



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 June 2016

on credit agreements for consumers relating to residential immovable property

(CON/2016/34)

Introduction and legal basis

On 31 May 2016 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft law on the implementation of Directive 2014/17/EU of the European Parliament and of the Council¹ (hereinafter the 'draft law').

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 indent of Article 2(1) of Council Decision 98/415/EC², as the draft law relates to the Bank of Greece. 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 purpose of the draft law is to implement Directive 2014/17/EU into Greek law, with a view to addressing problems uncovered by the financial crisis in the area of credit agreements for consumers relating to residential immovable property. The draft law aims at developing a more transparent and efficient market in this area which contributes to financial stability and provides a higher level of consumer protection, taking into account that much of the debt held by consumers within the Union is concentrated in credits related to residential immovable property.
- 1.2. The draft law designates the Bank of Greece as the competent authority responsible for ensuring the application and enforcement of certain requirements applicable to creditors and credit intermediaries when providing credit to consumers, and for the adoption of secondary legislation further specifying these requirements. The requirements to be monitored by the Bank of Greece include the following: (a) business conduct obligations; (b) knowledge and competence requirements; (c) minimum standards for the provision of advisory services to consumers; (d) requirements concerning the use of tying and bundling practices; (e) requirements on the provision of general information and adequate explanations to consumers on credit agreements; (f) the calculation of the annual percentage rate of charge (APRC); and (g) the assessment of consumers' creditworthiness. The draft law also imposes obligations on creditors in relation to payment default

¹ Directive 2014/17/EU of the European Parliament and the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

² Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

by consumers, such as exercising reasonable forbearance and making reasonable attempts to resolve the situation through alternative means before foreclosure proceedings are initiated.

- 1.3 Furthermore, the draft law designates the Bank of Greece as the competent authority for the licensing and supervision of credit intermediaries. In particular, the Bank of Greece will be responsible for: (a) licensing credit intermediaries; (b) ensuring that all licensed credit intermediaries comply with the professional requirements set out in the draft law; (c) withdrawing the license of credit intermediaries; (d) imposing sanctions in case of infringements; and (e) carrying out notification procedures which allow licensed credit intermediaries to operate throughout the Union. Finally, the draft law stipulates that the Ministry of Economy and Development should cooperate with the Bank of Greece and other relevant Greek authorities with a view to educating consumers on responsible borrowing and debt management and providing clear information on the debt-granting process especially in respect of consumers taking out mortgage credit for the first time.

2. General observations

- 2.1 This opinion does not address whether the draft law effectively implements Directive 2014/17/EU into Greek law. The ECB will only assess those provisions of the draft law that may impact on the role and tasks of the Bank of Greece as a central bank, national supervisory authority and member of the Eurosystem and the European System of Central Banks (ESCB).
- 2.2 The draft law broadens the Bank of Greece's current supervisory functions by assigning to it responsibility for the supervision and regulation of the market for credit agreements relating to residential immovable property. To this end, the draft law expands the categories of entities over which the Bank of Greece exercises prudential supervision to include credit intermediaries, which arrange credit by presenting credit agreements to consumers or concluding such agreements on behalf of creditors. Furthermore, the draft law expands the supervisory functions of the Bank of Greece in order to ensure proper market conduct of any natural or legal person granting credit relating to residential immovable property in the course of his trade, business or profession.
- 2.3 The ECB underlines that, in the context of a proposed conferral of new tasks on an ESCB member, it is necessary to assess whether such new tasks are in line with the prohibition of monetary financing under Article 123 of the Treaty. The ECB has developed the guidance set out in paragraphs 3.1 to 3.3 on the basis of which it may decide whether a new task conferred on a national central bank (NCB) is to be considered a central banking task or a government task for the purposes of assessing such conferral of tasks against the prohibition of monetary financing³.

