



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 15 February 2019**  
**on the licensing and supervision of providers of microcredit**  
**(CON/2019/7)**

**Introduction and legal basis**

On 18 December 2018 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft Law on the provision of microcredit (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/EC<sup>1</sup>, as the draft law relates to the Bank of Greece (BoG) and to the tasks conferred upon the ECB concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty. 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 aim of the draft law is to lay down rules for the taking up, pursuit, and supervision of the activity of microcredit provision and to regulate certain rights and obligations of both providers and recipients of microcredit. The draft law defines microcredit as the provision of non-bank, unsecured loans not exceeding EUR 25,000 to individuals, socially vulnerable groups, and very small legal entities and/or 'entities for the social and solidary economy', to be used as working or investment capital, for educational purposes, or for social integration purposes.
- 1.2 The draft law designates the BoG as the competent authority to license and supervise entities providing microcredit in Greece. In particular, the BoG is empowered to: (a) assess licence applications, further specify the documentation required, and grant and withdraw, subject to certain conditions, the relevant licence; (b) conduct fit-and-proper assessments of natural or legal persons aiming to acquire qualifying holdings (or increase such holdings) in microcredit entities; (c) specify the detailed requirements concerning subscription to the initial capital of microcredit entities and set own funds requirements if deemed necessary; (d) maintain a register listing the microcredit entities licensed, or with passporting rights, to operate in Greece; (e) supervise microcredit entities in a way that is adequate, proportionate and responsive to their risk exposure, and issue decisions related to the levying of an annual supervision fee payable by each microcredit entity; and (f) impose penalties on microcredit entities in the event of infringement of the provisions of the draft law.

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<sup>1</sup> 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).

- 1.3 The draft law also stipulates that credit institutions within the meaning of Article 4(1)(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council<sup>2</sup>, and financial institutions, within the meaning of Article 4(1)(26) of that Regulation, may also provide microcredit the same conditions as licensed microcredit entities. It is noted that Parts 3 and 4 thereof (Articles 18-31) are to apply to credit institutions within the meaning of Union law. Accordingly the ECB understands that the provisions on licensing, acquisition of a qualifying holding in a microcredit institution, and withdrawal of a licence (see Articles 6-11 of the draft law) do not apply to credit institutions.
- 1.4 Moreover, the draft law confers on the General Secretariat of Commerce and Consumer Protection at the Ministry of Economy and Development the task of ensuring and monitoring effective compliance with several provisions of the draft law applicable to credit institutions (relating to consumer protection issues).<sup>3</sup>
- 1.5 Finally, the draft law provides that, with a decision by the Minister of Finance and the Minister of Economy and Development (and any other competent Minister, as applicable), it is possible to set up microcredit provision programmes as established in the draft law, co-investing resources from microcredit institutions and the national or co-financed leg of the Programme of Public Investments. The same decision shall specify the potential beneficiaries, the kinds and the purpose of the provided microcredit products, the specific programme implementation terms, the procedure for the recovery of sums wrongly paid, as well as any other necessary implementation details.

## 2. General observations

- 2.1 By way of introduction, the ECB notes that the great majority of Member States do not have a dedicated regime for the regulation of the provision of microcredit. In these Member States, the provision of credit, including credit under terms similar to microcredit within the meaning of the draft law, is subject only to the regulatory regime governing the institutions that provide it (either credit institutions or non-bank entities). Unlike in the case of credit institutions, which are subject to the harmonised EU banking rules when providing credit for their own account, the regulatory approach to the provision of microcredit by non-banks differs across Member States. Absent a harmonised, EU-wide regime to govern the provision of microcredit by non-banks, the European Commission has established a European Code of Good Conduct for Microcredit Provision (the 'Code'). The purpose of the Code is to lay down a set of standards in terms of management, governance, risk management, reporting, consumer and investor relations that are common to the EU microcredit sector, rather than to replace existing regulations applicable to microcredit providers, where such regulations exist.<sup>4</sup> The Code is primarily designed to cover non-bank microcredit providers providing loans of up to EUR 25,000 to micro-entrepreneurs. The draft law contains several references to the Code, which appears to inform some of its provisions, including the proposed

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<sup>2</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>3</sup> See Article 27 of the draft law.

