



OPINION OF THE EUROPEAN CENTRAL BANK

9 July 2010

on the establishment of the Financial Stability Fund

(CON/2010/54)

Introduction and legal basis

On 29 June 2010 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft law on the establishment of the Financial Stability Fund (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 ECB by national authorities regarding draft legislative provisions¹, as the draft law 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 ECB, the Governing Council has adopted this opinion.

1. Purpose of the draft law

1.1 Context and objective

1.1.1 The establishment of the Financial Stability Fund (FSF) implements Council Decision 2010/320/EC of 10 May 2010 addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit². In particular, Article 2(1)(p) prescribes the establishment by Greece of ‘an independent financial stability fund to deal with potential capital shortfalls and preserve the soundness of the financial sector, by providing equity support to banks as needed’. Furthermore, as clarified in recital 6 of the Loan Facility Agreement³ concluded on 8 May 2010 between certain euro area Member States as lenders and the Hellenic Republic as borrower, the support granted to the borrower is made dependent on its complying with measures consistent with Decision 2010/320/EU and laid down, *inter alia*, in the Memorandum of

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 145, 11.6.2010, p. 6.

³ Available at <http://www.hellenicparliament.gr>.

Understanding on specific economic policy conditionality⁴ of 3 May 2010⁵. In this respect the establishment of the FSF is also foreseen in the Memorandum as part of a set of measures to be implemented by the end of June 2010.

1.1.2 According to the explanatory memorandum to the draft law, the establishment of the FSF aims at maintaining the stability of the Greek banking system by means of recapitalisation of Greek credit institutions in the light of the paramount importance of the banking sector in general economic activity. The FSF will thus provide a safety net to credit institutions that may be unable to meet their capital requirements under the applicable legislation. Finally, the FSF will facilitate strategic decision-making in restructuring the Greek banking system to allow it to accomplish its function in financing and developing the Greek economy.

1.2 *Main features*

Legal nature, purpose and capital

1.2.1 The FSF will be governed by private law. It will enjoy administrative and financial independence and operate purely in accordance with private economic activity standards⁶. Its purpose will be to safeguard the stability of the Greek banking system by strengthening the capital adequacy of credit institutions, including credit institutions that are subsidiaries of foreign credit institutions and operate in Greece following authorisation by the BoG⁷. The Greek State will gradually pay up and incorporate into securities its capital of EUR 10 billion not transferable before expiry of the FSF's duration⁸. The Minister for Finance will gradually deposit capital stemming from the financial support mechanism to Greece by virtue of Law 3845/2010 in a special interest-bearing account held with the BoG for the purpose of the draft law⁹.

Eligibility for recapitalisation

1.2.2 Under Article 2(1) of the draft law, credit institutions authorised by the BoG will be eligible for recapitalisation by the FSF. These include authorised credit institutions that are subsidiaries of legal entities with a registered office abroad, including the branches of authorised Greek credit institutions operating abroad.

⁴ The Memorandum is annexed as Annex IV to Law 3845/2010 on the measures implementing the support mechanism for the Greek economy by the euro area Member States and the International Monetary Fund (FEK A 65 / 6.5.2010).

⁵ Moreover, according to recital 8 of the Loan Facility Agreement, the release of loans subsequent to the first loan will be conditional on the lenders deciding favourably following verification that the implementation of the economic policy of the borrower complies with the adjustment programme or any other conditions laid down in the Decision 2010/320/EC. See also Article 3(5)(c) of the Agreement.

⁶ See Article 1.

⁷ See Article 2. The FSF will manage its capital and assets and exercise the rights deriving from its shareholder capacity with a view to preserving the value of such assets, minimising risks to Greek taxpayers and preventing competition in the banking sector from being hampered or distorted; moreover, the liquidity support provided under Law 3723/2008 (FEK A 250) or as part of the operations of the Eurosystem and/or the BoG will not fall within the purpose of the FSF.

⁸ See Article 3(1).

⁹ See Article 3(2). Such deposits will be remunerated at a rate not more or less than the following: (1) the rate applicable to the Eurosystem main refinancing operations; (2) the Eurosystem deposit facility rate; and (3) the EONIA rate. Moreover, under Article 3(4), the FSF's capital and cash may only be invested in such deposits; any other type of investment will be prohibited and the FSF may not enter into lending arrangements or issue bonds or other commercial paper.

