EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 19 March 2008

on a draft law concerning the reform of the Greek social security system

(CON/2008/13)

Introduction and legal basis

On 6 March 2008 a draft law entitled 'Administrative and organisational reform of the social security systems and other social security provisions' (hereinafter the 'draft law') was submitted for adoption to the Greek Parliament by the Minister for Employment and Social Protection. As part of the legislative procedure, the competent Permanent Committee for Social Affairs convened on 11, 12 and 13 March 2008 and adopted the draft law by a majority of its members including amendments and improvements, thereafter proposing it for enactment by the Parliament.

The competence of the European Central Bank (ECB) to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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[1], as the draft law relates to a national central bank (NCB). In particular, the draft law introduces a number of provisions that could affect the status of the Bank of Greece, inter alia by integrating the main pension fund of its members of staff (hereinafter the 'BoG Pension Fund') into a State-run fund, namely the IKA-ETAM.

In the light of the above and considering the nature of the abovementioned provisions which could affect the status of the Bank of Greece as an independent authority, the ECB has decided to submit this own-initiative opinion, with a view to assisting in the ongoing legislative procedure by commenting on specific provisions.

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, as stated in its explanatory memorandum, is to reform the social security system, especially as the ratio between active and retired employees has severely deteriorated, entailing the creation of deficits within social security entities, which may require

1 OJ L 189, 3.7.1998, p. 42.

subsidising by the State.

1.2 The draft law aims at: (i) implementing an administrative reform, by drastically reducing the existing high number of social security entities; (ii) adjusting specific social security arrangements that require a more efficient approach, increasing the sustainability of the pension system, inter alia by providing for special retirement age, providing incentives for staying in service and by regulating issues relating to supplementary retirement schemes; and (iii) introducing institutional changes in the social security system.

1.3 The draft law is structured to consist of a Part A on administrative and organisational reform, basically providing for the integration of several individual entities, including the BoG Pension Fund, and a Part B on specific provisions and arrangements on social security.

2. Description of the reform under the draft law

2.1 According to the explanatory memorandum to the draft law, the basic principles of the envisaged social security reform are the following: (i) the public, redistributive and compulsory character of the social security system; (ii) a three-pillar structure, i.e. main and supplementary social security, occupational social security (occupational funds) and free financing (private social security); (iii) the three fundamental parameters of the system (general retirement age limits, level of pensions, level of contributions), with 'mature' pension rights remaining unaffected; and (iv) the application of certain social security arrangements to persons insured before 1 January 1993, taking into account the general uniform rules pursuant to Law 2084/1992[2].

2.2 In terms of the administrative reform being undertaken, the explanatory memorandum states that today public social security in Greece is provided by 155 separate entities. In order to limit the resulting fragmentation and achieve economies of scale, to ensure capability for substantial control and supervision, to overcome administrative and organisational difficulties and reduce administrative and operational cost, the draft law proposes to consolidate funds or integrate entities in already existing social security organisations under specific terms and conditions. In this context the BoG Pension Fund is to be integrated into the State-run pension fund IKA-ETAM.

2.3 Finally, the Greek legislator intervenes in some specific social security arrangements pertaining, inter alia, to retirement age limits and incentives to stay in service for a longer time, taking into account increasing life expectancies, as well as to supplementary pensions. Furthermore, the legislator seeks to protect mothers' rights, create a social security capital fund for solidarity among generations with the task of financing social security entities as from 1 January 2019 and introduce a social security registration number for all citizens.

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2 Law on social security reform and other provisions (Government Gazette, Vol A/165).