<sup>4</sup> See European Commission, European Code of Good Conduct for Microcredit Provision (2013), p. 10, available at: [https://ec.europa.eu/regional\\_policy/sources/thefunds/doc/code\\_bonne\\_conduite\\_en.pdf](https://ec.europa.eu/regional_policy/sources/thefunds/doc/code_bonne_conduite_en.pdf).

statutory ceiling for microcredit loans.

- 2.2 The focus of the Code on non-bank microcredit providers is justified by the fundamental differences between them and credit institutions, as providers of credit. These differences can be summarised as follows. First, the acceptance of deposits or other repayable funds from the public, and the granting of loans on the basis of such deposits and funds, is a regulated activity under Union law and is reserved to credit institutions. This particular characteristic accounts for both the particular systemic importance of credit institutions and the application to them of the stringent prudential supervisory standards laid down by applicable Union law, including Regulation (EU) No 575/2013 and Directive 2013/36/EU of the European Parliament and of the Council<sup>5</sup>. Second, despite the fact that in the EU there are other examples of special-purpose lenders which are – in some respects – treated as credit institutions, the sources of their funding typically differ from those of non-bank microcredit lenders, and they typically lend to different groups of borrowers.<sup>6</sup> These fundamental differences are also countenanced by the draft law. Indeed, under the draft law, microcredit institutions do not fund their operations through the collection of deposits or other contributions akin to deposits and the terms of credit and categories of beneficiaries provided for in the draft law also differ fundamentally from those applicable in the case of credit institutions. Significantly, the Basel Committee on Banking Supervision (BCBS) has contemplated the provision of microcredit by legal entities or individuals engaged primarily in its extension, including ‘banks specialised in offering microcredit’.<sup>7</sup> However, the ECB notes that the BCBS’s definition of ‘traditional microlending’ differs qualitatively from the draft law’s understanding of ‘microcredit’, in particular through the requirement for the beneficiaries of microlending to provide collateral.<sup>8</sup>
- 2.3 The draft law opts to include credit institutions in its scope of application in a manner that might lead to unwelcome ambiguities in terms of its fundamental policy goals. If the primary aim of the draft law is to promote the development of the Greek microcredit sector by standardising the regulatory expectations placed on non-bank microcredit providers and introducing socially-motivated terms of credit and categories of beneficiaries aligned with microcredit’s social mission,<sup>9</sup> it is difficult to see how the licensing and, *a fortiori*, the prudential supervision of such non-bank microcredit providers can be conducted on the basis of rules that could resemble those applicable to credit institutions.

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<sup>5</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>6</sup> The reference is, for example, to Irish and Lithuanian credit unions, Latvian cooperative undertakings, and Polish cooperative savings and credit unions which, despite falling outside the scope of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV) for prudential supervision purposes, are nonetheless deemed to fulfil the functional criteria of credit institutions and are to be treated as credit institutions, for example for the purposes of minimum reserves requirements (see, for example, ECB Opinion CON/2009/60, paragraph. 2.2.). Significantly, these lending institutions tend to fund their operations through the contributions of their members, who are, typically, the recipients of the loans granted, and their mission differs from that of microcredit providers which are vehicles through which to combat poverty and social or financial exclusion (see the Code, p. 22 (Introduction)). All ECB opinions are published on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>7</sup> BCBS, ‘Guidance on the application of the core principles for effective banking supervision to the regulation and supervision of institutions relevant to financial inclusion’, September 2016, available at: <https://www.bis.org/bcbs/publ/d383.pdf>.

<sup>8</sup> *Ibid.*, Annex E.

<sup>9</sup> The Code understands the ‘mission’ of microcredit providers as one to ‘combat poverty and social and financial exclusion’ (see the Code, p. 22 (Introduction)).

- 2.4 The fundamental differences between the economic role of credit institutions and microcredit providers, as defined in the draft law, the different risks to which each is exposed, and the different sources of funding for their activities, all militate in favour of a different regulatory and, in particular, supervisory treatment to take into account their specific characteristics. Moreover, the equal treatment, on a regulatory and/or supervisory footing, of non-bank and bank lending activities is inconsistent with the letter and the spirit of the Code, which was drafted with non-bank microcredit providers and their social mission in mind.<sup>10</sup> The ECB would, therefore, in the context of the draft law, strongly advise against the inclusion of credit institutions within its scope of application, in order to avoid confusion about the draft law's policy objectives and legal uncertainty in respect of which set of rules the fundamentally different activities of these entities would be subject to in Greece under the draft law.
- 2.5 On a separate note, paragraph 4 of this opinion assesses the proposed conferral, on the BoG, of the new tasks of licensing and supervision of microcredit institutions against the criteria for determining what constitutes a government task from the perspective of the monetary financing prohibition laid down in Article 123 of the Treaty.

### **3. Prudential supervisory and financial stability considerations**

- 3.1 The draft law defines a microcredit institution as a legal entity that has obtained authorisation, in accordance with Article 9, to provide microcredit in Greece (Article 2(2) of the draft law). Credit institutions, therefore, do not appear to fall within the definition of microcredit institution, given that Article 9 is included in Part 2 of the draft law, which does not apply to credit institutions. Consequently, it is understood that credit institutions could provide microcredit under their existing banking licence.
- 3.2 The draft law sets out the definitions of microcredit and business microcredit. Microcredit is defined as credits of funds of up to twenty-five thousand euros (EUR 25,000) that do not constitute a bank loan and are provided exclusively in accordance with the provisions of the present law (Article 2 of the draft law). However, business microcredit is defined to include all forms of credit up to the limit of twenty-five thousand euros (EUR 25,000) which are provided either in order to cover investment needs or as working capital.<sup>11</sup> On the basis of this definition it appears that a loan granted by a credit institution, within the limits and on the conditions set out in the draft law, would qualify as a form of business microcredit and would be subject to the draft law. In this respect, it is also noted that the definition of business microcredit contains an open-ended list of activities that qualify as business microcredit; this creates legal uncertainty as to whether a loan granted by a credit institution would qualify as business microcredit and fall within the ambit of the draft law.
- 3.3 The draft law confers wide-ranging powers on the BoG with regard to microcredit institutions (see paragraph 1.2 of this opinion). However, the ECB notes that the draft law is silent on the details of the supervisory framework in which microcredit institutions would be expected to pursue their activities, as it merely refers to 'adequate, proportionate, and responsive' controls that the BoG, as

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<sup>10</sup> It is noted that of the limited number of Member States in which the provision of microcredit constitutes a regulated activity, only one has included credit institutions in the scope of the applicable national regime.

<sup>11</sup> See Article 18(1)(a) of the draft law.

the competent authority, would be expected to exercise at a future point in time.<sup>12</sup> Moreover, in the absence of an express provision in the draft law, it is unclear whether the BoG would be empowered to exercise the powers conferred upon it with regard to the activity of business microcredit, where this activity is exercised by credit institutions.

- 3.4 Furthermore, the ECB notes that Council Regulation (EU) No 1024/2013<sup>13</sup> confers exclusive tasks on the ECB concerning the prudential supervision of credit institutions with a view to contributing to their safety and soundness and in order to protect the stability of the financial system of the Union and each Member State. The ECB is responsible for the effective and consistent functioning of the Single Supervisory Mechanism (SSM) and exercises oversight over the SSM's functioning, based on a distribution of responsibilities between the ECB and the national competent authorities, including the BoG. In this respect, it is of the utmost importance that the conferral of tasks on the BoG and the Ministry of Economy and Development with regard to microcredit institutions and/or the activity of providing business microfinance should be without prejudice to the tasks that the ECB and the BoG exercise for the purposes of the prudential supervision of credit institutions. By removing credit institutions from the scope of application of the draft law, legal certainty can be ensured concerning the distribution of competences between the NCAs and the ECB with regard to the supervision of credit institutions providing business microcredit.<sup>14</sup>
- 3.5 By explicitly excluding from supervision other business activities that 'microcredit institutions' may pursue, in addition to the provision of microcredit,<sup>15</sup> the draft law risks undermining the efficiency of the future supervision of microcredit institutions. In particular, by precluding the supervisor from monitoring the full range of the activities pursued by entities engaging in the provision of microcredits, and from detecting possible risks to the financial position of those entities arising from their other activities, the draft law falls short of creating an environment conducive to the protection of financial stability, while at the same time exposing the supervisor to risks of supervisory failure and to the attendant reputational risks.
- 3.6 The ECB also notes its concern that if credit institutions are included in the scope of application of the draft law, Article 30<sup>16</sup> could seriously interfere with their lending activity and capital adequacy,<sup>17</sup> since it could result in imposing pressure on credit institutions to extend microcredit on terms dictated by the Minister of Economy and Development or by any other minister, rather than on the regular terms subject to which supervised credit institutions conduct their lending operations.

