



OPINION OF THE EUROPEAN CENTRAL BANK

of 23 April 2010

on private insurance supervision, the establishment of a private life insurance guarantee fund and other provisions
(CON/2010/33)

Introduction and legal basis

On 1 March 2010 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft law on private insurance supervision, the establishment of a private life insurance guarantee fund and other provisions (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 and sixth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law relates to the Bank of Greece and 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 of the draft law

- 1.1 The draft law abolishes the Insurance Supervision Commission for Private Insurance (HPISC), established as an entity supervised by the Ministry of Finance², and transfers its competences³ to the Bank of Greece, thus placing the insurance sector under the supervision of the Bank of Greece. Following the adoption of the draft law, the Bank of Greece will supervise credit and financial institutions and insurance companies, and the Hellenic Capital Market Commission (HCMC) will supervise investment firms.
- 1.2 The draft law also establishes the Private Life Insurance Guarantee Fund (PLIGF) as a legal entity governed by private law and subject to the supervision and control of the Minister for Finance. The PLIGF will preserve and transfer all or part of the life insurance portfolios of insurance undertakings in liquidation to other insurance undertakings and, should this not be feasible, the PLIGF will terminate the insurance policies and pay compensation for the value of the said policies

¹ OJ L 189, 3.7.1998, p. 42.

² Under Law No 3229/2004 on the supervision of private insurance, supervision and control of games of chance, the application of international accounting standards and other provisions, FEK A 38/10.2.2004.

³ Article 1 of the draft law.

and outstanding claims and payable benefits⁴. Moreover, the PLIGF will provide cover for insurance payments deriving from any life insurance policies entered into and operations carried out in Greece or other Member States or European Economic Area countries through a branch or through the free (cross-border) provision of services⁵. Finally, from the date of declaring bankrupt or revoking the authorisation of an insurance undertaking, the PLIGF will be automatically subrogated to such insurance undertaking in respect of all the rights and obligations deriving from such life insurance policies⁶.

- 1.3 Article 14 of the draft law establishes a Systemic Stability Council (SSC) at the Ministry of Finance to monitor the systemic stability of the economy⁷. More specifically, the SSC will: (a) monitor the relationships and dynamics between financial systems, with an emphasis on capital markets, the banking and insurance systems, liquidity, public debt and State guarantees, as well as on prudential action in extreme situations, instability and crises; (b) monitor and coordinate the Ministry of Finance's financial policy on issues arising in the context of the operation of the European supervisory institutions; and (c) monitor and ensure the exchange of information between the Ministry of Finance and the financial sector's supervisory authorities for the coordination of the Ministry's financial policy. The SSC's members will comprise the Minister and the Deputy Minister for Finance, the Governor and one Deputy Governor of the Bank of Greece, the HCMC's Chair and two persons of recognised standing with special knowledge of the financial sector, to be designated by the Minister for Finance. The Minister for Finance will chair the SSC.
- 1.4 Finally, the draft law streamlines the legal framework governing credit cooperatives operating as credit institutions, while taking into account their special features⁸.

2. General observations

Article 127(5) of the Treaty provides that the European System of Central Banks (ESCB) contributes to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. In this context, the ECB has stressed the importance of the national central banks' (NCBs) close involvement in prudential supervision⁹, which may support their contribution to the macro-prudential oversight of the financial sector. The financial crisis demonstrates the need to strengthen supervision and regulation of the financial system as a whole. With respect to the insurance sector in particular, experience has shown that insurance companies are important for systemic financial stability because of their size, their interconnectedness with the financial sector and the economic function

⁴ Article 5(1) of the draft law.

⁵ Article 5(2) of the draft law.

⁶ Article 5(3) of the draft law.

⁷ See also Article 14 in Chapter C of the explanatory memorandum to the draft law.

⁸ See Article 16 of the draft law. According to the explanatory memorandum to the draft law, the amendments are intended to enable such cooperatives to raise increased amounts of capital and to finance their members.

⁹ See 'The role of central banks in prudential supervision', ECB, 22.3.2001, available on the ECB's website at www.ecb.europa.eu.

of insurance. In view of the systemic relevance of the insurance sector for financial stability, insurance is part of the macro-prudential oversight to be exercised by the proposed European Systemic Risk Board (ESRB). Against this background, the ECB welcomes the Bank of Greece's future supervisory role for the insurance sector, as the new tasks will enhance its contribution to safeguarding financial stability and preventing or mitigating systemic risks, also in the context of ESCB and ECB support to the ESRB which will be responsible for macroprudential supervision of the EU financial system as a whole.

