



OPINION OF THE EUROPEAN CENTRAL BANK
of 22 December 2011
on amendments to the resolution regime for credit institutions
(CON/2011/107)

Introduction and legal basis

On 15 December 2011, the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft provision amending Law 3601/2007¹ (hereinafter the ‘draft provision’).

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 provisions², as the draft provision 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 provision

The draft provision will accelerate the procedure for transferring assets from a credit institution to another under Article 63D(4)³ of Law 3601/2007 in urgent cases. It provides that in urgent cases the procedure for submitting offers, the determination of the remuneration to be paid to the transferee credit institution and the transfer will be based on a temporary assessment by the BoG. Immediately thereafter, the BoG will entrust external auditors with the preparation of assessment reports. Within two months from the transfer of assets under Article 63D(1), the BoG will determine the remuneration to be paid, taking into account the assessment reports, the current market conditions and the need to ensure the smooth operation of the financial system⁴. Any discrepancies between the two valuations will be funded by the Resolution Branch of the Hellenic Deposit and Investment Guarantee Fund, in accordance with Article 63D(13).

¹ FEK A 178/1.8.2007.

² OJ L 189, 3.7.1998, p. 42.

³ If the offers submitted are considered unattractive, the BoG will transfer assets to a transitional credit institution to be established for this purpose under Article 63E or put the credit institution under special liquidation in accordance with Article 68.

⁴ See the second sentence of Article 63D(4).

2. General observations

- 2.1 The draft provision will take the form of a legislation adopted under Article 44 of the Greek Constitution by Greece's President, on a proposal by the Cabinet. Under this urgent procedure, the draft provision would need to be submitted to Parliament for ratification within 40 days and ratified within three months of submission. The draft provision enters into force immediately after publication and has the same effect as a law. Thus, the ECB should be consulted in due time prior to entry into force. More generally, internal administrative procedures should be in place to ensure the timely consultation of the ECB, and the ECB should be consulted at an appropriate point in time in the event of amendments during the legislative procedure⁵.
- 2.2 The draft provision amends Article 63D(4) of the Law on banking, introduced by Law 4021/2011. Law 4021/2011 established a comprehensive bank resolution framework as a structural benchmark under the EU/IMF support programme⁶. In addition to safely resolving ailing institutions, the bank resolution framework aims at averting severe systemic disruption and undue taxpayer exposure to loss. The ECB understands that the objective of the draft provision is to facilitate the exercise by the BoG, in urgent cases only, of its resolution powers relevant to the transfer of the assets of an ailing institution, in accordance with Article 63D.

3. Specific observations

- 3.1 The ECB acknowledges the importance of enhancing the BoG's role, as a resolution authority, under Law 4021/2011, and the significance of safeguarding its ability to take, in a timely manner and without undue delay, the necessary resolution measures in relation to ailing credit institutions. While understanding the need for the BoG to have the necessary flexibility to efficiently exercise its resolution powers under Article 63D(4), the ECB notes that neither the draft provision nor its explanatory memorandum specify the conditions or criteria for activating the procedure laid down in the draft provision.
- 3.2 Concerning the proposed modification of the external auditors' role in the valuation procedure under Article 63D of Law 3601/2007, for the purposes of the current valuation procedure, 'the Bank of Greece will take into account, but should not be bound by, the auditors' reports as part of the external valuation process'⁷. If the BoG activates the emergency procedure under the draft provision, thus dispensing with the external auditors' *ex ante* valuation, a risk of discrepancies could arise between its own valuation and the *ex post* external auditors' valuation. This risk could

⁵ ECB Opinion CON/2010/58. All ECB Opinions are available on the ECB's website at www.ecb.europa.eu.

⁶ See the Economic Adjustment Programme for Greece – Fourth Review available on the European Commission's website at: http://ec.europa.eu/economy_finance/publications/occasional_paper/2011/op82_en.htm. In particular, paragraph 12 of annexed Memorandum of Economic and Financial Policies iterates the need, in the context of ongoing initiatives at the EU level, to strengthen the resolution framework for problem banks and to allow timely and effective intervention and resolution consistent with EU Treaty rules and international sound practices. In this context, a broad set of tools will be prepared to ensure that a resolution regime for financial institutions is put into place to safeguard financial stability and ensure effective depositor protection.

⁷ See also ECB Opinion CON/2011/72.

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inter alia affect the funding gaps to be financed by the Resolution Branch of the Hellenic Deposit and Investment Guarantee Fund, according to Article 63D(13) of Law 3601/2007.

- 3.3 Therefore, the BoG should carefully consider the criteria it would propose for its preliminary valuation, to mitigate the risk of any discrepancies between the preliminary and final valuations, as such discrepancies may, *inter alia*, lead to outflows of taxpayers' money. In this regard, the ECB understands that the procedure provided for in the draft provision will only be activated as a measure of last recourse in emergency situations only.

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

Done at Frankfurt am Main, 22 December 2011.

[signed]

The President of the ECB

Mario DRAGHI