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<sup>12</sup> See Article 15(1) of the draft law.

<sup>13</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

<sup>14</sup> The proposed approach would also protect the ECB and SSM from any reputational risks arising from obstruction in the exercise of their supervisory mandate over credit institutions that extend credit up to the statutory limit of EUR 25,000.

<sup>15</sup> See Article 5(2) of the draft law.

<sup>16</sup> Article 30(1) of the draft law states that '[W]ith a decision by the Minister of Finance and the Minister of Economy and Development and any other competent Minister, as applicable, it is possible to set up microfinance provision programmes as established by the present law, co-investing resources from microcredit institutions and the national or co-financed leg of the Programme of Public Investments. The same decision shall specify the potential beneficiaries, the types and the purpose of the microfinance products provided, the specific programme implementation terms, the procedure for the recovery of sums wrongly paid, and any other necessary implementation details'.

<sup>17</sup> This is all the more so, considering the absence of capital provisions corresponding to microcredit as well as the possibility of such loans becoming non-performing within a short period of time.

#### 4. New tasks of the BoG

4.1 The draft law designates the BoG as the authority responsible for both licensing *and* supervising entities that provide microcredit loans in Greece.<sup>18</sup> The ECB underlines that a proposed conferral of new tasks on a national central bank (NCB) of the European System of Central Banks (ESCB) must be assessed against the criteria for determining what constitutes a government task from the perspective of the monetary financing prohibition laid down in Article 123 of the Treaty.

4.2 For the purposes of that prohibition, Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93<sup>19</sup> defines ‘other type of credit facility’, *inter alia*, as ‘any financing of the public sector’s obligations vis-à-vis third parties’. To determine what constitutes ‘financing of the public sector’s obligations vis-à-vis third parties’ – which can be interpreted as financing provided by an NCB outside the scope of its central bank tasks – it is necessary to assess whether a new task to be undertaken by that NCB is a government task.

4.3 As part of its discretion in the exercise of its duty, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’), to ensure that NCBs honour the obligations laid down by the Treaty, the Governing Council has endorsed safeguards in the form of criteria for determining what may be seen as falling within the scope of a public sector’s obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, what constitutes a government task as follows:

First, central bank tasks are in particular those tasks that are related to the tasks that have been conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB. These tasks are mainly defined in Article 127(2), (5) and (6) and Article 128(1) of the Treaty, as well as Article 22 and Article 25.1 of the Statute of the ESCB.

Second, as Article 14.4 of the Statute of the ESCB allows NCBs to perform ‘other functions’, new tasks that are not related to tasks that have been conferred upon the ECB and the NCBs are not precluded *per se*. However, new tasks which are atypical of NCB tasks or which are clearly discharged on behalf of and in the exclusive interest of the government or of other public sector entities should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly discharged on behalf of and in the exclusive interest of the government or other public sector entities is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

- (a) whether the performance of the new task would create conflicts of interest with existing central bank tasks which are not adequately addressed and does not necessarily complement those existing central bank tasks. If a conflict of interest arises between existing

<sup>18</sup> See Article 5(1) of the draft law.

<sup>19</sup> 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 Treaty (OJ L 332, 31.12.1993, p. 1).

and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should be interpreted narrowly, so as to avoid leading to the creation of an indefinite chain of ancillary tasks. Such complementarity should also be examined in relation to the financing of those tasks;

- (b) whether without new financial resources the performance of the new task is disproportionate to the NCB's financial or organisational capacity and may have a negative impact on the capacity to properly perform the existing central bank tasks;
- (c) whether the performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations;
- (d) whether the performance of the new task harbours substantial financial risks;
- (e) whether the performance of the new task exposes the members of the NCB decision-making bodies to political risks which are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute of the ESCB.

