



OPINION OF THE EUROPEAN CENTRAL BANK

of 14 April 2011

on amendments to the Statute of the Bank of Greece

(CON/2011/36)

Introduction and legal basis

On 16 March 2011 the European Central Bank (ECB) received a request from the Bank of Greece (BoG) for an opinion on draft legislative provisions introducing amendments to the Statute of the Bank of Greece (hereinafter the ‘draft provisions’).

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 on 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 provisions relate to the 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 European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft provisions

The draft provisions serve the following main objectives.

- 1.1 In accordance with Law 3867/2010 on private insurance supervision, the establishment of a private life insurance fund and other provisions², the BoG was entrusted with the task of supervising private insurance companies. As a result, the Statute of the BoG is amended to add to the main tasks of the BoG the supervision of insurance companies. In addition, under the draft provisions, the categories of entities over which the BoG exercises prudential supervision are extended to expressly include insurance companies and payment institutions. The BoG is required to submit an annual report to the Greek Parliament on the fulfilment of its supervisory tasks.
- 1.2 The draft provisions amend certain conditions relating to shareholder rights. The record date, i.e. the date establishing a shareholder’s right to participate in the General Meeting and to vote on the basis of the number of shares they hold, is set at the beginning of the fifth day before the general

¹ OJ L 189, 3.7.1998, p. 42.

² FEK 128 A/3.8.2010.

meeting. The deadline for submitting the documents for the appointment of a proxy is reduced to three days prior to the general meeting. Furthermore, shareholder rights may not only be exercised by Greek citizens, but also by citizens of other Member States and European Economic Area countries.

- 1.3 The draft provisions extend the BoG's collective bodies to include the Social Security Board (hereinafter the 'Board'). The Board was originally established pursuant to Article 64 of Law 3863/2010³ in the context of the reassignment to the BoG of the task to provide pensions to its staff⁴. The Board's appointment, composition and tasks under the draft provisions reflect, to some extent, Article 64(2) and (3) of Law 3863/2010. Pursuant to the draft provisions, the Board will be composed of the BoG's Governor, an employee of the General Secretariat of Social Security, an employee of the Ministry of Finance, a high-ranking BoG official, two representatives of the BoG's insured staff members and a representative of the BoG's pensioners. Furthermore, a Government Commissioner will participate in the Board's meetings, but will not have the right to vote. The Board will be responsible for defining the BoG's general policy guidelines concerning its provision of pensions to its staff. The Board will also decide on general issues relating to the application of relevant legislation by the BoG's competent bodies and officials. Moreover, the Board will decide on appeals against negative decisions of the BoG relating to pensions, and approve the exercise of all relevant legal remedies and actions available to the BoG before all courts of law.
- 1.4 Where a legal entity supervised by the BoG enters into liquidation following withdrawal of its authorisation, the draft provisions allow the BoG to pay the liquidator's remuneration and the liquidation costs. In turn, the BoG will acquire a claim against the legal entity in liquidation for the reimbursement of any amounts paid to the liquidator with priority over any other claim in respect of the proceeds of liquidation.

2. General observations

The ECB understands that the general aim of the draft provisions is to amend the Statute of the BoG to: (a) take into account recent national legislative developments that affect the BoG's tasks; (b) adequately reflect the BoG's role in ensuring the efficient conduct of the liquidation process of the entities it supervises; (c) ensure compliance with Union law in force. In this respect, the ECB generally welcomes the draft provisions as a means to address important aspects related to the operation of the BoG and the performance of its tasks. The proposed amendments to the Statute of the BoG would also enhance the consistency of the relevant legal framework, thereby ensuring legal certainty.

³ Law on the new social security system and related provisions, FEK 115A/15.7.2010.

⁴ According to the first sentence of Article 64(1) of Law 3863/2010, as of 1 January 2011 the BoG will undertake and arrange social insurance for its staff in the main and supplementary pension sectors; Article 64 of Law 3863/2010 re-established the pensions regime which was applicable to the BoG staff prior to the adoption of Law 3655/2008 (FEK 58 A/3.4.2008).

3. Specific observations

3.1 Supervisory role

3.1.1 The ECB notes that the draft provisions on the extension of the BoG's supervisory tasks are limited to the insertion in the BoG's Statute of a reference to the new categories of entities subject to the BoG's supervision.

3.1.2 As the transfer of insurance sector supervisory competences to the BoG was addressed in Opinion CON/2010/33⁵, the ECB would like to reiterate that the BoG's new functions should be performed in line with the relevant specific observations expressed in that Opinion. In particular, the ECB notes that the expanded supervisory tasks of the BoG will require increased resources, as also acknowledged in the updated Economic Adjustment Programme for Greece⁶.