Board of Directors and staff

- 1.2.3 The FSF's Board of Directors (hereinafter the 'Board') will have full independence in any matter relating to the FSF's administration, operations, asset management, identification and pursuit of its objectives¹⁰. Its three executive members will be the President and two Vice-Presidents, and two of the four non-executive members shall be *ex officio* members, namely the Secretary General of the Ministry of Finance and the Director of the BoG's Financial Stability Department. The Minister for Finance, after proposal by the BoG's Governor, will appoint all Board members for a term of five years, renewable until 30 June 2017¹¹. One representative from each of the European Commission and the ECB will be invited to participate in the Board's meetings without the right to vote¹². Board members may not be employed by credit institutions for a period of two years after their term of office has ended for any reason whatever¹³.
- 1.2.4 Its staff must be freely recruited by the Board under private employment contracts for a fixed renewable term. The secondment of civil servants from other Greek authorities is also possible subject to a decision by the relevant Minister or an act to be adopted by the BoG's Governor, following a request by the Board's President¹⁴.

Activation of the FSF

- 1.2.5 Under Article 6(1) of the draft law, a credit institution complying with Pillar 2 capital requirements¹⁵ may apply to the FSF for recapitalisation, following an instruction from the BoG or on its own initiative, provided that the following conditions are both met: (a) on the basis of conservative assumptions by the BoG that there is a well-founded risk that the credit institution may not be able to continue to comply with such Pillar 2 requirements; and (b) the credit institution has failed to increase its own funds with the participation of its existing or new shareholders.
- 1.2.6 Furthermore, under Article 6(2) of the draft law, the BoG may also instruct a credit institution to apply to the FSF for recapitalisation, if the credit institution does not comply with either Pillar 1¹⁶ or 2 capital requirements and, at the same time, it has failed to increase its own funds with the participation of its existing or new shareholders. In these cases, if the credit institution does not

¹⁰ See Article 4(1) and Article 4(2)(e). In the performance of their duties Board members will enjoy full independence, may not seek or receive instructions from the Greek State or any other government body or official and may not be subject to any influence. Likewise, the Greek State and the abovementioned government bodies and officials must refrain from giving any instructions to the FSF.

¹¹ See Article 4(2)(b).

¹² See Article 4(2)(c).

¹³ See Article 16(3). The same prohibition will apply to the FSF's staff for a period of six months from termination of their employment contract.

¹⁴ See Article 5.

¹⁵ See Article 28 of Law 3601/2007 (FEK A 178 / 1.8.2007) and the BoG's Governor's act 2595/20.8.2007 (FEK B 1748 / 31.8.2007).

¹⁶ See Article 27 of Law 3601/2007.

apply for recapitalisation to the FSF, the BoG will either appoint a Commissioner¹⁷ or withdraw the credit institution's authorisation¹⁸, or may require removal of the credit institution's management¹⁹.

1.2.7 The credit institution's request for recapitalisation may be submitted to the FSF within one month from receipt of a BoG instruction and must be accompanied by: (a) a business plan specifying the amount of the required capital injection and detailing the measures that the credit institution intends to take to safeguard and strengthen its solvency as soon as possible²⁰; and (b) a detailed timetable for the implementation of the measures, stating the estimated time by which the credit institution should be able to repurchase the preference shares referred to in Article 7 of the draft law. If the FSF grants the capital injection requested, in accordance with Article 6(6) of the draft law, it will draw up jointly with the credit institution a detailed restructuring plan or amend any plan already submitted to the European Commission, in accordance with the applicable Union State aid rules and European Commission practices²¹.

Recapitalisation procedure, issuance of shares and related issues

1.2.8 The capital injection will be granted through the FSF's participation in an increase of the credit institution's share capital by issuing preference shares²², except if the credit institution fails to meet Pillar 1 capital requirements²³, where the capital increase will be carried out by issuing ordinary shares to the FSF. The share issue price must reflect the estimated fair value or market price disregarding any actual or potential support by the Greek State, the FSF or the BoG outside the framework of Eurosystem operations²⁴. The preference shares must be redeemed in their entirety by the credit institution after five years or earlier, on approval by the BoG, at a price to be set at the highest between the original issue price (plus accrued and unpaid dividends) and the price at the time of the decision to convoke the General Meeting of Shareholders for the purposes of the share

17 Under Article 63(2) of Law 3601/2007. Prior to the Commissioner's appointment, the BoG will communicate in writing to the credit institution the verified breach. From the communication of such appointment to the credit institution, any act related to the credit institution's management will be null and void unless approved by the Commissioner. Within the time limit specified by the BoG, the Commissioner must report to it on the capital adequacy and the overall financial condition and the administrative and organisational structure of the credit institution. If the BoG, on the basis of other data and information available to it, judges that the credit institution's operations cannot continue under the current management, it will decide to assign its management to the Commissioner. The Commissioner will be subject to the BoG's control and supervision. The BoG will decide on the fees and overall costs to be paid by the credit institution. The BoG may replace or terminate the mandate of the Commissioner.

