EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 23 February 2010

on the establishment of the Hellenic Statistical System

and an independent statistical authority

(CON/2010/17)

Introduction and legal basis

On 12 January 2010 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft law on the Hellenic Statistical System (HSS) and the establishment of the Hellenic Statistical Authority (HSTAT) as an independent authority and legal person governed by public law (hereinafter the 'draft law'). This opinion is based on the text of the draft law received by the ECB on 12 January 2010[1].

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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[2], as the draft law relates to a national central bank. 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

The draft law is mainly aimed at making an institutional upgrade of the official statistics production system with a view to ensuring professional independence, scientific impartiality and integrity, as well as administrative efficiency. This is to be achieved by the establishment of the HSS, composed of HSTAT and other public and private sector entities (hereinafter the 'other HSS entities') that have the responsibility for or the obligation to collect data and produce the statistics required for decision and policy making at local, national, European and international levels. Under the draft law the General

1 In accordance with Chapter III of the 'Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions' (available on the ECB's website at www.ecb.europa.eu), 'The duty to consult the ECB on amendments to draft legislative provisions which have already been submitted to the ECB for an opinion applies to substantive amendments which affect the essence of the draft legislation. It is useful to distinguish between two different [cases]. The first is where substantive amendments are proposed at a stage when the ECB has not yet adopted its opinion. In such situations the ECB expects the consulting authority to submit the amended draft legislative provision to it as soon as possible, so that the opinion can be based on the most recent text. The second situation is where substantive new provisions are proposed after adoption of the ECB opinion. In the latter situation, the ECB should be consulted in relation to those amendments. However, no further consultation is required if the amendments in essence aim to accommodate the view expressed by the ECB in its opinion. The ECB nevertheless welcomes being kept informed about the response to its opinions and receiving details of such amendments for information purposes'.

2 OJ L 189, 3.7.1998, p. 42.

Secretariat of the National Statistical Service of the Ministry of Finance, which has been subject to direct control by the State, is converted into an independent administrative authority, namely HSTAT. HSTAT will operate as a legal person governed by public law and benefit from the institutional safeguards necessary for its independent functioning. More specifically, Chapter A of the draft law sets out the rules of procedure for the HSS and assigns to HSTAT the coordination of all the activities of the other HSS entities for the production of official national statistics and their transmission to Eurostat, taking into account the existing Union legal framework and in particular Council Regulation (EC) No 223/2009 on European Statistics[3], as well as the European Statistics Code of Practice[4]. Chapter A of the draft law also establishes the Hellenic Statistical System Council (HSSC) as an advisory body to HSTAT[5]. Chapter B of the draft law sets out the structure and operational methods of HSTAT[6].

2. General observations

2.1 The ECB welcomes the aim of the draft law to improve the collection, compilation and distribution of European and national statistics by the HSS. At the same time, the ECB underlines that, irrespective of the general institutional setting, the specific arrangements of a national statistical system should aim to optimise the reliability and efficiency of the statistical production process and ensure that the statistics provided are of high quality, in particular with a view to preserving the credibility and the sound functioning of monetary union. The achievement of these aims relies on the efficient and effective implementation of the arrangements introduced by the draft law.

2.2 There are two complementary regimes for the production of European statistics set out in Regulation (EC) No 223/2009 and in Regulation (EC) No 2533/98[7]. The ECB notes that the

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3 Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

4 The Code was endorsed by the Commission in its Recommendation of 25 May 2005 on the independence, integrity and accountability of the national and Community statistical authorities (COM(2005) 217 final). Articles 1 and 2 of Regulation (EC) No 223/2009 stipulate that the statistical principles set out in Article 338(2) of the TFEU and in Article 2 of the Regulation are further elaborated in the European Statistics Code of Practice. The Code of Practice is to be reviewed and updated as necessary by the European Statistical System Committee (ESS Committee). While the Code of Practice does not form an integral part of Regulation (EC) No 223/2009, the authority to further elaborate the statistical principles in the Code of Practice is clearly specified in Regulation (EC) No 223/2009.

