations

- 2.1 This opinion does not address whether the draft law effectively implements Directive 2014/65/EU in Greek law. The ECB will only assess those provisions of the draft law that may impact on the role and tasks of the Bank of Greece as a central bank, national supervisory authority and member of the Eurosystem and the European System of Central Banks (ESCB).
- 2.2 The draft law amends the Bank of Greece's existing tasks in respect of markets in financial instruments. The Bank of Greece is already the competent authority responsible for carrying out certain duties with regard to credit institutions that provide investment and ancillary services or perform investment activities pursuant to Law No 3606/2007 on markets for financial instruments<sup>10</sup> (hereinafter 'Law No 3606/2007'), which transposed Directive 2004/39/EC of the European Parliament and of the Council<sup>11</sup> into the Greek legal order. These duties are of a similar nature to those conferred upon the Bank of Greece by the draft law and include: (a) supervision of the enforcement of organisational requirements and requirements relating to the prevention and management of conflicts of interest, the membership of an authorised investor compensation scheme, the trading process and the finalisation of transactions in a multilateral trading facility and the appointment of tied agents<sup>12</sup>; (b) the duty to cooperate with the Hellenic Capital Markets Commission, as the competent authority for the supervision of investment firms<sup>13</sup>; and (c) the power to impose administrative sanctions for the violation of provisions falling within its supervisory competence<sup>14</sup>. Thus, the conferral upon the Bank of Greece under the draft law of the power of authorisation and supervisory powers does not amount to a conferral of genuinely new tasks in the area of markets in financial instruments.

The ECB notes that the Bank of Greece's existing tasks under Law No 3606/2007 also include the certification of the financial knowledge of persons providing investment services or performing investment activities on behalf of credit institutions<sup>15</sup> and that these tasks are specified in greater detail in the draft law. The draft law provides that the Bank of Greece is responsible for certifying the financial knowledge of persons providing investment services or performing investment activities on behalf of credit institutions or insurance companies and remains responsible for the renewal of a certificate, irrespective of the kind of company where the person seeking renewal of that certificate was last employed. The draft law also details the composition of the Examination

<sup>10</sup> Νόμος υπ' αριθμ. 3606 «Αγορές χρηματοπιστωτικών μέσων και άλλες διατάξεις», ΦΕΚ Α 195/17.08.2007.

<sup>11</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

<sup>12</sup> See Article 59 of Law No 3606/2007.

<sup>13</sup> See Article 60 of Law No 3606/2007.

<sup>14</sup> See Article 61 of Law No 3606/2007.

<sup>15</sup> See Article 14 of Law No 3606/2007.

Committee responsible for conducting the relevant examinations and outlines the duties of its members. In addition, the draft law provides that the following are to be determined by a joint decision of the Bank of Greece and the Hellenic Capital Markets Commission: (a) requirements for participating in the examinations for those persons providing investment services on behalf of credit institutions or insurance companies; and (b) the conditions governing the renewal or withdrawal of certifications and the conditions for outsourcing the conduct of examinations to third parties. Thus, the draft law does not confer on the Bank of Greece genuinely new tasks in this field. The draft law does not specify the resources to be used by the Bank of Greece in performing its financial education tasks, as amended by the draft law, nor does it provide an estimate of the direct costs likely to be incurred in the process. At the same time, the draft law provides that a joint decision of the Bank of Greece and the Hellenic Capital Markets Commission will determine the requirements for participating in the certification examinations and set the fees of the three members of the Examination Committee, which will be borne by the budgets of the Bank of Greece and the Hellenic Capital Markets Commission. In this respect, the ECB notes that the existing financial education tasks of the Bank of Greece under Law No 3606/2007 are remunerated by means of a fee of EUR 100 per participant in the certification examinations. The payment of this fee forms part of the requirements for participating in the certification examinations and was established pursuant to a joint decision of the Bank of Greece and the Hellenic Capital Markets Commission adopted by virtue of Law No 3606/2007 in 2009<sup>16</sup> and replaced in 2015<sup>17</sup>. The ECB understands that the remuneration of the financial education tasks of the Bank of Greece will continue to be governed by the existing joint decision of the Bank of Greece and the Hellenic Capital Markets Commission until a new joint decision is issued under the draft law.