3. Transfer of insurance sector supervisory competences to the Bank of Greece and related arrangements

3.1 The ECB notes that the proposed transfer of insurance sector supervisory competences is in line with Article 55A of the Statute of the Bank of Greece which provides, *inter alia*, that categories of enterprises and organisations other than those currently provided for therein may also be brought under the Bank of Greece's prudential supervision.

3.2 Safeguards for central bank independence and compliance with the monetary financing prohibition

The principle of central bank independence requires Member States to ensure that NCBs have sufficient financial resources to perform ESCB or Eurosystem-related tasks as well as their own national tasks¹⁰. In this respect, the new functions to be performed by the Bank of Greece should be conducted in a manner that is fully compatible with the Bank of Greece institutional and financial independence and consequently should not impede the proper performance of its ESCB-related tasks. Also, Article 5A of the Statute of the Bank of Greece guarantees the independence of the Bank and of the members of its decision-making bodies in respect of all tasks carried out by them, i.e. both ESCB-related and other tasks, which would include the supervision of insurance undertakings. To ensure that the proposed reform guarantees the Bank of Greece's institutional and financial independence and compliance with the monetary financing prohibition and that the solution is balanced, the ECB comments as follows.

3.2.1 Transfer of the HPISC's competences to the Bank of Greece

Under Article 1(1) of the draft law, all the HPISC's competences, which are listed non-exhaustively in Article 3(1) of Law 3229/2004, are transferred to the Bank of Greece, with the exceptions explicitly referred to in Article 1(1) of the draft law. To ensure legal certainty in relation to the transfer of competences to the Bank of Greece, the ECB recommends that Article 1(1) of the draft law should state that, in addition to the transfer of the HPISC's competences to the Bank of Greece specified in the draft law, all other concurrent competences of other authorities relating to the supervision of the insurance sector under other national legislation are transferred. This would enable the Bank of Greece to carry out its new tasks without interference.

¹⁰ See ECB Convergence Report May 2008, p. 20.

3.2.2 *Devolution of the HPISC's assets to the Greek State*

In order for the Bank of Greece to be able to perform its new supervisory tasks without being adversely affected in the performance of all its existing tasks, sufficient resources should be available to it. The draft law provides that the capital created through the contributions made by the insurance undertakings, as well as the HPISC's remaining property in terms of assets and liabilities, will devolve to the State¹¹. The ECB therefore understands that, while the function of the insurance sector supervision previously entrusted to the HPISC will be transferred to the Bank of Greece, assets that belonged to the HPISC will not be transferred. In this respect, it should be ensured that the Bank of Greece will not bear any financial costs or liability related to any HPISC supervisory activities undertaken prior to the effective date of transfer of responsibilities to the Bank of Greece.

3.2.3 *Pending legal proceedings*

Any provisions under which an NCB becomes the legal successor to any liabilities of a distinct supervisory authority raise issues of compliance with the monetary financing prohibition provided for in Article 123 of the Treaty¹². The draft law provides in this respect that pending legal proceedings relating to disputes or matters involving the abolished HPISC will be continued by the Bank of Greece without interruption. Any financial consequences resulting from judicial decisions will ultimately be borne by the Greek State, which may, where appropriate, intervene and assume the legal proceedings¹³. The ECB understands that the draft law does not provide for any compensation for legal proceedings or disputes which may occur after the transfer of responsibilities to the Bank of Greece but originate in events occurring prior to this transfer. Moreover, the ECB understands that any judgment rendered by the Greek courts granting compensation to a holder of an insurance policy will imply that the compensation will be borne by Bank of Greece, which will only have subsequent recourse to the Greek State for reimbursement. Accordingly, the Bank of Greece would acquire a claim against the Greek State. This arrangement would be incompatible with Article 123 of the Treaty. The ECB therefore recommends specifying in the draft law that the Greek State will meet in advance any financial obligations incurred by the Bank of Greece as a result of it being a legal successor to a supervisory authority and that the State will not have any recourse to the Bank of Greece in relation to its liability in this respect¹⁴.

In addition, as regards the principle of central bank independence, as previously mentioned by the ECB¹⁵, in order to ensure an NCB's financial independence, 'Member States may not put their NCBs in a position where they have insufficient ... resources to carry out their ESCB or Eurosystem-related tasks'. In this vein, the proposed taking on of legal proceedings should be preceded by an assessment of the direct or indirect effect this may have on the Bank of Greece's

11 Article 1(6) of the draft law.

12 See paragraph 4.2(d) of Opinion CON/2008/16 and paragraphs 8 to 12 of Opinion CON/2005/24. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

13 Article 1(8) of the draft law.

14 See paragraph 4.2(d) of Opinion CON/2008/16.

15 See e.g. ECB Convergence Report May 2008, p. 20.

ability (both operationally in terms of manpower, and financially in terms of financial resources) to fulfil its mandate.