5 Under Article 3 of the draft law, the composition of the HSSC, which will be chaired by the HSTAT President (the chairman of the Council of Economic Advisors will be its vice-chairman), also includes one member nominated by the Bank of Greece. The HSSC will advise HSTAT on: a) the Hellenic Statistical Programme; b) the Rules on Statistical Obligations; c) the priorities of the HSS on the basis of developments at European and international levels and on measures to reduce the administrative response cost of HSS entities; d) issues relating to the need for coherence in the production of statistics by the HSS entities and compliance with statistical principles, as well as further development and dissemination of the Code of Conduct for all such entities; e) issues pertaining to statistical confidentiality; f) methodology issues which arise in the preparation and application of statistical programmes, especially issues pertaining to statistics at European and international levels.

6 Under Article 9(4) of the draft law, HSTAT will be entrusted with the systematic production of official statistics, the conduct of scientific research and carrying out studies, which: a) concern all areas of activity of the public and private sector; b) support decision-making, as well as the definition and evaluation of Government and public sector policies; c) are submitted to international organisations for the purpose of complying with Greece's obligations; and d) concern the general public or specific categories of users of statistics within Greece or abroad.

7 Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

explanatory memorandum of the draft law takes account of these complementary regimes by expressly stating that the distinct institutional framework governing the collection of statistical information by the ECB, assisted by the Bank of Greece, within its fields of competence, is not affected by the draft law in any way. The ECB strongly recommends including in the draft law itself, and ideally in its Article 1, an explicit statement that the draft law is without prejudice to Article 5 of the Statute of the European System of Central Banks and of the European Central Bank. The ECB also strongly recommends that it should be clear in the draft law that, as a member of the European System of Central Banks (ESCB), the Bank of Greece has a duty to cooperate with the ECB and other Eurosystem central banks on statistical matters and to compile official statistics. Such a clarification would be welcome to the extent that the Bank of Greece may also be entrusted with the compilation of certain official statistics[8] in the context of the HSS[9].

2.3 Furthermore, given the complementary regimes for the production of European statistics, ensuring effective cooperation between the Bank of Greece, as a producer of European Statistics under Regulation (EC) No 2533/98, and the HSS entities is very important for cost-effectiveness and, in particular, for the quality of the statistics. The ECB would favour a formalisation of such cooperation either by means of the draft law or by any other means that the relevant national authorities deem appropriate. In addition, for the purposes of such cooperation the ECB emphasises the importance of ensuring that a national statistical system should allow for the transmission of confidential data to ESCB members, in accordance with Regulation (EC) No 223/2009 and Regulation (EC) No 2533/98, while preserving strict confidentiality safeguards.

3. HSS entities' tasks, statistical principles and quality criteria

3.1 Without prejudice to the general observations made above, the ECB notes that, for the purpose of ensuring that the HSS entities can adequately perform their tasks, Articles 1(4) and (5) of the draft law provide for the application of the statistical principles and quality criteria set out in Regulation (EC) No 223/2009. While the ECB welcomes the aim of the Greek legislator to optimise the proposed national statistical system, among other things by aligning it with the European Statistical System framework, it makes the following specific observations.

3.2 *HSS entities' tasks*

The draft law could benefit from a clearer formulation of the responsibilities and duties of HSTAT and the other HSS entities. For example, Article 1(2) of the draft law stipulates that the HSS entities will be HSTAT and the other entities in the list of HSS entities determined by a decision of HSTAT's Board in accordance with Article 10(8). At the same time, Article 4(3)(b) of the draft law seems to exclude HSTAT from the definition of HSS entities, in particular if read in conjunction

8 See Article 55C of the Bank of Greece's Statute.

9 Article 1(2) of the draft law stipulates that the HSS entities will comprise the HSTAT and the other HSS entities, which have the responsibility for or obligation to collect data and which will be included in the list of HSS entities under Article 10(8) of the draft law. At the same time Article 10(5) of the draft law refers to the list of 'national authorities' within the meaning of Article 5(2) of Regulation (EC) No 223/2009, which includes the Bank of Greece.

with Article 4(3)(a) thereof, as it states that the Hellenic Statistical Programme is to be implemented by the HSS entities 'or HSTAT'. In the light of the above, the ECB recommends the use of consistent formulations for, and a clearer delineation of, the responsibilities assigned to HSS entities, since this could contribute to ensuring the necessary quality of statistics, as also highlighted in the following paragraphs. The ECB also notes that there is scope for enhancing the consistency of the use of terminology in the draft law[10].

