



OPINION OF THE EUROPEAN CENTRAL BANK
of 22 May 2012
on debt arrangements for over-indebted individuals
(CON/2012/40)

Introduction and legal basis

On 19 April 2012, the European Central Bank (ECB) received a request from the Greek Ministry of Labour and Social Security for an opinion on a draft law on debt arrangements for over-indebted individuals (hereinafter 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

- 1.1 The draft law introduces amendments to both: (a) Law 3869/2010² governing the procedures enabling over-indebted individuals to benefit from a debt arrangement under specific conditions, and (b) the Code of Civil Procedure. The ECB was previously consulted on Law 3869/2010 and issued Opinion CON/2010/34 on debt arrangements for over-indebted individuals³ in response.
- 1.2 The draft law amends the conditions for applying to the competent court for a debt arrangement, by specifying that: (a) debtors may reach an out-of-court settlement with their creditors prior to or following the submission of their application, pending final judgment by the competent court on such application; and (b) individuals regularly engaged in the conduct of commercial transactions will also be eligible for a debt arrangement subject to the following conditions: (i) they are self-employed, (ii) they have not employed more than one employee over the four years prior to making the application and, (iii) their debt from commercial transactions does not exceed a specific amount.

¹ OJ L 189, 3.7.1998, p. 42.

² Law 3869/2010 on debt arrangements for over-indebted households and other provisions (FEK 130 A/3.8.2010).

³ All ECB opinions are available on the ECB’s website www.ecb.europa.eu.

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- 1.3 In addition, the draft law specifies further certain procedural issues in relation to the submission of applications for a debt arrangement and the assessment of such applications by the courts. More specifically, it provides that in case of assignment of creditors' claims to third parties, assignees with no main residence or seat in the Hellenic Republic are obliged to appoint an agent pursuant to the relevant provisions of the Code of Civil Procedure. This obligation is to apply retroactively.
- 1.4 As regards debt arrangements for debtors whose assets are not sufficient to repay the debt, the draft law extends from four to five years the maximum period during which the debtor may be obliged to pay a specific amount to satisfy his creditors' claims on a monthly basis. In such a case, where the debtor fails to make the payments imposed on him by the court, he must, within six years from submission of his application or within one year from the court judgement, settle the outstanding amount plus the interest accruing from the date of such judgement. The applicable interest rate is 2.5 percentage points higher than the interest rate applicable to the ECB's main refinancing operations. This measure will also apply retroactively to pending applications. In exceptional cases, the court may limit the maximum arrangement period to three years. Due performance of the above obligations by the debtor will, in principle, result in him being released from any residual debts towards all his creditors.
- 1.5 As regards the special procedure aimed at protecting the debtor's primary residence, the draft law allows for the extension of the maximum repayment period for the total debt from 20 to 35 years, in certain cases. The creditor may only institute enforcement proceedings with respect to the debtor's sole place of residence if the debtor fails to honour the obligations imposed during such repayment period, by being at least four monthly instalments in arrears.
- 1.6 The draft law also reinforces the debtors' duty of disclosure, stipulating that the consequences of infringing such duty will also apply where debtors deliberately omit creditors from their application for a debt arrangement.
- 1.7 Finally, the draft law amends Article 982 of the Code of Civil Procedure in order to provide that debtor claims on deposits with credit institutions up to an amount of EUR 1 500 for personal bank accounts and EUR 2 000 for joint bank accounts shall be exempt from seizure.

2. General observations

- 2.1 The ECB understands that the draft law aims to enhance the legal framework governing debt arrangement procedures with a view to improving its effectiveness and ensuring the adequate fulfilment of its objectives. On the basis of the consultation request submitted to the ECB, the draft law aims to safeguard the interests of credit institutions and debtors, restoring trust between credit institutions and creditors and enhancing liquidity in the banking sector. However, in the absence of a thorough impact assessment of the proposed changes, it remains doubtful whether these objectives will be achieved. Such assessment should therefore be undertaken before the draft law is adopted.

- 2.2 The ECB notes that the amended provisions are of unlimited duration and general application and govern existing legal relationships between debtors and creditors, such as credit institutions. Consequently, the observations made by the ECB in Opinion CON/2010/34 still apply to the proposed provisions. This is of importance given that the time which has elapsed since the adoption of the relevant legislation and the issuance of Opinion CON 2010/34 has seen changes to the Greek financial system, which should be taken into consideration prior to the adoption of the draft law.
- 2.3 It seems likely that several of the amendments may have negative implications for credit institutions in their capacity as creditors and these provisions should be thoroughly assessed before the adoption of the draft law. In particular, such amendments may have a potential impact on both the capital adequacy and liquidity position of credit institutions as well as the functioning of the financial system. It is only by making such a prior assessment that it may be possible to mitigate such negative implications. In turn, this will safeguard financial stability, promote market efficiency and liquidity and support the adequate flow of credit to the economy⁴. From a financial stability perspective, potential concerns impacting on credit institutions, which need to be assessed from the outset, stem from the following provisions: (a) the proposed extension from 20 to 35 years of the maximum repayment period for debt related to primary residences, (b) the proposed extension of the debt arrangement regime to self-employed persons regularly engaged in the conduct of commercial transactions, as described above⁵, (c) the exemption from seizure of certain deposits with credit institutions⁶, and (d) the removal of the current requirement to first pursue an out-of-court settlement procedure, thereby making it possible to immediately file for a court procedure and for the stay of enforcement procedures.
- 2.4 In this context, the ECB stresses that the proposed amendments should be accompanied by the necessary safeguards to avoid moral hazard, as it is important that the debtor has an incentive to fulfil the payment obligations determined by the court settlement procedure. Against this background, the proposed interest rate to be applied in the event of non-fulfilment of such obligations seems to be too low to serve as a penalty rate. In addition, no explanatory material on the background of this provision has been provided and this would be needed in order for a full assessment to be made.
- 2.5 The ECB welcomes the reinforcement of the debtors' duty of disclosure and considers, in view of its importance for the stability of financial institutions and markets, that the draft law could be further elaborated on in order to ensure that the relevant legal framework takes into account the current needs of all stakeholders involved and will prove efficient in the long term.

⁴ See paragraph 2.2 of Opinion CON/2010/34. See also paragraph 2.3 of Opinion CON/2010/8 on restructuring of business and professional debts owed to credit institutions and on credit bureau data processing.

⁵ See paragraph 1.2 above.

⁶ See paragraph 1.7 above.

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

Done at Frankfurt am Main, 22 May 2012.

[signed]

The President of the ECB

Mario DRAGHI