3.2.4 *Staff*

Special scientific staff employed by the HPISC under private law contracts of indefinite duration¹⁶ may request their integration into the permanent staff of the Bank of Greece following submission of an application and a relevant assessment, accepting, as appropriate, the terms and conditions for their grade and salary adjustment to be notified by an act of the Governor of the Bank of Greece within two months of publication of the draft law¹⁷. In accordance with what has been stated on previous occasions¹⁸, the ECB understands that the Bank of Greece's autonomy in staff matters is respected by such an arrangement and that it is the exclusive and independent decision of the Bank of Greece whether to employ the HPISC's staff. At the same time, it should be ensured that the Bank of Greece is able to recruit specialised staff where appropriate for the proper implementation of the new responsibilities in the same way as for its current responsibilities.

In line with paragraph 3.2.2 above, it should be ensured, however, that the Bank of Greece does not bear any financial obligations deriving from the employment relations that new staff may have had with the HPISC.

3.2.5 *Contributions of supervised insurance undertakings*

The ECB notes that the contributions of the supervised insurance undertakings will be defined and any relevant detail addressed by a decision of the Minister for Finance¹⁹. For reasons of financial independence of the Bank of Greece it should be ensured that the performance of the new supervisory functions by the Bank of Greece will be adequately financed by the contributions to be received from supervised entities and will not result in any loss for the Bank of Greece.

In terms of the competence for defining the contributions of the supervised insurance undertakings, the ECB notes that, to the extent that the new supervisory competences will be exclusively transferred to the Bank of Greece, the modalities for the definition of such contributions should be defined independently by the Bank of Greece²⁰. The attribution of such power to the Bank of Greece would reflect international practice established with the aim of safeguarding the supervisory authorities' independence.

3.2.6 *Transitional period*

The substantive and technical details for the unimpeded substitution of the Bank of Greece for the abolished HPISC, as well as any other specific issues and details for the purposes of the application

¹⁶ As provided for in Article 17 of Presidential Decree 20/2006, FEK A 17/7.2.2006.

¹⁷ Article 1(5)(d) of the draft law.

¹⁸ See e.g. Opinions CON/2008/9, CON/2008/10, CON/2009/15, CON/2009/45 and CON/2009/47. See also ECB Convergence Report May 2008, p. 22.

¹⁹ Article 1(3) of the draft law. These contributions will amount to a maximum of 1.5 thousandths (1.5 ‰) of the total annual yield from gross insurance premiums.

²⁰ The ECB notes that the framework in place for the supervision of credit institutions in Greece (Law No 3601/2007, FEK A 178/1.8.2007) also provides for the possibility for the Bank of Greece to impose such contributions.

of Article 1, will be determined by a decision of the Minister for Finance²¹. In the light of the concerns raised above about financial independence and monetary financing, and with a view to ensuring a smooth transfer of the supervisory competences to the Bank of Greece and their efficient performance, the ECB recommends drawing up the details for the transfer of such competences by a joint decision of the Ministry of Finance and the Bank of Greece. Finally, the ECB notes that the draft law provides that the HPISC must be abolished from the first day of the third month following the publication of the law²². To ensure a smooth transfer of the tasks to the Bank of Greece, the draft law should provide for a longer transitional period, to be determined in agreement with the Bank of Greece.

- 3.3 Failure to amend the draft law along the lines suggested in paragraphs 3.2.2, 3.2.3 and 3.2.4 would lead the ECB to the conclusion that the proposed arrangements are incompatible with Articles 123 and 130 of the Treaty.

4. Establishment of the Private Life Insurance Guarantee Fund (PLIGF)

- 4.1 The PLIGF will be established as a private law legal entity supervised and controlled by the Minister of Finance²³. At the same time, several provisions of the draft law assign to the Bank of Greece decision-making and/or approving powers in relation to the PLIGF's operations, in particular in terms of coverage, transfer of life insurance portfolios following revocation of an insurance undertaking's authorisation, contributions and internal governance²⁴. In this regard, the ECB would like to stress that the activities performed by the Bank of Greece need to comply with the monetary financing prohibition contained in Article 123 of the Treaty, so it should not have to finance any of the PLIGF's activities in the event that the members' contributions to the Fund under the first and second paragraphs of Article 10 of the draft law prove insufficient. Moreover, the Bank of Greece's operational independence would need to be enhanced. This could be facilitated by giving a clearer definition of the Bank of Greece's involvement in the PLIGF's operations and by an adequate level of central bank involvement in the PLIGF's governance²⁵. The attribution to the Bank of Greece of clear and autonomous responsibility for supervising the PLIGF may greatly benefit the efficient and effective fulfilment of the aims of the draft law to extend its current supervisory responsibilities to encompass the insurance sector. In order to ensure the

