



EUROPEAN CENTRAL BANK
EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK
of 6 August 2013
on the special liquidation of credit institutions
(CON/2013/57)

Introduction and legal basis

On 3 July 2013 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on draft legislative provisions on the special liquidation of credit institutions (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 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 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 amend the legal framework governing the special liquidation of credit institutions², in line with the commitment to improve the management of assets in liquidation undertaken by the Greek government during the second review of the Second Economic Adjustment Programme for Greece. To this end, the draft provisions introduce amendments to Law 3601/2007 on the taking up and pursuit of the business of credit institutions, capital adequacy of credit institutions and investment firms and other provisions³ and authorise the Bank of Greece to adopt implementing measures, as necessary.
- 1.2 The draft provisions specify that the special liquidator appointed by the Bank of Greece may be a natural or a legal person and may liquidate several credit institutions, if this proves necessary to better serve the purposes of the special liquidation.
- 1.3 In addition, the draft provisions create an advisory Special Liquidation Committee (SLC) with five members, who are appointed by the Bank of Greece for a three-year term of office. The special liquidator is required to request the SLC’s consent to carry out specific liquidation tasks, namely

¹ OJ L 189, 3.7.1998, p. 42.

² The special liquidation framework contains the relevant provisions of Law 3601/2007 on the taking up and pursuit of the business of credit institutions, capital adequacy of credit institutions and investment firms and other provisions, the relevant provisions of the Law on bankruptcy (Law 3588/2007) and the relevant acts of the Bank of Greece’s Credit and Insurance Committee No 21/4.11.2011 and No 77/30.5.2013.

³ FEK A 178/1.8.2007.

settlement of claims and debt restructuring as well as sales of immovable property and debt instruments, where the amount of the claim or the value of the asset concerned exceeds certain thresholds.

- 1.4 Finally, the draft provisions: (a) specify the Bank of Greece's scope of supervision over the special liquidator; (b) limit the special liquidator's and the SLC's liability for debts incurred by the credit institution under liquidation with regard to the time period prior to their appointment (c) specify the means of notification for certain cases in special liquidation proceedings.

2. Appropriate time to consult the ECB

- 2.1 According to Article 4 of Decision 98/415/EC, the ECB must be consulted at an appropriate stage in the legislative process, which gives the ECB sufficient time to adopt its opinion and also enables the consulting authority to take the ECB's opinion into consideration before the draft provisions are adopted. In this case, the ECB was consulted at a point in the legislative process that did not give the consulting authority enough time to introduce substantive amendments to the draft provisions. Furthermore, the Greek Parliament adopted the draft provisions shortly after the submission of the request for the ECB's opinion.
- 2.2 The ECB understands that the framework for the special liquidation of credit institutions in Greece is evolving, particularly due to the framework's relevance for restructuring the Greek banking sector. Therefore, the ECB considers that this opinion, despite being published following adoption of the draft provisions, can serve as guidance for future amendments to this framework. However, the ECB stresses that even cases of particular urgency do not relieve national authorities of their duty to consult the ECB at an appropriate stage in the legislative process and to allow sufficient time to take into account its views in accordance with Decision 98/415/EC.

3. General observations

- 3.1 The ECB welcomes the draft provisions to the extent that they seek to amend the current framework on the special liquidation of credit institutions in line with the financial sector objectives outlined by the Greek authorities in the Memorandum of Economic and Financial Policies⁴. In relation to the development of the abovementioned framework, the ECB refers to its previous relevant opinions⁵.
- 3.2 The ECB understands that the main purpose of the draft provisions is to ensure timely and cost-effective disposal of and/or restructuring of assets in liquidation and to also take advantage of synergies by centralising the administration of assets. Given the high financial stakes involved in the liquidation of credit institutions, the ECB notes that establishing sound, efficient and orderly liquidation procedures based on international practices is essential. Therefore, the ECB considers

⁴ Annex V to Law No 4046/2012 on the approval of the draft financing agreements between the European Financial Stability Fund, the Hellenic Republic and the Bank of Greece and of the draft Memorandum of Understanding between the Hellenic Republic, the European Commission and the Bank of Greece and other provisions of utmost importance for reducing the public debt and saving the national economy (FEK A 28/14.12.2012).

⁵ See, in particular, Opinion CON/2011/72. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

that further developing the Greek legal and supervisory framework governing the special liquidation of credit institutions is an important step towards increasing the protection of the value of assets in liquidation and, ultimately, of creditors' interests. Furthermore, when significant public sector claims are involved in the special liquidation procedure, a well-designed framework is necessary in order to minimise taxpayer exposure to costs.