- 2.3 As noted in paragraph 1.5 the draft law confers new tasks upon the Bank of Greece which are derived from its new product intervention powers relating to the marketing, distribution or sale of structured deposits by credit institutions. Where a new task is conferred on a national central bank (NCB) of the ESCB it must be assessed against the prohibition of monetary financing under Article 123 of the Treaty. For the purposes of that prohibition, Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93<sup>18</sup> defines ‘other type of credit facility’ as, inter alia, ‘any financing of the public sector’s obligations vis-à-vis third parties’.
- 2.4 Ensuring that Member States implement a sound budgetary policy is one of the key objectives of the monetary financing prohibition, which may not be circumvented<sup>19</sup>. In view of this, the task of financing measures, which are normally the responsibility of the Member States and funded from their budgetary sources rather than by the NCBs, must not be entrusted to NCBs. To decide what constitutes financing of the public sector’s obligations vis-à-vis third parties, which can be

<sup>16</sup> Κοινή απόφαση της Εκτελεστικής Επιτροπής της Τράπεζας της Ελλάδος και της Επιτροπής Κεφαλαιαγοράς Πιστοποίηση επαγγελματικής επάρκειας υπαλλήλων και στελεχών πιστωτικών ιδρυμάτων αναφορικά με την παροχή επενδυτικών υπηρεσιών (ΦΕΚ Β/1168/16.06.2009).

<sup>17</sup> Κοινή απόφαση της Τράπεζας της Ελλάδος και της Επιτροπής Κεφαλαιαγοράς υπ’ αριθ. 4/505/3.4.2009 «Πιστοποίηση καταλληλότητας προσώπων απασχολουμένων σε πιστωτικά ιδρύματα που παρέχουν υπηρεσίες σύμφωνα με το άρθρο 14 του ν.3606/2007» (ΦΕΚ Β/2452/13.11.2015).

<sup>18</sup> Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

<sup>19</sup> Article 123 of the Treaty also serves the objective of maintaining price stability and reinforces central bank independence.

translated as the provision of central bank financing outside the scope of central bank tasks, it is necessary to carry out on a case-by-case basis an assessment of whether the task to be undertaken by an NCB is a central bank task or a government task, i.e. a task within the responsibility of the Member States. In other words, adequate safeguards must be in place to ensure that circumventions of the objective of the monetary financing prohibition of maintaining a sound budgetary policy of Member States do not take place.

- 2.5 As part of its discretion in the exercise of its duty, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), to ensure that NCBs honour the obligations laid down by the Treaty, the Governing Council has endorsed safeguards of that kind in the form of criteria for determining what may be seen as falling within the scope of a public sector's obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, what constitutes a government task as follows:

First, central bank tasks are in particular those tasks that are related to the tasks that have been conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB. These tasks are mainly defined in Article 127(2), (5) and (6) and Article 128(1) of the Treaty, as well as Article 22 and Article 25.1 of the Statute of the ESCB.

Second, as Article 14.4 of the Statute of the ESCB allows NCBs to perform 'other functions', new tasks, i.e. tasks that are not related to tasks that have been conferred upon the ECB and the NCBs, are not precluded per se. However, new tasks that are undertaken by an NCB and which are atypical of NCB tasks or which are clearly discharged on behalf of and in the exclusive interest of the government or of other public sector entities should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly on behalf of and in the exclusive interest of the government or other public sector entities is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

- (a) whether the performance of the new task creates conflicts of interest with existing central bank tasks which are not adequately addressed and does not necessarily complement those existing central bank tasks. If a conflict of interest arises between existing and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should not be interpreted broadly, so as to lead to the creation of an indefinite chain of ancillary tasks. Such complementarity should also be examined in relation to the financing of those tasks;
- (b) whether without new financial resources the performance of the new task is disproportionate to the NCB's financial or organisational capacity and may have a negative impact on the capacity to perform properly the existing central bank tasks;
- (c) whether the performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations;
- (d) whether the performance of the new task harbours substantial financial risks;

- (e) whether the performance of the new task exposes the members of the NCB decision-making bodies to political risks which are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute of the ESCB.

### 3. Conferral of new tasks on the Bank of Greece

- 3.1 On the basis of the criteria set out in paragraph 2.5, paragraphs 3.2 to 3.10 below assess whether the Bank of Greece's new tasks deriving from its new product intervention powers are in line with the monetary financing prohibition.

- 3.2 *New tasks related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB*

Tasks deriving from the exercise of product intervention powers are not among the central banking tasks listed in Article 127(2) or (5) of the Treaty or otherwise conferred upon the NCBs by the Statute of the ESCB. In addition, the conferral on the Bank of Greece of product intervention tasks involving assessments relating to investor protection, the orderly functioning of financial markets and the stability of the financial system goes beyond the scope of its existing tasks both in its capacity as the national supervisory authority and macroprudential authority and as the competent authority in respect of credit institutions that provide investment and ancillary services pursuant to Law No 3606/2007. The objectives of the Bank of Greece's prudential supervisory tasks are to enhance the stability and effectiveness of the credit system and of the financial sector in general, and in this context the Bank of Greece carries out macroprudential tasks with a view to strengthening the resilience of the financial system and decreasing the build-up of systemic risks<sup>20</sup>. Furthermore, Law No 3606/2007 currently implements a supervisory model involving a functional division of responsibilities between the Bank of Greece and the Hellenic Capital Markets Commission with regard to supervision of the financial sector. This model is upheld by the draft law, which confers on the Bank of Greece certain duties with regard to credit institutions that provide investment and ancillary services or carry out investment activities. The remaining tasks are assigned to the Hellenic Capital Markets Commission and include, in particular, tasks concerning investor protection and the transparency and integrity of the market. The ECB has positively assessed this supervisory model in previous opinions<sup>21</sup>, taking into consideration that it acknowledges the distinct character of the goals of financial stability and investor protection, while recognising the complementarity of these goals and the need for the authorities to which they are entrusted to pursue them consistently while acting in close cooperation with one another. In conclusion, although the new tasks conferred on the Bank of Greece relate to credit institutions, which are entities supervised by the Bank of Greece, they do not form part of either the Bank of Greece's existing prudential supervisory tasks or macroprudential tasks. These new tasks include prohibiting or restricting the marketing, distribution or sale of structured deposits by credit institutions where the conditions set out in Article 42 of Regulation (EU) No 600/2014 are met and

<sup>20</sup> See Article 55A of the Statute of the Bank of Greece.

<sup>21</sup> See paragraph 2.2 of Opinion CON/2007/17 and paragraph 4 of Opinion CON/2004/21. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

suspending the marketing or sale of structured deposits by credit institutions where the credit institution has failed to comply with organisational requirements or where the conditions set out in Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met. The assessment of credit institutions' compliance with organisational requirements and the imposition of sanctions in case of infringement of these requirements is a task related to the Bank of Greece's prudential supervisory tasks. However, the assessment of whether the conditions set out in Articles 40, 41 and 42 of Regulation (EU) No 600/2014 are met requires expertise relating to investor protection, the orderly functioning of financial markets and the stability of the financial system, which do not fall within the exclusive competence of the Bank of Greece. Consequently, a careful assessment of the conferral of these tasks on the Bank of Greece is required in order to determine whether they constitute a government task and whether the related funding gives rise to monetary financing concerns.