3. Economic analysis of the pension reform

Greece is expected to experience a strong increase in age-related public spending, which will negatively affect the long-term sustainability of public finances. Greece is therefore in the group of high-risk countries in this respect. The EU Council opinion on the updated 2007 stability programme therefore calls for reforms to the Greek pension system. Moreover, in the absence of commonly agreed long-term projections of pension expenditures, the Greek authorities are urged to produce such projections as soon as possible. Taking account of the available information on the planned pension reform, the ECB welcomes the overall objective of the pension reform to be brought about by the draft law as it is intended to improve the sustainability of the Greek pension system and therefore of public finances. The ECB understands that consolidating existing pension funds would also render long-term projections of pension expenditures easier, which would improve the transparency of Greek public finances and also support the assessment of the stability programme as required under the Stability and Growth Pact.

4. Central bank independence

4.1 Article 2(4) of the draft law states that the resources of the state-run IKA-ETAM will also include those of the entities being integrated, namely contributions of employers and employees, revenues from social resources, property revenues, remuneration of capital and reserves and any other revenue of such entities. This Article goes beyond a mere consolidation and restructuring by introducing a requirement for the Bank of Greece to pay the amount of EUR 23 million annually into the IKA-ETAM for a period of 15 years (i.e. a total of EUR 345 million), such amount corresponding to the Fund's deficit as calculated on 31 December 1992.

4.2 The ECB is concerned about those provisions of the draft law that oblige the Bank of Greece to make annual contributions to the state-run IKA-ETAM, which may undermine the Bank of Greece's financial independence. The ECB has consistently stated in its Convergence Reports that even if an NCB is fully independent from a functional, institutional and personal point of view, its overall independence would be jeopardised if it could not autonomously avail itself of sufficient financial resources to fulfil its mandate[3]. It would be inconsistent with the Treaty for a member of the European System of Central Banks (ESCB) to be under a legal obligation to provide financial support, potentially by drawing on its own funds, for activities that are normally sponsored by the State[4].

4.3 The ECB therefore recommends that the new rules which apply to the Bank of Greece should contain sufficient safeguards to ensure that the Bank of Greece's ability to carry out its tasks, in

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3 ECB Convergence Report of May 2007, p. 19. See also ECB Opinion CON/2008/9 of 21 February 2008 at the request of the German Ministry of Finance on a draft law amending the Law on the Deutsche Bundesbank and ECB Opinion CON/2008/10 of 21 February 2008 at the request of the Italian Ministry of Economic Affairs and Finance on some provisions of the Law on the State annual and pluriannual budget (2008 Budget Law).

4 See ECB Opinion CON/2003/27 of 2 December 2003 at the request of the Austrian Federal Ministry of Finance on a draft Federal law on the National Foundation for Research, Technology and Development.

particular ESCB-related tasks will not be affected. Such provisions should therefore be drafted in cooperation with the Bank of Greece.

5. Monetary financing aspects of the proposal

5.1 The IKA-ETAM constitutes a body governed by a public law for the purposes of the monetary financing prohibition in Article 101 of the Treaty. First, Article 11 of Law 1846/1951 provides that the Social Insurance Institute (IKA) is a legal person governed by public law. The IKA was renamed the IKA-ETAM, integrating a number of pension entities as part of the social security system reform undertaken by law[5]. Second, Governors and Presidents of Social Security Organisations such as the IKA-ETAM are approved by a Parliamentary Committee after a proposal made by the Minister of Employment and Social Protection, following selection of a candidate by a Committee composed in its majority of public sector representatives including the Governor or Vice Governor of the Bank of Greece[6]. It is further noted that, pursuant to Article 5 of the draft law, the Governing Committee of the Office in charge of the BoG Pension Fund, after its integration in the IKA-ETAM, will be composed of four representatives: two public sector officials, one representative of the insured persons and one representative of employers (Hellenic Banks Association or Ethniki Insurance Company), but without any participation of a representative of the Bank of Greece. In terms of financing the IKA-ETAM, Article 2(8) of the draft law states that within six months from the integration, a special economic study to be tendered and awarded by the Minister of Economy and Finance will be conducted for each individual entity and fund being integrated. In the cases where deficits are identified under this provision, the State will undertake to meet the costs of such deficits. In other respects, the provisions of Article 4 of Law 3029/2002 will apply as regards the financing of the IKA-ETAM.