18 Under Article 8 of Law 3601/2007.

19 Under Article 5(10)(c)(i) of Law 3601/2007.

20 e.g. by increasing its capital and/or restoring its profitability through cost-cutting, reducing risks or receiving support from other companies of its group, etc. The plan may also include any prospects of a merger or absorption, or a transfer of its activities or units to another credit institution or financial organisation (see Article 6(4)(a)).

21 See Article 6(7) to 6(9) also providing for the period for implementation of the restructuring plan and the monitoring and assessment of such implementation.

22 See Article 7(1).

23 See Article 6(2)(b).

24 See Article 7(3). For the purposes of determining the issue price, account must be taken of the average of the valuations provided by two independent audit firms using commonly accepted methodologies and criteria. Such audit firms will be appointed by the FSF and the credit institution. In the event of a deviation of more than 10% between the two valuations, a third independent audit firm, appointed jointly by the Minister for Finance and the BoG's Governor, will determine the final price. The appointment of the audit firms should also include deadlines for their evaluation compatible with the submitted business plan's timing. In any event, the Union State aid rules and European Commission practices for similar valuations must also be observed.

redemption²⁵. If five years have lapsed and the redemption of the preference shares by the credit institution has not been completed, an annual cumulative surcharge of 2% will be imposed on annual compensation payable by the credit institution as provided for in Article 10(2) of the draft law²⁶.

1.2.9 The preference shares will be converted into ordinary transferable shares by a decision of the FSF, following a proposal by the BoG, in accordance with Article 9 of the draft law. Moreover, such preference shares may neither be transferable by the FSF to third parties nor tradable on a regulated market until the end of the FSF's duration²⁷. They will, *inter alia*, confer on the FSF the right to participate in the credit institution's Board of Directors with a representative as an additional member²⁸. In this respect, the FSF's representative may, in particular: (a) call a General Meeting of Shareholders within the time limits provided²⁹; and (b) veto any decision by the credit institution's Board of Directors: (i) regarding the distribution of dividends and the remuneration policy in relation to the credit institution's senior executives; or (ii) where the decision in question could jeopardise the interests of depositors, or seriously impair the credit institution's liquidity or solvency or its overall sound and smooth operation. Moreover, the FSF's representative will attend the General Meeting of ordinary shareholders and have a right to veto any resolution on the issues referred to above³⁰.

1.2.10 The FSF may request, even prior to the request for its activation, all relevant data and information from credit institutions through the BoG, as well as on-site inspections to be carried out by the BoG with the participation of a FSF representative, expert or external auditor³¹.

Financial results and statements, auditing and other provisions

1.2.11 The FSF will establish unrealised revaluation reserve accounts in accordance with the International Financial Reporting Standards (IFRS)³². Moreover, provision is made for: (1) the approval of the FSF's annual financial statements prepared in accordance with the IFRS and their submission, together with other relevant reports, to the Greek authorities and the European Commission, the ECB and the IMF; (2) regular financial audits and ad hoc audits, the outcome of which must be submitted to the Greek Parliament; (3) a comprehensive internal audit mechanism; and (4) FSF immunities³³.

25 See Article 8(1). Partial redemption will not be permitted. The BoG will only approve redemptions that do not jeopardise the credit institution's solvency and financial stability.

