EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

5 April 2012

on the recapitalisation and resolution of credit institutions in Greece

(CON/2012/25)

Introduction and legal basis

On 25 February 2012, the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft law amending the legal framework for the recapitalisation and resolution of credit institutions in Greece (hereinafter the 'draft law'), on which the ECB issued Opinion CON/2012/14 on 28 February 2012. On the same date the ECB received a supplementary request from the Ministry for an opinion on draft provisions introducing further amendments to the draft law (hereinafter the 'first amending provisions'). The Greek Parliament adopted them on 28 February 2012 as Law 4051/2012[1]. Furthermore, on 7 March 2012 the ECB received a request for an opinion on draft provisions amending Law 4051/2012 (hereinafter the 'second amending provisions'). The Greek Parliament adopted them on 8 March 2012 as Law 4056/2012[2].

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 provisions, as the draft law relates to the Bank of Greece 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**

1.1   The draft provisions will further align the Greek legal framework for the recapitalisation and resolution of credit institutions with the financial sector and other objectives[3] set out in the Memorandum of Economic and Financial Policies[4] (MEFP), by amending Law 3864/2010 on the Hellenic Financial Stability Fund (hereinafter the 'Law on the HFSF'), Law 3601/2007 (hereinafter

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[1]   FEK A 40/29.02.2012.

[2]   FEK A 52/12.03.2012.

[3]   See paragraphs 1 and 2 of ECB opinion CON/2012/14. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

[4]   Annex V to Law 4046/2012. FEK A 28/14.2.2012.

referred to as the 'Banking Law) and Law 3746/2009 on the Hellenic Deposits and Insurance Guarantee Fund (hereinafter referred to as the 'Law on the HDIGF').

1.2   The purpose of the first amending provisions is mainly to: (i) further specify aspects of the Law on the HFSF, with a view to fostering best practice in decision-making transparency and accountability within the HFSF's General Council and Executive Board. They set out more detailed rules on their modus operandi and the HFSF's tasks; (ii) further specify transitional credit institutions and the ranking of creditors' claims against credit institutions under special liquidation; and (iii) further specify the contributions of credit institutions to the HDIGF Resolution Branch, the ranking of claims of HDIGF branches against credit institutions under special liquidation and the ranking of depositor claims.

1.3   The second amending provisions: (i) further specify the scope of the HDIGF's investment authority to ensure adequate diversification of investments; (ii) clarify certain governance aspects for the HFSF and the HDIGF; and (iii) in view of financial developments, increase the total amount of State guarantees to the Bank of Greece by 50%.

2.   **General observations**

2.1   The ECB received the additional consultation requests on 28 February and 7 March 2012, while the respective draft legislation was adopted by the Greek Parliament on 28 February and 8 March 2012, respectively. As underlined in several ECB opinions[5], even in cases of extreme urgency national authorities are not relieved from their duty to consult the ECB and to allow sufficient time to take the ECB's views into account as laid down in Articles 127(4) and 282(5) of the Treaty. Article 3(4) of Decision 98/415/EC obliges Member States to suspend the process of adoption of draft legislative provisions pending receipt of the ECB's opinion. Article 4 of Decision 98/415/EC provides that the ECB must be consulted 'at an appropriate stage' in the legislative process[6], 'enabling the authority initiating the draft legislative provision to take into consideration the ECB's opinion before taking its decision on the substance'. Member States must also ensure 'that the opinion received from the ECB is brought to the knowledge of the adopting authority if the latter is an authority other than that which has prepared the legislative provisions concerned'.

2.2   In relation to the recent amendments to the basic legal framework underlying the resolution and recapitalisation of credit institutions in Greece, the ECB refers to Opinion CON/2012/14. Overall the ECB welcomes the amending provisions which appear to complement this basic legal framework in line with the MEFP.

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[5]   See the most recent ECB opinions CON/2012/4, CON/2012/9 and CON/2012/13.

[6]   This implies that the consultation should take place at a point in the legislative process that affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and also enables the relevant national authorities to take the ECB's opinion into account before the provisions are adopted.

3.   HDIGF's status as privileged creditor

Articles 13A(4) and 4(16) of the Law on the HDIGF, respectively amended by paragraphs 45 and 46 of the first amending provisions, delimit the scope of the priority rule for the claims of HDIGF branches against a credit institution under special liquidation and for depositor claims, by reference to the provisions of the Greek Bankruptcy Code on privileged claims[7]. Moreover, paragraph 43 of the first amending provisions adds a new paragraph 4 to Article 68 of the Banking Law, to provide that where the special liquidation of a credit institution involves claims with a privilege over a certain thing or amount of money, Article 156 of the Greek Bankruptcy Code applies, except to rights resulting from financial collateral arrangements within the meaning of Article 2 of Law 3301/2004[8], in which case the collateral taker is satisfied from the collateral in full, to the exclusion of all other claims under Article 154 of the Bankruptcy Code and Articles 13A(4) and 4(16) of the Law on the HDIGF. The ECB welcomes these draft provisions, as they clarify the scope of the priority rule by reference to the Greek bankruptcy code provisions on privileges and to the Greek legislation transposing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements[9], for the purposes of insulating claims under financial collateral arrangements as defined in the Directive. In this context the ECB understands that the priority of the Bank of Greece's claims, in accordance with the latter's statutory provisions, is not affected by the priority arrangements set out in the draft provisions.

4.   Increased State guarantee to the Bank of Greece

Paragraph 1 of the second amending provisions provides that the total amount of State guarantees under Decision of the Deputy Minister for Finance No 2/43219/0025/6.5.2011[10], as amended, will be increased by 50%. The ECB welcomes the increase of State guarantees to the Bank of Greece, on the basis of which liquidity may be disbursed by the Bank of Greece to solvent credit institutions with short term liquidity problems.

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

Done at Frankfurt am Main, 5 April 2012.

[signed]

The President of the ECB

Mario DRAGHI

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[7]   Law 3588/2007 (FEK A 153/10.7.2007).
[8]   FEK A 263/23.12.2004.
[9]   OJ L 168, 27.6.2002, p. 43.
[10]   FEK B 1143/06.06.2011.