3. Conferral of new tasks on national central banks

3.1 General considerations

³ See, for example, paragraph 3.1 of Opinion CON/2015/21 paragraphs 2.2.1 to 2.2.3 of Opinion CON/2015/54 and paragraphs 2.2.1 to 2.2.3 of Opinion CON/2016/31. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

First, the systematic categorisation of tasks assigned to NCBs as central banking or government tasks applies to genuinely new tasks that did not exist in the past or did not form an integral part of the central banking tasks already assigned to the NCB in the past. In recognition of the different Member States' legal frameworks, central banking traditions and national set-ups, the tasks currently discharged by an NCB as central banking tasks are not reviewed and re-categorised, but may be reassessed if their substance is amended.

Second, it needs to be emphasised that when Member States decide to confer new tasks on their NCBs, due regard must be given to the role of the NCB as part of the ESCB or Eurosystem, as applicable, and to the requirement of central bank independence. The principle of financial independence, which is a key aspect of the principle of central bank independence as laid down in Article 130 of the Treaty, requires that the Member States may not put their NCBs in a position where they have insufficient financial resources to carry out their ESCB- or Eurosystem-related tasks, as applicable. Accordingly, an NCB must have sufficient financial means not only to perform its ESCB- or Eurosystem-related tasks but also its national tasks (e.g. financing its administration and own operations)⁴. Where an NCB considers that the allocation of a new task would impinge on its financial independence, because it would not have sufficient means to focus primarily on its ESCB- or Eurosystem-related tasks, or that the discharge of the new task would impose a disproportionate burden on it, the NCB should be able to object to the new task being allocated to it.

Third, central banking tasks comprise in particular those tasks that are related to the tasks listed in Article 127(2), (5) and (6) of the Treaty.

Fourth, new tasks conferred on an NCB which are atypical of NCBs' tasks, or which are clearly discharged on behalf of and in the exclusive interest of the government or of other public entities, should be considered as government tasks.

3.2 *Specific considerations*

Consumer protection tasks related to financial services are central bank tasks to the extent that these complement existing supervisory powers of a central bank and thus contribute to the soundness of the financial markets and the preservation of confidence in the marketplace.

An important criterion for qualifying a new task as a government task is its impact on the institutional, financial and personal independence of the NCB. In particular, the following should be taken into account.

First, it should be assessed whether the performance of the new task creates (inadequately addressed) conflicts of interest with existing central banking tasks, without necessarily complementing the NCB's existing central banking tasks. If a conflict of interest arises between existing and new tasks, there should be sufficient mitigation measures in place to adequately address that conflict. Complementarity between the new task and existing central banking tasks should not, however, be interpreted broadly, as this could lead to the creation of an indefinite chain of ancillary tasks. The assessment of the complementarity of the new task should also take into

⁴ See paragraph 2.2.3 of the ECB's 2014 Convergence Report.

account the financing of that task. In the event of a conflict of interest between supervision and consumer protection, supervisory considerations must prevail⁵.

Second, it should be assessed whether without new financial resources the performance of the new task places a disproportionate burden on the financial or organisational capacity of the NCB and may negatively impact on its capacity to properly perform its existing central banking tasks.

Third, it should be assessed whether the performance of the new task is aligned with the institutional set-up of the NCB, in particular as regards central bank independence and accountability considerations.

Fourth, it should be assessed whether the performance of the new task entails substantial financial risks.

Fifth, it should be assessed whether the performance of the new task exposes the members of the NCB's decision-making bodies to political risks that are disproportionate and could also impact on their personal independence and, in particular, the guarantee of the Governor's term of office under Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank.

- 3.3 The final assessment of the qualification of a task given to an NCB as either falling within the scope of a central banking task or a government task will be guided by the objective of ensuring the consistent application of the prohibition of monetary financing within the Eurosystem and the ESCB.

4. Specific observations

4.1 Conferral of new tasks on the Bank of Greece

In the light of the guidance set out in paragraphs 3.1 to 3.3, it is further assessed whether the new tasks that the draft law confers on the Bank of Greece could constitute a breach of the monetary financing prohibition.