26 See Article 8(2).

27 See Article 10(1).

28 See Article 10(3).

29 See Article 7(2).

30 See Article 10(5).

31 See Article 11.

32 See Article 12.

33 See Articles 13 to 15.

2. General observations

- 2.1 The ECB welcomes the establishment of the FSF as a means to improve the safety net for the Greek banking system during an economic downturn which could have adverse implications for the asset quality of Greek credit institutions. Moreover, it takes note that the FSF is part of a broader set of measures under the Memorandum and its design therefore takes into account the other characteristics of the Programme plan³⁴. The ECB appreciates that the FSF's mandate is clearly defined. At the same time, the ECB welcomes the FSF's role in facilitating strategic decision-making in terms of restructuring the Greek banking system and thus allowing it to continue its function in extending credit to the Greek economy.
- 2.2 The ECB welcomes the scope of the draft law covering subsidiaries operating in Greece of credit institutions having their registered office abroad as well as branches operating abroad of Greek credit institutions. Moreover, the draft law does not discriminate between credit institutions established in Greece in accordance with the Declaration of Paris³⁵, which states that Member States' actions taken to facilitate the funding of banks 'will be designed in order to avoid any distortion in the level playing field', a crucial element for the integration of the financial markets in Europe. The ECB also welcomes the FSF's finite life, ending on 30 June 2017. Despite its relatively long tenure, this is in line with earlier ECB opinions underscoring the need for any national support scheme to be temporary in nature, even if it may be extended or renewed³⁶. The ECB also appreciates the clarification in Article 2 of the draft law according to which the liquidity provision by the BoG in the context of the Eurosystem's refinancing operations will not fall within the FSF's purpose, hence respecting the Eurosystem's exclusive competence under Article 127(2) of the Treaty as regards the implementation of the single monetary policy.
- 2.3 The ECB welcomes the close link between the activation of the FSF and the supervisory process under Law 3601/2007 on banking and the relevant Basel rules. Taken in conjunction with the BoG's supervisory powers over credit institutions under Law 3601/2007, the draft law should ensure that the capital adequacy requirements of credit institutions are properly maintained. In particular, the ECB endorses the need, at the first instance, for the recommendation by the BoG for the credit institution to apply to the FSF for a capital injection to be based on a forward-looking assessment using conservative assumptions under the Pillar II review process. The ECB notes that

³⁴ In accordance with Article 1(3) of Law 3845/2010, Annex III (Memorandum on economic and financial policy) and Annex IV (Memorandum of Understanding on specific economic policy conditionality) are jointly referred to as the 'Programme plan'. The Ministry of Finance drew up the Programme plan with the European Commission, the ECB and the IMF, to implement the support mechanism in accordance with the Statements reproduced in Annexes I and II to Law 3845/2010 (Statement by the Heads of State and Government of the euro area of 25 March 2010 and Statement on the support to Greece by euro area Member States of 11 April 2010).

³⁵ The Declaration issued by the Heads of State of the euro area on 12 October 2008. The text of the Declaration is available on the former French Presidency's website at www.ue2008.fr.

³⁶ See paragraph 3.3 in Opinion CON/2009/62. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

any recourse to the FSF may occur only after the credit institution can show that it has failed to increase its own funds with the participation of its existing or new shareholders³⁷.

- 2.4 The strong sanctions, including the possibility of appointing a Commissioner or requiring removal of the management, or even withdrawing the banking licence, are to be imposed by the BoG on a credit institution which, despite a recommendation by the BoG based on a forward-looking assessment, fails to enhance its solvency position and whose capital subsequently falls below the relevant Pillar I or II limits. Such rules, in conjunction with the quantitative targets for activating the FSF, are essential to allow the BoG to exercise its supervisory powers in safeguarding financial stability.
- 2.5 The ECB appreciates that any request by a credit institution for recapitalisation must be accompanied by a business plan and a detailed timetable for its implementation, even before the submission of the restructuring plan to be drawn up in line with the requirements of the European Commission in the context of Union State aid rules and European Commission practices. The ECB notes that these mandatory rules go in the direction of ensuring that the recapitalised institutions will be subject to a proper viability assessment and will not be unfairly advantaged by recourse to the FSF, which is in line with earlier ECB opinions³⁸.
- 2.6 The ECB notes that the requirement for the pricing of the preference shares to be issued or redeemed by the credit institution in exchange for recapitalisation funds, as well as the pricing applied in conversion of the preference shares to ordinary shares on a decision by the FSF, must reflect the fair value or market price. As in its previous opinions, the ECB stresses the importance of appropriate pricing for recapitalisations to enhance the stability of the financial system, facilitate the return to normal market conditions, ensure a level playing field and the proper financing of the economy³⁹. The ECB welcomes the time limit of five years for the repurchase of the shares, as this significantly contributes to the temporary nature of the FSF support. The ECB also appreciates the need for the BoG to approve any redemption of shares, also taking into account the possible implications for financial stability.
- 2.7 The ECB welcomes the FSF's extensive powers over the management and shareholders of the credit institutions receiving capital support⁴⁰. In particular, and in addition to the abovementioned requirements for the nature and pricing of any capital injection, these rules ensure that existing shareholders bear the due consequences of the intervention, in line with previous ECB opinions⁴¹. The ECB appreciates that the FSF will have access to all relevant data and information from the credit institutions through the BoG, even prior to the submission of a request for its activation, as

