EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

29 May 2013

on the Hellenic Financial Stability Fund

(CON/2013/38)

Introduction and legal basis

On 24 April 2013, the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on certain draft legislative provisions amending the Law on the Hellenic Financial Stability Fund (hereinafter the 'HFSF Law')[1]. The draft provisions were submitted to the Hellenic Parliament on 26 April 2013 and adopted on 28 April 2013[2].

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 (TFEU) and 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[3], as the draft provisions relate to the representation of the ECB in the Hellenic Financial Stability Fund's (HFSF) governing bodies and to the strengthening of the HFSF's governance structure in view of its crucial role in the process of the recapitalisation and restructuring of the Greek banking sector. 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 aim at implementing the commitments undertaken by the Greek government in the context of the second review of the second economic adjustment programme for Greece to (a) strengthen the HFSF's governance structure; (b) rationalise the division of tasks between the HFSF's General Council and Executive Board; and (c) strengthen the HFSF's independence.

1.2 The draft provisions, *inter alia*, alter the composition of the HFSF's General Council by increasing its members from five to seven; amend the rules relating to the competences of the HFSF's General Council and Executive Board; and enhance the tasks of the HFSF's Managing Director. Furthermore, the draft provisions amend the rules relating to the convocation of the meetings and

1 Law No 3864/2010 on the establishment of the Hellenic Financial Stability Fund, FEK A 119/21.07.2010.

2 See Article 1 subparagraph D.3 of Law 4152/2013 on urgent measures implementing laws 4046/2012, 4093/2012 and 4127/2013, FEK A 107/09.05.2013.

3 OJ L 189, 3.7.1998, p. 42.

the validity of the decisions of the HFSF's General Council and Executive Board, and to the quorum required for the meetings of the HFSF's General Council.

1.3 Finally, the draft provisions amend the rules relating to the representation of the ECB and the European Commission in the HFSF, by clarifying that the ECB and Commission representatives may: (a) participate as observers in the committee selecting members of the HFSF's General Council and Executive Board; and (b) attend the meetings of the HFSF's General Council and Executive Board as observers without voting rights.

2. Appropriate time to consult the ECB

According to Article 4 of Decision 98/415/EC, the ECB must be consulted 'at an appropriate stage' in the legislative process in order to afford the ECB sufficient time to adopt its opinion. In certain cases, the consulting authority may invoke reasons of extreme urgency and request that the ECB might adopt its opinion within a shorter time frame.

In the present case, the consulting authority did not provide the ECB with a specific time frame within which to adopt its opinion. Furthermore, the draft provisions were adopted by the Greek Parliament within days of requesting the ECB's opinion.

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

The ECB welcomes the draft provisions, to the extent that they aim to amend the HFSF framework in line with the financial sector objectives outlined by the Greek authorities in the Memorandum of Economic and Financial Policies, as applicable from time to time[4]. In relation to the evolution of the abovementioned legal framework, the ECB refers the consulting authority to its previous, relevant opinions[5]. Without prejudice to this general observation, the ECB has the following specific observations.

4. HFSF's governance structure

4.1 The ECB understands that the proposed amendments to the HFSF's governance structure aim at clarifying the competences and responsibilities of the HFSF's governing bodies and optimising the

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, Opinions CON/2010/54, CON/2012/14, CON/2012/90 and CON/2013/17. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

HFSF's operation in order to support it in its efforts for an ambitious and swift operational restructuring of all banks in which it has a significant stake.

4.2 The ECB emphasises that the enhancement of the HFSF's governance structure has been pursued since the agreement on the second economic adjustment programme for Greece in March 2012, on account of the very substantial amount of official financing that is being channelled to Greek banks through the HFSF[6]. Moreover, the ECB notes that the Greek authorities have already, since the time of the agreement on the first economic adjustment programme for Greece in 2010, undertaken to ensure that the HFSF will be governed by private law, that it will enjoy administrative and financial independence, and that it will operate purely in accordance with private economic activity standards[7].

4.3 The ECB considers that any amendment to the HFSF's governance structure should take into consideration all the commitments undertaken by the Greek government under the economic adjustment programme for Greece and aim at enabling the HFSF to pursue effectively its critical mandate, which is to maintain the stability of the Greek banking system and to minimise costs for the taxpayer. Against this background, the ECB considers that, although the draft provisions improve to some extent the HFSF's operation, they do not contribute substantially to enhancing the independent and effective fulfilment of the HFSF's mandate. In particular, the ECB welcomes the fact that the independence of the HFSF's General Council is enhanced by means of the addition of two independent members. At the same time, the ECB is of the view that the competences and responsibilities of the HFSF's governing bodies should be clarified further in order to facilitate more effective practical decision-making. More specifically, the ECB understands that, although the HFSF's General Council has the status of a supervisory body, it exercises significant decision-making powers upon proposal from the Executive Board[8]. The HFSF framework should ensure that the two governing bodies of the HFSF bear adequate responsibility for the HFSF's decisions, that they cooperate efficiently, that the boundaries of their respective competences are clear, and that these boundaries are also reflected in the internal rules of procedure of the HFSF.

5. Representation of the ECB in the HFSF

5.1 The ECB welcomes the draft provisions relating to the ECB's representation in the HFSF, as these are broadly in line with the ECB representative's mandate within the HFSF, which has always been limited to that of an observer, without decision-making authority[9].

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6 The Second Economic Adjustment Programme for Greece - March 2012', *European Economy-Occasional Pap*ers, 94, p. 3.

7 See, in particular, ECB opinion CON/2010/54, paragraph 1.2.1. See, also, Article 1 of Law 3864/2010.

8 See Article 4(9) of the HFSF Law.

9 See Opinion CON/2012/90, paragraph 8.

5.2 The ECB nevertheless wishes to reiterate its position that the provision in Article 4(13) of the HFSF Law entitling the ECB's representative to request the convocation of a meeting of the General Council should be deleted, given that this goes beyond mere observer status of the ECB representative[10].

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

Done at Frankfurt am Main, 29 May 2013.

[signed]

The President of the ECB

Mario DRAGHI

10 See Opinion CON/2012/90, paragraph 8.