4.2 Principle of financial independence

The principle of financial independence requires NCBs to have sufficient means to carry out not only their ESCB-related tasks but also their national tasks, both from an operational and financial perspective⁶. In this regard the ECB notes that the draft law does not specify how the costs related to the supervision of credit intermediaries by the Bank of Greece are to be financed. The ECB therefore invites the consulting authority to consider establishing a cost recovery regime, which would require credit intermediaries to pay to the Bank of Greece an authorisation fee or an annual fee to cover the actual costs incurred by the Bank of Greece in the performance of its supervisory tasks.

4.3 Links to tasks listed in Article 127(5) of the Treaty

The authorisation and supervision of credit intermediaries, as well as the oversight and regulation of the market for credit agreements relating to residential immovable property, can be considered

⁵ See paragraph 3.1 of Opinion CON/2015/21.

⁶ See paragraph 2.2.3 of ECB's 2014 Convergence Report.

as tasks related to those referred to in Article 127(5) of the Treaty, based on the understanding that they are complementary to the supervisory tasks exercised by an NCB, particularly where, as in this case, the Bank of Greece already exercises tasks of a similar nature⁷. More specifically, the ECB notes that the Bank of Greece already supervises credit institutions and other financing institutions, such as credit companies granting consumer credit to natural persons⁸, with a view to enhancing the stability and effectiveness of the credit system and of the financial sector in general⁹. As part of this function, the Bank of Greece establishes and monitors the application of requirements aimed at ensuring a proper interaction between market participants and consumers with respect to the provision of credit, at the pre-contractual stage as well as during the contractual relationship, including, for example, minimum disclosure requirements, and requirements relating to complaints, property valuation and creditworthiness assessments. Moreover, the Bank of Greece is also entrusted with the adoption and application of a code of conduct for the handling of arrears¹⁰. Finally, in its capacity as the national supervisory authority, the Bank of Greece acts under the auspices of the European Banking Authority (EBA). Directive 2014/17/EU favours the designation of authorities acting under the auspices of the EBA as the competent authorities responsible for the admission of credit intermediaries¹¹.

4.4 *Atypical tasks*

A number of Member States have conferred on their NCBs supervisory tasks related to the provision of consumer credit¹². The ECB has generally accepted the allocation of such tasks to NCBs provided they do not interfere with the performance of the NCB's ESCB-related tasks¹³. The tasks of an NCB with regard to the supervision of credit intermediaries can therefore, if this condition is met, be regarded as tasks not atypical of a central bank, particularly if, as in the case of the Bank of Greece, it has a statutory responsibility for banking supervision¹⁴.

4.5 *Discharge of tasks on behalf of and in the exclusive interest of the Government or of other public entities*

The draft law designates the Bank of Greece as the sole authority responsible for supervising credit intermediaries, in its own name and not on behalf of any other authority. Under the draft law the Bank of Greece is also the sole authority responsible for enforcement of the requirements applicable to creditors and credit intermediaries. The ECB notes that the draft law designates the Ministry of Economy as the authority responsible for the application of certain provisions of the draft

⁷ See, for example, paragraph 3.3 of Opinion CON/2015/54, paragraph 3.1.2 of Opinion CON/2015/37, paragraph 3.1.2 of Opinion CON/2015/45 and paragraphs 3.2 and 3.3 of Opinion CON/2015/21.

⁸ See Article 153 of Law 4261/2014 'Access to the activity of credit institutions and prudential supervision of credit institutions and investment firms (transposition of Directive 2013/36/EU), repeal of Law 3601/2007, and other provisions', FEK A 107/ 5.5.2014.

⁹ See Article 55A of the Statute of the Bank of Greece.

¹⁰ See Article 1(2) of Law 4224/2013 'Government Council for Private Debt Management, Institution for Growth in Greece, provisions on the Hellenic Republic Asset Development Fund, and other urgent provisions', FEK A 228/31.12.2013.

¹¹ See recital 79 of Directive EU/2014/17.

¹² See paragraph 3.4 of Opinion CON/2015/54.

¹³ See, for example, paragraphs 2.1 to 2.3 of Opinion CON/2006/38, paragraphs 2.1 and 2.2 of Opinion CON/2006/47, paragraphs 2.1 to 2.5 of Opinion CON/2007/29, and paragraph 2 of Opinion CON/2009/71.