37 See Article 6(1)(b) and Article 6(2)(b).

38 See paragraph 3.3 in Opinion CON/2008/57.

39 See paragraph 3.2 in Opinion CON/2009/62.

40 See Article 10(3) and 10(5) on the rights attached to the preference shares.

41 See paragraph 2.2 in Opinion CON/2008/52.

well as on-site inspections. Such access should be subject to the same confidentiality requirements imposed on the BoG with respect to information from the credit institutions⁴².

- 2.8 The ECB welcomes the establishment of the FSF as an entity with its own decision-making powers independent of its founder, the Greek State. Under the draft law the FSF will be governed and managed by a Board, which will be its supreme decision making body and will enjoy full independence in deciding on any issue concerning the FSF's administration, operation, asset management, identification and pursuit of its objectives. The ECB understands that as regards corporate governance, the FSF's Board as the FSF's supreme decision-making body will have the powers that would be assigned to the Board of Directors and to the General Meeting of shareholders were the entity to be a joint stock company. This decision-making autonomy should enable the FSF to decide on recapitalising particular credit institutions independently of outside influence. Moreover, the President of the Board will represent the FSF in its relations with judicial authorities, other bodies and third parties⁴³.

3. Specific observations

Role of Governor of Bank of Greece in appointing the FSF Board members

- 3.1 The ECB notes that all seven members of the Board are to be appointed by a decision of the Minister for Finance on a proposal by the BoG's Governor⁴⁴. The formal appointment of members of the Board by the Minister for Finance is important to ensure the democratic legitimacy of the FSF, whose capital is provided by the Greek State⁴⁵. That being the case, the ECB notes that the BoG's Governor will have an initiating role in the appointment procedure, having the power to select five Board members following a public call for expressions of interest⁴⁶. The ECB considers that this enhanced role in the appointment procedure is important in view of the BoG's prudential supervision role and the stability of the financial system.

Presence of ECB observer in FSF Board meetings

- 3.2 The ECB supports the draft law's requirement for an observer from the ECB to be invited to participate in the Board's meetings⁴⁷. To facilitate participation by the ECB and Commission

⁴² See Article 11(1)(a).

⁴³ See Article 4(3).

⁴⁴ Other Member States have set up domestic funds to recapitalise and restructure banks. Some of these funds have a similar procedure for appointing most of the members of the fund's decision-making body on a proposal by the national central bank. For example, in the case of the Spanish Fund for Orderly Bank Restructuring (FROB) set up under the Royal Decree Law 9/2009 of 26 June 2009, Article 3 provides that the Minister for Economic Affairs and Finance appoints all members of the Governing Committee, the FROB's decision-making body, with five of the eight members to be proposed by the Banco de España. The remaining three members are representatives of the bank deposit guarantee funds for each of the three Spanish banking sectors. See ECB Opinions CON/2008/52, CON/2008/57 and CON/2009/62.

⁴⁵ Also, the Board assures the FSF's accountability to the Greek legislature and the State authorities by having to report periodically on its activities to the Minister for Finance and the BoG, and to provide detailed information to them through its President on request. The Board must also submit bi-annual reports to the Greek Parliament notified to the Ministry of Finance, the European Commission, the ECB and the International Monetary Fund, as well as to the BoG. See Article 4(9).

⁴⁶ See Article 4(2)A.

⁴⁷ Article 4(2)C.

observers in the Board's meetings, it would be helpful if the draft law could clarify that all documents going to the Board will be made available in English.

Impact of FSF account at the BoG on implementation of Eurosystem monetary policy

- 3.3 The recourse to a BoG deposit account for the investment of the FSF's capital provides a stable solution. This does not necessarily raise difficulties for the implementation of the single monetary policy provided that even infrequent account movements are known in advance and therefore included in liquidity forecasts.