3.3 The ECB notes that proper and swift implementation of the envisaged framework by the special liquidator, the SLC and other competent authorities is of crucial importance for achieving the abovementioned objectives. Proper implementation of the envisaged framework involves, *inter alia*, ensuring compliance with the principles of legal certainty, transparency and predictability regarding the treatment of creditors, as well as with the principle of equal treatment of creditors.

4. Interaction of the draft provisions with other provisions of the special liquidation framework

The ECB notes that the interaction between the draft provisions, the Law on bankruptcy⁶ and secondary legislation governing the special liquidation of credit institutions⁷ should be clear and ensure that the framework as a whole is consistent, comprehensive and, thus, enforceable. The ECB recommends that the interaction between these provisions be clarified, e.g. in an explanatory note to the draft provisions.

5. Development of the framework to support and oversee the special liquidator

5.1 The ECB welcomes that the draft provisions develop the framework to support and oversee the special liquidator appointed by the Bank of Greece. There is merit in appointing the same special liquidator for more than one credit institution under liquidation. At the same time, the ECB stresses that the draft provisions should include safeguards to avoid conflicts of interests, to ensure that control over the special liquidator is neither arbitrary nor excessive and to specify that this appointment for multiple credit institutions should be based on specific objective criteria, such as the size of the institutions concerned. Furthermore, the ECB understands that, under the draft provisions, allowing the special liquidator to carry out liquidation of several entities does not affect the insolvency estate of each entity and that each respective procedure remains separate.

5.2 It would be beneficial to provide more detailed guidance to the special liquidator and the SLC for the performance of their tasks in the draft provisions. The special liquidator and the SLC should be supported by specialised and impartial advisers when assessing the value of assets under liquidation, e.g. by providing non-binding evaluations from independent evaluators. As regards the thresholds that trigger the SLC's involvement, the ECB stresses the need for their adequate justification, taking into consideration the inherent aim of maximising the proceeds of the liquidation.

⁶ Law 3588/2007, FEK A 153/10.7.2007.

⁷ Acts of the Bank of Greece's Credit and Insurance Committee No 21/4.11.2011 and No 77/30.5.2013.

5.3 It would be useful to further specify the scope of the control exercised over the special liquidator. In line with its previous opinions, the ECB welcomes the Bank of Greece playing the central role in the special liquidation procedure, as a means to reinforce the financial stability framework⁸. At the same time, it is equally crucial to ensure clarity and legal certainty as regards the procedure for judicial review of the decisions made by the special liquidator and the SLC.

6. The SLC and Bank of Greece's role

6.1 The ECB welcomes the creation of the SLC as a means to reinforce the framework to oversee the special liquidation of credit institutions and to enhance the smooth and efficient conduct of the special liquidation procedure. At the same time, in order to enable the SLC to fulfil its role in a satisfactory manner, the draft provisions should ensure that there is no ambiguity in the SLC's status, role and powers under Greek law.

6.2 The ECB recommends that the draft provisions clarify whether the SLC is considered an internal body of the Bank of Greece or whether it has the same status as the special liquidator. This is also relevant with respect to who should be held accountable for SLC decisions. The Greek legislator should set up an appropriate accountability framework.

7. Relationship between the Bank of Greece and the SLC

The draft provisions provide that the Bank of Greece is to provide secretarial support to the SLC, decide on the qualifications and the selection criteria for SLC members, and nominate and remunerate SLC members. The ECB understands that these rights and obligations relate to the Bank of Greece's mandate in the special liquidation process for credit institutions, which is already controlled by the Bank of Greece, i.e. opening of the liquidation process, appointment of the special liquidator, and control of the liquidator's activities. In this regard, the draft provisions do not breach the monetary financing prohibition which prevents central bank financing of the public sector. At the same time, the draft provisions should clarify that the SLC's tasks are related to the Bank of Greece's competences in the process of special liquidation of credit institutions.

8. Independence

The ECB has consistently noted that the principle of central bank independence requires Member States to ensure that NCBs have sufficient financial resources to perform their Eurosystem-related tasks as well as their own national tasks. In this respect, any remuneration paid to the SLC members by the Bank of Greece should be determined in a manner that is fully compatible with the Bank of Greece's institutional and financial independence.

⁸ See in particular Opinions CON/2004/9 and CON/2004/18.

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

Done at Frankfurt am Main, 6 August 2013.

[signed]

The President of the ECB

Mario DRAGHI