### 3.3 *Tasks which are atypical of NCB tasks*

Directive 2014/65/EU and Regulation (EU) No 600/2014 grant Member States wide discretion in determining the competent authority for the performance of the product intervention tasks which involve an assessment of whether the conditions set out in Articles 40, 41 and 42 of Regulation (EU) No 600/2014 are met<sup>22</sup>. The ECB considers that the new product intervention tasks involving assessments relating to investor protection, the orderly functioning of financial markets and the stability of the financial system conferred on the Bank of Greece correspond more closely to investor protection tasks than to the prudential supervisory and macroprudential tasks that are currently carried out by the Bank of Greece. It is therefore necessary to analyse whether investor protection tasks are typical tasks that are also undertaken by other NCBs of the ESCB. In this respect, the ECB notes that although the majority of NCBs of the ESCB have thus far not been assigned any tasks under Directive 2004/39/EC, including investor protection tasks, there are five Member States<sup>23</sup> in which the NCBs perform all tasks under Directive 2004/39/EC, including investor protection tasks<sup>24</sup>. Consequently, the new tasks conferred on the Bank of Greece are not atypical for an NCB of the ESCB.

### 3.4 *Impact of the tasks on the independence of the Bank of Greece*

The impact of the new tasks on the institutional, financial and personal independence of the Bank of Greece must also be taken into account.

### 3.5 *Extent to which the performance of the new task creates conflicts of interest with existing central bank tasks*

No apparent conflicts of interest with other existing central bank tasks arise from the Bank of Greece's product intervention tasks.

### 3.6 *Extent to which the performance of the new task places a disproportionate burden on the Bank of Greece's financial or organisational capacity*

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22 See Articles 4(1)(26) and 67 of Directive EU/2014/65 and Article 2(1)(18) of Regulation (EU) No 600/2014.

23 The Czech Republic, Hungary, Ireland, Lithuania and Slovakia.

24 See 'List of competent authorities to carry out the duties provided for by the Directive 2004/39/EC on Markets in Financial Instruments (MiFID I) as required by Article 48(1) of MiFID I and delegation of part of those duties under Article 48(2) of MiFID I' (last update 3 February 2016), published by the European Securities and Markets Authority, available at [www.esma.europa.eu](http://www.esma.europa.eu).

The principle of financial independence requires that Member States do not put their NCBs in a position where they have insufficient financial resources to carry out both their ESCB-related tasks and their national tasks, from an operational and financial perspective. Furthermore, when allocating specific new tasks to NCBs, each NCB concerned should have additional financial and human resources at its disposal to ensure that the tasks can be carried out without impacting on the NCB's operational or financial capacity (including sufficient human resources) to perform its ESCB tasks. In order to ensure that the Bank of Greece's capacity to perform its ESCB-related tasks is not impacted, the Bank of Greece must, therefore, be in a position to avail itself of the necessary resources, including personnel, for assessing whether the conditions set out in Articles 40, 41 and 42 of Regulation (EU) No 600/2014 are met under the draft law<sup>25</sup>. The draft law does not specify the resources to be used by the Bank of Greece in performing its new tasks, nor does it provide an estimate of the direct costs likely to be incurred in the process. Thus, it cannot be excluded that the new tasks will impact on the Bank of Greece's regular budget.

3.7 *Extent to which performance of the new task fits into the Bank of Greece's institutional set-up, in the light of the principles of central bank independence and accountability*

Although the draft law deviates from the regime currently in force, under which investor protection tasks and tasks relating to the transparency and integrity of the market under Directive 2004/39/EC are conducted by the Hellenic Capital Markets Commission, given the complementarity of the new product intervention tasks with the Bank of Greece's existing prudential supervisory and macroprudential tasks, they appear to broadly fit into the Bank of Greece's institutional set-up.

3.8 *Extent to which the performance of tasks harbours substantial financial risks*

The draft law does not directly address the Bank of Greece's potential liability in the event of any legal action, application or other legal proceedings for damages in relation to the exercise of, or failure to exercise, its product intervention powers under the draft law. In the absence of any provision in the draft law excluding the Bank of Greece's liability in performing the new product intervention tasks under the draft law, the Bank of Greece could potentially be held liable for damages in accordance with the Greek liability rules applicable to the Bank of Greece.

3.9 *Extent to which the performance of the new tasks exposes members of the Bank of Greece's decision-making bodies to disproportionate political risks and has an impact on their personal independence*

The performance of the new product intervention tasks does not appear to expose the Bank of Greece's decision-making bodies to any disproportionate political risk or to have an impact on their personal independence. The new task appears to be complementary to the Bank of Greece's existing macroprudential and prudential supervisory tasks, which aim at enhancing the stability and effectiveness of the credit system and of the financial sector in general, strengthen the resilience of the financial system and decrease the build-up of systemic risks.