Prohibition on monetary financing

- 3.4 As regards the monetary financing prohibition laid down in Article 123 of the Treaty, as the FSF's capital is to be issued in the form of securities that are wholly owned by the Greek State, the FSF should be considered as a 'public undertaking of a Member State' within the meaning of Article 123(1) of the Treaty and Article 8 of Council Regulation (EC) 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty⁴⁸. Under the draft law the FSF may not enter into any loan agreement or issue bonds or commercial paper⁴⁹. Accordingly there will be no question of the FSF being involved in any borrowing from the ECB, the BoG or any other ESCB central bank so that the monetary financing prohibition will not be breached.
- 3.5 Furthermore, to comply with the monetary financing prohibition, it is essential to specify that the remuneration of the account held by the FSF at the BoG will reflect market parameters. In particular, it is important to correlate the deposits' remuneration rate with their maturity. Past ECB opinions⁵⁰ have noted that the prohibition on monetary financing by central banks of government activities is independent of its form, e.g. loans or direct, non-reimbursable funding to the public sector. Interest payments above market rates constitute a *de facto* advanced distribution of profits. This, in turn, implies a *de facto* intra-year credit, contrary to the objective of the monetary financing prohibition. Therefore, the remuneration for public entity deposits should not go beyond the remuneration applied to a similar deposit made by a market counterparty. If the remuneration mechanism for deposits of public entities allows public sector entities to systematically steer the remuneration by a national central bank at a rate above the rate at which a similar deposit would be remunerated by a market counterparty, this would contravene the objectives of the monetary financing prohibition under the Treaty. It may also have undesired signalling effects. Given the purpose of the FSF's financial resources held at the BoG, their maturity is very short term to be quickly available. The interest rate at which the BoG should remunerate deposits made by the FSF should be at a rate equivalent to, or in a range, the highest and lowest points of which will be set by (1) the Eurosystem deposit facility rate and (2) the Euro Overnight Index Average (EONIA) rate. The reference to the rate applicable to the Eurosystem main refinancing rate (MRO) should be

48 OJ L 332, 31.12.1993, p. 1.

49 Article 3(4).

50 See in particular ECB Opinions CON/2008/10 and CON/2009/69.

removed as this rate would normally be positioned within the range defined above, but it might, in exceptional circumstances, exceed the EONIA rate.

- 3.6 The ECB notes the draft law expressly provides that the remuneration of the Board members and staff salaries will be payable from the FSF's budget⁵¹. As the FSF will be financially independent⁵² and will draw up its own financial statements⁵³, this implies that it will be responsible for its operating costs. Thus there should not be any cause for the FSF to resort to central bank resources to finance any of its operations.

Earmarking of FSF capital

- 3.7 Article 3(1) provides that the FSF's capital 'stem[s].....from the EU/IMF financial support mechanism to Greece by virtue of Law 3845/2010'. There may be a need to clarify this in a non-legislative act instead of in the draft law.

Conflicts of interest

- 3.8 The ECB considers that the draft law already deals with most of the situations where Board members' private interests could conflict with those of the FSF. Nevertheless there are still a number of technical details that could be usefully clarified.
- 3.9 First, as regards the second sentence of Article 4(2)(E), the draft law is ambiguous as to whether the BoG officials may not be subject to the incompatibility requirements for Board members in sub-paragraph E. This second sentence is understood to mean only that the holding of any office with the BoG by a Board member may not be considered incompatible with that person's status as a Board member. If this is what is intended, this should be specified in a separate clause and the words 'with the exception of officials coming from the BoG' at the end of the second sentence of Article 4(2)(E) should be deleted. Otherwise, the current wording could mean that the direct shareholding of BoG officials in credit institutions would not be covered by the incompatibility requirements in sub-paragraph E.
- 3.10 Second, the fifth sentence of Article 4(2)(E) should clarify that Board members should be obliged not only to disclose any possible conflict of interest, but also to abstain in any relevant Board resolution where a matter is on the agenda in which they have an actual or possible conflict of interest.
- 3.11 Third, it is important to clarify that the members of the Board and the staff may not use confidential price sensitive market information to which they have access by reason of their position at the FSF to carry out private transactions for their or their relatives' private benefit.
- 3.12 Fourth, in Article 16(3), consideration could be given to whether the cooling off period of six months following the end of the contract should only apply to senior professional staff.

51 Article 4(2)(B) and Article 5(1).

52 Article 1.

53 Article 13.

Definition of credit institutions

- 3.13 It is understood that the reference to ‘subsidiaries of credit institutions having their registered office abroad’ in Article 2, and concerning the types of institutions eligible for a capital injection by the FSF to strengthen their capital adequacy, is intended to refer to subsidiaries which are themselves credit institutions authorised by the BoG operating in Greece, and not any other type of authorised financial institution. This part of the provision could be made clearer for the sake of legal certainty.

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

Done at Frankfurt am Main, 9 July 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET