



OPINION OF THE EUROPEAN CENTRAL BANK
of 23 April 2010
on debt arrangements for over-indebted individuals
(CON/2010/34)

Introduction and legal basis

On 25 January 2010 the European Central Bank (ECB) received a request from the Greek Ministry of Economy, Competitiveness and Shipping for an opinion on a draft law on debt arrangements for over-indebted individuals (hereinafter the ‘draft law’). On 12 February 2010 the Ministry submitted an addendum to its consultation request with some clarifications and additional information on specific aspects of the draft law.

The ECB’s competence to deliver an opinion is based on Article 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 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 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

According to its explanatory memorandum, the draft law draws on similar legislation in other Member States and fills a significant gap in Greece’s current insolvency legislation. In particular, it introduces procedures to enable over-indebted natural persons, who are not merchants for the purposes of the existing bankruptcy framework and who have a proven and continuing inability to service their pecuniary debts that have fallen due to credit institutions and other creditors, to seek to repay such debts under more favourable conditions and to obtain debt relief where there are no assets available for the repayment of such debts or where their current and expected income is not sufficient for that purpose. The draft law also contains special provisions, such as the possibility for debtors to request the exclusion of their primary residence from realisation of their assets, and the possibility of a judicial settlement without debt relief where a debtor is temporarily unable to service their debt². Finally, the draft law contains a

¹ OJ L 189, 3.7.1998, p. 42.

² Articles 9 and 10 of the draft law.

provision on the period of retention and use of data in relation to the debt repayment arrangements introduced therein³.

2. General observations

- 2.1 The ECB understands that the draft law introduces these insolvency arrangements as part of a comprehensive legal framework of unlimited duration and general application. As the draft law applies to debtors and, among other things, governs their relationships with credit institutions, the new legal framework should be clear as to the rights and obligations it creates and should take into account existing legal relationships between credit institutions – including in their capacity as mortgage lenders – and their debtors, thus ensuring legal certainty.
- 2.2 To the extent that the draft law provides for the medium and longer term repayment of and relief from debts owed to credit institutions, such repayment and relief arrangements should contain the necessary safeguards to prevent them having implications for financial stability. Such arrangements should also cater for possible interaction with the other similar legislative arrangements already adopted by the Greek Government to address the current adverse economic conditions. In view of the above, the ECB stresses the importance of making a thorough prior assessment of the impact of the draft law on the functioning of the financial system so as to safeguard financial stability and it refers to its recent Opinion CON/2010/8⁴, on restructuring of business and professional debts owed to credit institutions and on credit bureau data processing, which is also relevant for the purposes of the draft law.
- 2.3 Finally, the ECB considers that the proposed framework needs to be clear in providing the right incentives to debtors falling within its scope to service their debts appropriately and that it should contain sufficient safeguards to avoid moral hazard, as this could have serious adverse consequences on banks' capital and liquidity positions, as well as on the overall cost of financing.

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

Lucas D. PAPADEMOS

³ Article 16 of the draft law.

⁴ All ECB opinions are published on the ECB's website at www.ecb.europa.eu.