3.1.3 As regards the supervision of financial institutions other than credit institutions by the BoG, the ECB welcomes the reference to payment institutions. Moreover, the ECB notes that Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC⁷, which is to be implemented by the Member States by 30 April 2011, amends the definition of credit institutions as provided for in Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)⁸. As a result, electronic money institutions will appear as a separate category of financial institutions. Thus, the legal framework relating to the supervision of such institutions by the national central banks will have to be readjusted accordingly.

3.2 Shareholder rights

The proposed amendments relating to shareholder rights are in line with Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies⁹. Nevertheless, the exact point in time before the general meeting by which shareholders should register in the BoG's books in order to be able to exercise their rights should be clarified, as the formulation proposed for the amendment to Article 13 of the Statute of the BoG, referring to 'the beginning of the fifth day' prior to the general meeting, is not sufficiently clear.

⁵ See paragraph 3 of CON/2010/33. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁶ Third Review - winter 2011. See in particular the updated Memorandum of Understanding on Specific Economic Policy Conditionality and the Memorandum of Economic and Financial Policies, available on the European Commission's website at: <http://ec.europa.eu>.

⁷ OJ L 267, 10.10.2009, p. 7.

⁸ OJ L 177, 30.6.2006, p. 1.

⁹ OJ L 184, 14.7.2007, p. 17.

3.3 *Central bank independence*

- 3.3.1 As regards proposed Article 37A, the envisaged appointment of the Board by a decision of a government authority and its composition, combined with its tasks, raise concerns with regard to central bank independence.
- 3.3.2 In particular, proposed Article 37A provides for the appointment of the Board by means of a decision of the Ministry of Labour and Social Security for a term of office of three years. Moreover, regarding the Board's composition, two of its members will be appointed by the Minister of Finance and the Minister of Labour and Social Security, respectively. Furthermore, a Government Commissioner will be invited, under penalty of nullity of the meeting, to participate in all the meetings of the Board, but will not have the right to vote¹⁰. The draft provisions on both the appointing authority and the composition of the Board imply that the Board will perform its tasks without any involvement whatsoever of the BoG's General Council, which according to the Statute of the BoG is, in that respect, the competent collective decision-making body.
- 3.3.3 As regards its tasks, the ECB understands that according to the draft provisions, the Board does not have an advisory role with respect to the BoG, but is empowered, *inter alia*, to make decisions on the BoG's policy on issues relating to the provision of pensions to its staff and on all legal remedies and actions available to the BoG in pension matters. In addition, according to Article 64(1) of Law 3863/2010, the Board may amend statutory provisions of the BoG relating to the provision of pensions to its staff by a decision approved by the BoG's General Council.
- 3.3.4 Taking into account the above, the tasks entrusted to the Board under proposed Article 37A, combined with its appointment and composition as envisaged therein, raise a compatibility issue with Article 38 of the Statute of the BoG according to which the BoG's staff will receive their pensions based on terms laid down by the BoG's General Council (without prejudice to the applicable general legislation). Furthermore, the scheme introduced by the draft provisions could result in the Government influencing the autonomous formulation of the BoG's policies on pension matters and ultimately on the BoG's finances. The BoG's autonomy in relation to staff pensions, which is an aspect of the financial independence of a central bank¹¹, would, therefore, be potentially compromised.
- 3.3.5 These concerns should be adequately taken into account in the proposed appointment, composition and delimitation of the tasks of the Board, which to some extent attempt to accommodate the provisions of Article 64 of Law 3863/2010. To this end, the Board could be appointed by a decision of the BoG's General Council and the participation of members appointed by the government could be limited to the Government Commissioner as provided for in proposed Article 37A. Alternatively, the Board could have only advisory functions to the BoG's General Council on relevant matters. Such solutions would also ensure the operation of the Board as a

¹⁰ The Government Commissioner will have the right to veto decisions of the Board purely on grounds of legality.

¹¹ See Convergence Report 2010, p. 23.

specialised and flexible body and would be in line with the structure of the BoG and the requirements of its Statute, and in particular its independence. Finally, the ECB considers that the term of office of the Board members could be further specified in the draft provisions.

3.4 *Financial aspect of the liquidation process and the monetary financing prohibition*

It is important to safeguard compliance with the prohibition of monetary financing pursuant to Article 123 of the Treaty supplemented by the 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 Treaty¹². This is designed to prevent central bank financing of the public sector. The proposed eighth amendment to the BoG Statute aims to ensure the payment of the liquidator (remuneration and liquidation costs) in case of liquidation of an entity supervised by the BoG after the BoG withdraws its authorisation. The ECB understands that the BoG would have the right to recover any payment it made to the liquidator, on the basis of a priority claim against the entity in liquidation. In the specific case of the BoG and in its competence as the supervisor of these entities, the whole liquidation process is already controlled by the BoG, i.e. opening of the liquidation process, appointment of the liquidator, control of the liquidator's activities. Accordingly, the BoG would not be financing a public sector obligation and therefore, the draft provisions do not breach the monetary financing prohibition.

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

Done at Frankfurt am Main, 14 April 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

¹² OJ L 332, 31.12.1993, p. 1.