4.4 On the basis of the criteria set out above, the following paragraphs assess whether the new tasks conferred upon the BoG constitute government tasks in the context of the monetary financing prohibition.

#### 4.4.1 *New tasks and the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB*

The licensing and supervision of 'microcredit institutions' is not expressly mentioned among any of the basic central banking tasks listed in Article 127(2) and (5) of the Treaty or otherwise conferred upon the NCBs by the Statute of the ESCB. Under Article 127(6) of the Treaty, the Council may confer specific tasks upon the ECB concerning policies relating to the prudential supervision of credit institutions and other financial institutions. In this respect, the Council has conferred tasks on the ECB relating to the prudential supervision of credit institutions, but these tasks do not expressly include the authorisation and supervision of microcredit institutions. To the extent that the draft law purports to regulate non-bank lending activities, this new task is not directly related to tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB.

#### 4.4.2 *Tasks which are atypical of NCB tasks*

The ECB notes that the great majority of Member States do not have a dedicated regime for the regulation of the provision of microcredit. However, there are three Member States where there is a dedicated regime for the regulation of this activity<sup>20</sup>. In all three Member States the national authority responsible for the supervision of credit institutions – in two of these Member States the NCB – has been designated as the competent national authority for the licensing and supervision

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<sup>20</sup> France: Article L. 511-6 (5) and Articles R. 518-57 to R. 518-62 of the Monetary and Financial Code and the Decree of 18 July 2012 on associations and foundations authorised to grant certain loans and adopted pursuant to Articles R. 518-59 and R. 518-62 of the Monetary and Financial Code; Italy: Articles 111 and 113 of Legislative decree no. 385/1993 (the Italian banking law); Portugal: Decree-Law No. 12/2010 of 19 February 2010 on microcredit financial companies; Order 1315/2010, of 28 December 2010 and Order 59/2011, of 31 January 2011.

of microcredit institutions<sup>21</sup>. In a fourth Member State, while there is no regulatory regime catering specifically for the provision of microcredit, financial institutions providing microcredit are regulated subject to the licensing and supervision of the national authority responsible for the supervision of credit institutions<sup>22</sup>. It follows that the new tasks proposed to be conferred on the BoG in relation to the licensing and supervision of microcredit institutions is not atypical for a central bank in those Member States which have chosen to establish a dedicated regime for the regulation of the provision of microcredit.

#### 4.4.3 *Tasks clearly discharged on behalf of and in the exclusive interest of the government*

The ECB understands that the licensing and supervision of microcredit institutions is a necessary component of a scheme which aims to facilitate the access of beneficiaries to working or investment capital, or capital for educational/social integration purposes. Despite the fact that this particular financing scheme has a social orientation, these tasks need not necessarily be discharged on behalf of and in the exclusive interest of the government.

#### 4.4.4 *Extent to which performance of the new tasks creates conflicts of interest with existing central bank tasks*

The new tasks of licensing and supervision of microcredit institutions do not, in general terms, create conflicts of interest with existing central banking tasks. That said, the inherently social purpose of microcredit, namely, to help combat poverty and social and financial exclusion,<sup>23</sup> militates in favour of a more accommodative regulatory and supervisory regime than that applicable to credit institutions or other non-bank lenders and could become a source of tension between, on the one hand, the new tasks that the draft law entrusts to the BoG and on the other, the BoG's existing supervisory tasks in respect of credit institutions and other categories of financial institutions, where the emphasis of the BoG's supervision is on the financial soundness of those institutions and its impact on the overall stability of the financial system. Therefore, the possibility cannot be excluded that the performance of these new tasks may lead to conflicts of interest with the existing tasks of the BoG.