3.10 *Conclusion regarding the compatibility of the draft law with the prohibition on monetary financing*

The new tasks relating to the assessment of whether the conditions set out in Articles 40, 41 and 42 of Regulation (EU) No 600/2014 conferred on the Bank of Greece could in principle be regarded

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<sup>25</sup> See paragraph 4.7 of Opinion CON/2016/34.



as central banking tasks based on the understanding that they complement the prudential supervisory and macroprudential tasks currently performed by Bank of Greece and are not atypical for NCBs of the ESCB. However, it is noted that the assessment of whether the conditions set out in Articles 40, 41 and 42 of Regulation (EU) No 600/2014 are met requires expertise in investor protection, the orderly functioning of financial markets and the stability of the financial system, none of which fall within the exclusive competence of the Bank of Greece. Furthermore, the assignment of these tasks to the Bank of Greece deviates from the regime currently in force, under which investor protection tasks and tasks relating to the transparency and integrity of the market under Directive 2004/39/EC are conducted by the Hellenic Capital Markets Commission. Additionally, the conferral of new tasks is not accompanied by an estimate of the direct costs that the Bank of Greece is likely to incur in the performance of these tasks, thereby creating uncertainty with regard to the additional financial burden imposed on the Bank of Greece in undertaking these tasks. The ECB therefore recommends that the consulting authority take these considerations into account in its decision on whether to confer the new product intervention tasks on the Bank of Greece. In particular the consulting authority should consider whether the new product intervention tasks could rather be allocated to the Hellenic Capital Markets Commission or whether it would be appropriate to introduce a consultation procedure between the two competent authorities.

#### **4. The Bank of Greece's existing tasks relating to the certification of financial knowledge**

- 4.1 Regarding the Bank of Greece's tasks relating to the certification of the financial knowledge of persons providing investment services or performing investment activities on behalf of credit institutions or insurance companies, the ECB understands that under the draft law the certification of financial knowledge is a mandatory requirement for a large number of individuals employed by credit institutions providing investment services or performing investment activities.
- 4.2 The ECB was not consulted on Law No 3606/2007, pursuant to which these tasks were originally conferred upon the Bank of Greece. As previously noted by the ECB, the supervision of financial education is not among the central banking tasks listed in the Treaties<sup>26</sup>. These tasks could be regarded as complementary to the prudential supervisory and macroprudential tasks currently performed by the Bank of Greece, in the light of its contribution to the objective of ensuring that individuals employed by credit institutions providing investment services or performing investment activities have adequate professional qualifications. Furthermore, they do not appear to be atypical for NCBs of the ESCB<sup>27</sup>. However, ensuring the sound provision of specialised financial education forms part of the educational policies of the State. In this respect, these tasks would be administered at least in part on behalf of and in the interest of the government which requires taking into account the prohibition of monetary financing. Moreover, the draft law does not provide an estimate of the additional financial burden that is expected to be imposed on the Bank of Greece in undertaking these tasks or specify the resources to be used by the Bank of Greece in performing its new tasks, so as to ensure that these tasks can be carried out without impacting on

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<sup>26</sup> See paragraph 3.4 of Opinion CON/2017/43.

<sup>27</sup> See paragraph 3.2 of Opinion CON/2017/43.

the Bank of Greece's operational or financial capacity (including sufficient human resources) to perform its ESCB tasks<sup>28</sup>. The ECB therefore recommends that the consulting authority take these considerations into account when reviewing the Bank of Greece's existing tasks relating to the certification of financial knowledge by means of the draft law, having due regard to the fact that the Bank of Greece should be able to avail itself of sufficient resources for the performance of these tasks, including, in this context, being adequately remunerated for such tasks.

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

Done at Frankfurt am Main, 9 January 2018.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>28</sup> See paragraphs 3.3.2 and 3.4 of Opinion CON/2017/43.