¹⁴ See Article 4 of Law 4261/2014.

law, notably those relating to the advertisement and marketing of credit agreements and the provision of advisory services by consumer associations. Responsibility for the financial education of consumers lies with the Ministry of Economy and Development, which may cooperate with the Bank of Greece and other relevant authorities on related matters. In view of the above, it appears that the allocation of the responsibilities under the draft law is clear and there is no indication that in carrying out its new tasks the Bank of Greece would act exclusively in the interest of another public entity.

4.6 *Extent to which the performance of tasks is aligned with the Bank of Greece's institutional set-up, in particular as regards accountability considerations*

Given the complementarity of the new tasks with the Bank of Greece's existing supervisory powers, in particular in the field of supervision of credit institutions and other financial institutions and oversight of their market conduct, the new tasks appear to broadly fit into the Bank of Greece's institutional set-up.

4.7 *Extent to which the performance of tasks is proportionate to the Bank of Greece's financial and operational capacity and its ability to perform its ESCB-related tasks*

As noted above, the draft law does not provide for a regime for the recovery of costs related to the supervision of credit intermediaries. Directive 2014/17/EU requires Member States to ensure that competent authorities have adequate resources for the efficient and effective performance of their duties¹⁵. However, the draft law does not specify the resources to be deployed by the Bank of Greece for the discharge of its new tasks, nor does it provide an estimate of the direct costs that the Bank of Greece is likely to incur in the performance of these tasks. The ECB notes that it is important that appropriate resources are available to the Bank of Greece in order to ensure that it can properly perform its new tasks, while maintaining, at all times, sufficient financial means to carry out its ESCB- or Eurosystem-related tasks and other national tasks, meet its international obligations and properly cover its administrative and operational expenses.

4.8 *Extent to which the performance of tasks entails substantial financial risks and conflicts of interests with existing tasks of the Bank of Greece are addressed*

The draft law does not contain any specific provisions on liability for the performance of supervisory tasks. The Bank of Greece's potential liability for the performance of its new tasks under the draft law will be thus subject to the general rules on the liability of the Bank of Greece. These general rules provide that the governor, the deputy governors, all members of collective bodies and staff members of the Bank of Greece shall not be subject to civil liability towards third parties for actions or omissions in the performance of their duties related to any competence exercised by the Bank of Greece in its capacity as a public authority other than for wilful misconduct¹⁶. As regards potential conflicts of interest between existing and new tasks of the Bank of Greece, the ECB notes that under the draft law the Bank of Greece will be responsible for supervising conduct of creditors and credit intermediaries towards consumers, including their policies in respect of arrears and foreclosure. While these tasks seem to be broadly of the same nature as the supervisory tasks

¹⁵ See Article 5(1) of Directive EU/2014/17.

¹⁶ See Article 62(4) of Law 4261/2014.

already performed by the Bank of Greece, the ECB notes that conflicts of interest may arise. As the authority responsible for supervising the financial markets, the Bank of Greece will be required to mitigate any potential conflict of interest between its new consumer protection tasks and its supervision and financial stability mandates. The ECB recommends that sufficient mitigation measures are put in place.

4.9 *Conclusion*

The ECB considers that there are grounds for regarding the Bank of Greece's new tasks of supervising and regulating the market for consumer credit agreements as well as authorising and supervising credit intermediaries as central bank tasks, in the sense that they can be regarded as complementing the Bank of Greece's existing supervisory functions. However, it is essential that the new role assigned to the Bank of Greece by the draft law does not adversely affect its capacity to carry out its ESCB- or Eurosystem-related tasks and to perform its other functions. To this end, it must be ensured that the supervisory costs incurred by the Bank of Greece in relation to its new tasks are adequately covered. Furthermore, it is important to ensure that sufficient mitigation measures are in place to adequately address any potential conflict of interests between the Bank of Greece's new consumer protection tasks and its existing supervision and financial stability mandate. The ECB invites the Greek authorities to consider in more depth the abovementioned aspects before the draft law is adopted.

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

Done at Frankfurt am Main, 28 June 2016.

[signed]

The President of the ECB

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