21 Article 1(10) of the draft law.

22 Article 1(1) of the draft law.

23 Article 4 of the draft law.

24 More specifically, the draft law provides that: (i) the Bank of Greece will decide on actuarial operations and adjustments to be performed by the PLIGF, where insurance policy terms and conditions infringe the relevant legislation in force (Article 7(2)), while the Minister for Finance, on a proposal by the PLIGF, addresses any specific issues or details (Article 7(3)); (ii) the Bank of Greece will decide on the procedure and any details for the transfer of the life insurance portfolios of insurance companies whose authorisation has been revoked (Article 9(1)) and will approve the successor insurance undertaking selected by the PLIGF (Article 9(3)); the Bank of Greece's Governor will decide on any specific issues and details (Article 9(7)); (iii) the Bank of Greece will approve any decision by the Management Committee to impose extraordinary contributions in urgent cases (Article 10(2)), while any specific issues and details relating to the application of Article 10 will be regulated by a Governor's decision (Article 10(5)); (iv) the PLIGF's rules of procedure, as adopted by its members' assembly, will be approved by the Bank of Greece (Article 11(2)(b)).

25 See in this respect paragraph 4.2 of Opinion CON/2008/51.

compliance of the draft law with the abovementioned requirements, substantial substantive amendments should be made to the relevant provisions.

- 4.2 As noted in paragraph 1.2, the PLIGF will provide cover for insurance payments deriving from any life insurance policies entered into and operations carried out in Greece or other Member States or European Economic Area countries through a branch or through the free (cross-border) provision of services. The ECB understands that some Member States have already established private life insurance guarantee funds, membership of which is obligatory for insurance companies established in these Member States and any branches they may have situated outside the Member State, in line with the general principle in Union law of home State supervision. For this reason, and with a view to possible future Union initiatives in this area, the ECB suggests that Article 6 of the draft law be amended in order to avoid the operation and membership of the PLIGF being made obligatory in respect of branches of insurance companies that are already covered by equivalent guarantee funds in their countries of establishment.

5. Establishment of the Systemic Stability Council (SSC)

- 5.1 As pointed out in previous opinions²⁶, the establishment of national financial stability committees may enhance the ability of NCBs and supervisory authorities to provide analytical support to the ESRB. The tasks performed by these committees should complement the ESRB's activities. Therefore, it is particularly important to exploit appropriate synergies. However, it is necessary to avoid such national committees being entrusted with tasks and powers that potentially conflict with those of the ESRB and which may undermine its effectiveness. Moreover, the legal frameworks of these committees should appropriately reflect the NCBs' roles, should not constrain the independence of their governors or unduly affect the quality and impartiality of their contributions as members of the ESRB. With regard to the SSC's composition, the ECB notes that committees with similar tasks have been established in a number of Member States, in the majority of cases with their composition restricted to institutional members. Such composition seems preferable, for reasons related to safeguarding the competence of the institutional entities entrusted with the responsibility for macroeconomic stability analysis and the established confidentiality regime. Lastly, in view of the importance of ensuring the effectiveness of macroprudential supervisory arrangements at Union level, it is essential to safeguard the ESRB's ability to perform its tasks independently and to guarantee an authoritative and effective channel for transmitting its warnings and recommendations. Since, under the draft law, the SSC will adopt resolutions and conclusions, it is important to ensure that it will function in a way that is fully consistent with the abovementioned important principles.
- 5.2 In particular, the new institutional framework for financial stability in Greece should ensure that the involvement of the Bank of Greece and its Governor and Deputy Governor is performed in a

²⁶ Paragraph 2.1 of Opinion CON/2010/3, paragraph 2.2.2 of Opinion CON/2010/7 and paragraph 2.11 of Opinion CON/2010/10.

manner that fully complies with the institutional and financial independence of the Bank of Greece and with the Governor's and Deputy Governor's personal independence, as well as with the confidentiality requirements resulting from the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), which are designed to safeguard the proper performance of their tasks under the Treaty and the Statute of the ESCB²⁷.

Further implementation of the draft law with regard to the SSC's establishment, organisation and mandate should also respect the principle of central bank independence.

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

Done at Frankfurt am Main, 23 April 2010.

[signed]

The Vice-President of the ECB

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²⁷ See also paragraph 3.1 of Opinion CON/2010/4.