EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 23 May 2013

on debt arrangements for over-indebted individuals

(CON/2013/34)

Introduction and legal basis

On 30 April 2013, the European Central Bank (ECB) received a request from the Greek Ministry of Development, Competitiveness, Infrastructure, Transport and Networks for an opinion on draft provisions reforming the framework on debt arrangements for over-indebted individuals (hereinafter the 'draft provisions'). The draft provisions comprise draft amendments to Law 3869/2010[1] (hereinafter the 'draft amendments to Law 3869/2010') and draft provisions on the establishment of a forbearance scheme aimed at supporting individuals in deep financial distress (hereinafter the 'draft provisions on the facilitation programme').

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 provisions[2], as the draft provisions relate 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 amendments to Law 3869/2010 aim at enhancing the effectiveness of the existing legal framework on debt arrangements for over-indebted individuals (hereinafter also referred to as 'debtors'). To this end, the draft provisions redesign the procedure for debtors to apply for a judicial arrangement in respect of their due debts. The court hearing concerning applications for such arrangements shall take place within six months of the date of submission of the application by the debtor. The application must be accompanied by documentation regarding the applicant's assets, income and creditors, as well as those creditors' claims. The creditors shall have the right to access the documentation included in the court file.

1.2 During the two months following the submission of the application for a debt arrangement, debtors and creditors shall be required to negotiate an out-of-court settlement. The settlement shall be

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

2 OJ L 189, 3.7.1998, p. 42.

concluded upon the approval of a majority of the creditors, and it will then be submitted to the competent court for validation. In the event of failure to conclude an out-of-court settlement on the expiry of the abovementioned two-month period, debtors shall be required to continue servicing their debts under the conditions defined by the competent court, pending a final ruling on the application for a debt arrangement. Under certain circumstances, the court may also grant debtors protection from creditors with regard to enforcement of the latters' security. Debtors shall be subject to an enhanced duty of disclosure, as penalties for the non-disclosure of other creditors are also laid down.

1.3 The draft provisions on the facilitation programme allow individuals in financial distress to service their loans by paying reduced monthly instalments for a prescribed period of time. The facilitation programme shall apply exclusively to loans which have not fallen due, are secured on residential property and owed to credit institutions, financial institutions and credit companies.

1.4 Those eligible for benefiting from the facilitation programme are individuals whose total household income at the time of submission of the application has fallen by at least 20 % compared with 2009. The draft provisions lay down additional eligibility criteria relating, *inter alia*, to the value of the debtor's primary residence and total immovable property, as well as to the total annual household income. Debtors who benefit from the facilitation programme are subject to an ongoing duty of disclosure of their financial status, and failure to comply with that duty results in the debtor's removal from the scheme.

2. General observations

The ECB welcomes the draft provisions, to the extent that they seek to comprehensively amend the framework on debt arrangements for over-indebted individuals currently in force, in line with the objectives outlined in the Memorandum of Economic and Financial Policies, as applicable from time to time[3]. In relation to the development of the abovementioned framework, the ECB refers to its previous, relevant opinions[4]. Without prejudice to this general observation, the ECB has the following specific observations.

3. Specific observations

3.1 The ECB reiterates that the reform of the framework on debt arrangements for over-indebted individuals should ensure an adequate balance between, on the one hand, observance of the general duty of debtors to meet their payment obligations, which promotes a prompt payment culture, preserves the soundness of Greek credit institutions and prevents moral hazard and, on the other hand, the need to provide assistance to individuals in dire financial situations. In this respect, the

3 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).

4 See ECB Opinions CON/2010/34 and CON/2012/40.

proper and swift implementation of the envisaged framework, both by the authorities administering the schemes and by credit institutions and other entities affected by them, is of crucial importance for ensuring the abovementioned balance and thereby preventing serious adverse consequences for banks' capital and liquidity positions. Proper implementation of the envisaged framework involves, *inter alia*, devoting sufficient resources and ensuring the establishment of efficient procedures for facilitating the conclusion of out-of-court settlements.

3.2 The ECB welcomes the determination of appropriate time limits for the negotiation of out-of-court settlements and for the hearing of debt arrangement applications, as a means to accelerate the procedure. The ECB understands that the arrangements for debts that have fallen due require proper consideration by the competent courts, as a means to ensure that arrangements are sound and workable. Moreover, the ECB welcomes the reinforcement of the debtors' duty of disclosure by also laying down penalties for the non-disclosure of other creditors.

3.3 At the same time, there are certain prerequisites which are necessary for the effectiveness of the framework. First, the draft provisions should ensure the proper verification of the documentation to be submitted with the applications for debt arrangements. Second, the draft provisions should emphasise that the granting of debt arrangements shall be subject to the strict observance of the duty of disclosure throughout the entire duration of the arrangement. Third, effective, proportionate and dissuasive penalties should be applicable in cases of fraud or gross negligence. Finally, an independent body should regularly assess the efficacy of the facilitation programme and its impact on Greek credit institutions.

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

Done at Frankfurt am Main, 23 May 2013.

[signed]

The President of the ECB

Mario DRAGHI