3.3 *Independence of HSTAT*

3.3.1 The draft law establishes HSTAT as an independent authority and ensures that the HSS entities comply with the quality criteria set out in Article 12 of Regulation (EC) No 223/2009. The ECB notes that under the draft law HSTAT has functional independence and administrative and financial autonomy, not being subject to control by any government body or other administrative authority but, rather, being supervised by the Hellenic Parliament[11]. To the extent that the concept and scope of supervision cannot be clearly derived from the draft law, for the purposes of safeguarding the independent nature of HSTAT and avoiding any misunderstanding, the ECB would welcome the use of the formulation 'is accountable to' rather than 'supervised by' in Article 9(2) of the draft law. Furthermore, the ECB recommends specifying in Article 9 of the draft law how such accountability towards the Hellenic Parliament will be carried out.

3.3.2 HSTAT will be governed by its President and Board. Under Article 12 of the draft law, the composition of HSTAT's Board comprises seven members, each appointed by the Speaker of the Hellenic Parliament for a four-year term of office, renewable once. The Board will comprise: (i) the HSTAT president as its chairman to be selected by the Conference of Presidents of the Hellenic Parliament; (ii) four members, including the vice-chairman, also to be selected by the Conference of Presidents of the Hellenic Parliament; (iii) one representative from the Ministry of Finance, to be nominated by the Minister of Finance; and (iv) one member to be nominated by the HSTAT's staff union. To further enhance HSTAT's independence, the ECB recommends that the chairman and members of HSTAT's Board should be appointed for longer terms of office and that the terms of office for different Board members should be staggered, with a view to ensuring continuity in policymaking. Furthermore, the use of the term 'representative' in relation to the Board member nominated by the Minister of Finance seems to be incompatible with Article 15(1) of the draft law, on the safeguards of HSTAT's independence, according to which the chairman and members of HSTAT's Board enjoy personal independence in the performance of their duties and are bound only by the law and their consciences. Moreover, under the same Article, HSTAT's President must be employed by HSTAT on a full-time basis, while the other Board members may not hold any remunerated or non-remunerated public office or engage in any other professional activities of a business or other nature, which are incompatible with their status and duties as

10 See e.g. the different terms used in Articles 6(3) and 7(1) of the Greek version of the draft law in relation to the identification of reporting agents in the context of statistical confidentiality; these terms are not in line with the term introduced in Article 1(3) of the draft law for the same concept.

11 See Articles 9(1) and (2) of the draft law.

members of HSTAT's Board. While the ECB welcomes the independence safeguards in Article 15, it is of the view that the draft law leaves broad discretion as to which types of activities may be considered incompatible with such persons' status and duties[12] and recommends that also the vice-chairman of HSTAT should be employed by HSTAT on a full-time basis. Furthermore, under Article 15(2) of the draft law, the chairman and members of the Board may be dismissed by a decision of the body appointing them on serious grounds relating to the performance of their duties or for failure to perform their duties due to illness or disability. The ECB recommends that these serious grounds should be further specified in the draft law.

3.3.3 Article 16 of the draft law provides for a multitude of income sources for HSTAT, including Union, public and private funds[13]. Article 4 of the draft law, on the production of statistics, stipulates that the production of statistics that need to be compiled is weighed against the availability of human and financial resources. The ECB emphasises the importance of the availability of adequate resources at all times for the appropriate fulfilment of HSTAT's tasks in line with Union legal obligations. In this respect, the ECB draws the consulting authority's attention to the need to ensure the adequacy of regular and secure resources. The need to ensure the availability of resources is also underlined by the European Statistics Code of Practice, which stipulates that staff, financial and computing resources, adequate both in magnitude and in quality, should be available to meet European statistics needs.

3.4 *Quality and confidentiality of statistics under the HSS*

3.4.1 Article 5(1) of the draft law stipulates that, in order to safeguard the quality of the HSS's results, HSS entities must develop, produce and disseminate statistics on the basis of uniform standards and harmonised methods, applying the evaluation criteria of Article 1(5) of the draft law, which in turn refers to the quality benchmarks set out in Article 12 of Regulation (EC) No 223/2009. The ECB emphasises the importance of the high quality of statistics and recommends that the 'certification' procedure, which is referred to in Articles 1(6) and 10(9) of the draft law and which will be set out in detail in the HSTAT's Rules of Operation and Administration, should allow for thorough data validation to ensure the quality of the statistics produced. In view of the above, the ECB draws the consulting authority's attention to the need for HSS entities to provide HSTAT with all relevant statistical information required for the purposes of data validation as promptly as possible. In this respect, and in order to provide a practical safeguard for ensuring compliance with the abovementioned principles and quality standards, the ECB recommends that, without prejudice to Article 5(2) of the draft law, each HSS entity should submit a quality report to HSTAT at least once a year. As a minimum, such quality reports should address the completeness of the data, their compliance with relevant definitions and/or accounting rules, their internal consistency, their timeliness and their reliability. HSS entities should also properly document any cases of reporting