#### 4.4.5 *Extent to which performance of the new tasks is disproportionate to the financial or organisational capacity of the BoG*

The principle of financial independence requires that Member States may not put their NCBs in a position where they have insufficient resources to carry out both their ESCB-related tasks and their national tasks from an operational and financial perspective. While the draft law requires that microcredit institutions reimburse the BoG for the costs incurred in the performance of its new tasks,<sup>24</sup> it does not clearly address the financial impact of these new tasks on the BoG, specifically

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21 France: the Autorité de Contrôle Prudentiel et de Résolution is entrusted with the granting and withdrawal of the authorisation to exercise microcredit activities by non-profit associations and foundations that are recognized as being of public utility, and allowed, under certain conditions, to grant credits without having been authorised as a credit institution; Italy: the Banca d'Italia maintains the register of microcredit providers and supervises their compliance with applicable requirements; Portugal: Banco de Portugal is the national authority entrusted with the authorisation and supervision of microcredit financial companies.

22 Malta: Financial Institutions Act (Chapter 376 of the Laws of Malta). The Malta Financial Services Authority assumes the authorisation and supervision of these microcredit providers.

23 See the Code, p. 22 (Introduction).

24 See Article 15(3) of the draft law.



with regard to the envisaged provision of microcredit by credit institutions. Nor does the draft law consider the overall impact of those tasks on the BoG's organisational capacity; this can be significant, given the broad base of small lenders in Greece and the envisaged maximum amount of lending per lender, which is not immaterial by Greek standards. The ECB invites the consulting authority to consider appropriate arrangements so that the reimbursement of the BoG by the microcredit institutions is commensurate with the financial impact of the new tasks on the BoG.

#### 4.4.6 *Extent to which performance of the new tasks fits into the institutional set-up of the BoG, in the light of central bank independence and accountability considerations*

The tasks conferred on the BoG under the draft law do not, on their face, appear to be incompatible with the BoG's overall institutional set-up. However, it should be noted that the BoG generally performs its existing tasks under a clear legal framework. Insofar as the draft law contains many legal uncertainties, particularly from the prudential supervisory and financial stability perspectives (see paragraph 3 above), it is not guaranteed that the new tasks will fit smoothly into the institutional set-up of the BoG. The absence of clarity surrounding the precise scope and nature of the tasks proposed to be conferred on the BoG may raise accountability issues for the BoG if it should come to discharge these tasks.

#### 4.4.7 *Extent to which the performance of tasks harbours substantial financial risks*

The draft law does not contain any specific provision on liability in relation to the exercise of the BoG's tasks under the draft law. The BoG could, thus, potentially be held liable for damages in accordance with the rules of Greek law on liability applicable to the BoG.

#### 4.4.8 *Extent to which performance of the new tasks exposes members of the decision-making bodies of the BoG to disproportionate political risks and impacts on their personal independence*

Taking into account the social purpose of microcredit lending and the challenges to which the implementation of the draft law may give rise, the possibility cannot be excluded that the BoG's competent decision-making bodies will see their political exposure increase as a result of the BoG's involvement in the licensing and supervision of microcredit providers.

#### 4.5 *Conclusion*

While the new tasks which the draft law seeks to confer on the BoG regarding the licensing and supervision of microcredit institutions are not among the tasks conferred on the ECB and the NCBs by the Treaty and the Statute of the ESCB, they are not atypical of the tasks of NCBs in those Member States which have chosen to regulate the activities of microcredit institutions. Moreover, as they need not necessarily be discharged on behalf of and in the exclusive interest of the government, the BoG's new supervisory tasks in relation to microcredit institutions do not constitute government tasks. Nonetheless, the ECB notes that the performance of these new tasks may lead to conflicts of interest with the existing tasks of the BoG. Moreover, the ECB invites the consulting authority to consider appropriate arrangements so that the reimbursement of the BoG by microcredit institutions as envisaged in the draft law is commensurate with the financial impact of the new tasks on the BoG. Furthermore, the absence of clarity surrounding the precise scope and nature of the tasks proposed to be conferred on the BoG may make it challenging for the BoG to integrate these tasks into its existing institutional set-up.

## 5. Conclusions

The ECB advises the consulting authority to take into account the points raised in this Opinion when deciding whether to include credit institutions within the scope of application of the draft law, and whether to confer on the BoG the proposed new tasks with regard to microcredit providers.

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

Done at Frankfurt am Main, 15 February 2019.

[signed]

*The President of the ECB*

Mario DRAGHI