12 The explanatory memorandum states that this provision is intended to prevent cases of e.g. the engagement of Board members in companies conducting public opinion surveys. However, the current formulation of the draft law remains unclear as to the scope of activities.

13 E.g. State budget funds, own asset management, sales of HSTAT's statistical products to third parties, grants, donations and other contributions from public or private sector entities, administrative fines etc.

agents' non-compliance with their obligations to provide the required data, as well as any major data revisions. Moreover, the quality reports should provide HSTAT with a detailed inventory of the methods, procedures and sources used to collect data and produce statistics. The ECB would also welcome a clarification of the access rights provided for in the first sentence of Article 2(3) of the draft law. In particular, HSTAT's access rights should not be limited to 'statistics', as the current formulation suggests; HSTAT should also have access to primary information.

3.4.2 On the confidentiality of statistics, the ECB notes that under Article 7(2) of the draft law HSS entities may refuse to transmit confidential data if such data relate to national defence, State security and Greece's international relations. This provision is not in line with Regulation (EC) No 223/2009 or Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community[14]. Against this background, arrangements should be put in place that allow for the proper recording of all government expenditure, including military expenditure, in the national accounts without compromising secret State information.

4. Statistics used for administrative purposes

4.1 It is also important to ensure the highest quality of statistics used for administrative purposes, such as the statistics on the Harmonized Index for Consumer Prices (HICP) and the Excessive Deficit Procedure (EDP). In particular, the credibility of budgetary surveillance in the European Union and, ultimately, as stated above, the credibility and the sound functioning of monetary union, depend on the reliable and timely compilation of EDP statistics, independently of political cycles. Although the draft law aims to ensure the independence of HSTAT, the independence of the other HSS entities under the draft law is not ensured. Indeed, the current formulation of Article 2(3) of the draft law seems to allow, in practice, one or more of these HSS entities in the private or the public sector to be entrusted with the compilation of EDP statistics. However, the ECB recommends that the draft law should expressly stipulate that HSTAT is responsible for the compilation of EDP statistics, and that the other HSS entities should provide HSTAT with the administrative source data necessary for such compilation.

4.2 Furthermore, the ECB recommends that the other HSS entities should provide HSTAT with all information necessary for verifying the plausibility of the source data feeding into the EDP statistics as promptly as possible. Such verification should be made by comparing these source data

14 OJ L 145, 10.6.2009, p. 1. Article 8(2) of Regulation (EC) No 479/2009 stipulates that: 'Member States shall provide the Commission (Eurostat), as promptly as possible, with the relevant statistical information requested for the needs of data quality assessment, without prejudice to the provisions relating to the statistical confidentiality in Council Regulation (EC) 322/97'. Article 21(1) of Regulation 223/2009, which has replaced Regulation (EC) No 322/97, stipulates that the transmission of confidential data from an ESS authority, as referred to in Article 4 of that Regulation, that has collected the data to another ESS authority may take place if this information is necessary for the efficient development, production and dissemination of European statistics, and Article 21(4) further specifies that national rules on statistical confidentiality may not be invoked to prevent the transfer of confidential data, where an act of the European Parliament and of the Council in accordance with Article 294 of the Treaty provides for the transmission of the data. Article 8(2) of Regulation (EC) No 479/2009 is such a provision on the transmission of confidential information for quality assessment and improvement purposes.

with monetary and financial statistics collected by the Bank of Greece. The quality of the source data would also be improved by the establishment of an independent budget office to monitor the execution of the budget, as envisaged in the updated Hellenic Stability and Growth Programme[15]. The ECB recommends that HSTAT, the Bank of Greece and the relevant HSS entities should draw up a memorandum of understanding to define their various responsibilities in the field of EDP statistics.

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

Done at Frankfurt am Main, 23 February 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

15 See Annex D of the Updated Hellenic Stability and Growth Programme (January 2010), available on the website of the Ministry of Finance (www.mnec.gr).