5.2 In accordance with Article 237(d) of the Treaty, the ECB is under an obligation to ensure the NCBs' compliance with the monetary financing prohibition. Based on the information available to the ECB, it would appear that the draft law contains provisions that might put the Bank of Greece in a position where national law requires it to conduct transactions that would constitute a breach of the monetary financing prohibition. More specifically, Article 2 of the draft law requires the Bank of Greece to pay an amount corresponding to the deficit of the BoG Pension Fund as determined on 31 December 1992 (i.e. EUR 23 million), annually, for 15 years. Notwithstanding this requirement, the ECB understands that the BoG Pension Fund may no longer face any solvency deficit. Accordingly, provisions of Article 2 could be understood as requiring the Bank of Greece to finance a body governed by public law (i.e. the IKA-ETAM). Such requirement would be contrary to Article 1(1)(b)(ii) of 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

5 By Article 5 of Law 3029/2002 on the reform of the social security system (Government Gazette, Vol A/160, 11.7.2002).

6 See Article 134 of the draft law, which amends Article 36 of Law 3556/2007.

Treaty[7], which prohibits any financing by the central banks of public sector obligations vis-à-vis third parties. If the draft law is adopted, the BoG Pension Fund will be integrated into the IKA-ETAM and the Bank of Greece will have no control or influence over the Fund's asset management. Accordingly, the Bank of Greece will no longer be in a position to ensure the payment of pensions to its employees, which can no longer be considered to be a task of the Bank of Greece but rather a State task.

6. Proposed changes to the current regime under the Bank of Greece's statute

6.1 The Bank of Greece's statute stipulates the Bank's duty to provide social security coverage for its staff. In this context, it should be noted that the Bank of Greece's statute forms part of an International Convention ratified by Law 3424/1927 and, as such, it has superior status relative to ordinary laws (acts of Parliament) in accordance with Article 28(1) of the Greek Constitution. In particular, the first sentence of Article 38(4) of the Bank of Greece's statute establishes the Bank's obligation not only to remunerate its current employees but also to pay pensions to its retired staff, under terms and conditions specified by decisions of its General Council (subject to generally applicable legislation). This obligation is further confirmed elsewhere in the Bank of Greece's statute, namely in Article 71(1), which mentions the Bank's pension payments to its retired staff as a regular expenditure item deducted from its gross income when calculating net annual profit, and in Article 74, which states that, in the event of dissolution of the Bank, the Greek State 'shall assume unimpaired full liability for obligations previously attaching to the Bank towards its serving and pensioned staff in respect of all their rights.'

6.2 Recent Greek legislation has confirmed the Bank of Greece's statutory obligation to ensure the payment of staff pensions. Thus, the BoG Pension Fund was exempted from the scope of Articles 5 and 6 of Law 3029/2002 pursuant to which the IKA absorbed the individual pension funds of commercial banks. Further, Article 18 of Law 3193/2003 explicitly reconfirmed that the payment of staff pensions is a statutory obligation of the Bank of Greece under Articles 38 and 71 of its statute. This provision states that 'the Bank of Greece shall continue to fully ensure, by any appropriate means, the viability of the relevant Social Security Funds and the social security benefits payable to the Bank's staff in accordance with the Charters of the Funds and the legislation in force' and that, by exception from the single-fund scheme introduced for commercial banks, 'the Bank of Greece staff funds shall operate under their existing legal form and shall remain independent […]'[8].

6.3 In summary, therefore, the introduction of provisions in the draft law relating to the BoG Pension Fund touches upon the provisions of Articles 38, 71 and 74 of the Bank of Greece's statute.

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7 OJ L 332, 31.12.1993, p. 1.

8 Articles 5 and 6 of Law 3029/2002 provided for the integration of a number of pension branches of various funds as part into the State-run IKA-ETAM and IKA-ETEAM with regard to main and auxiliary pensions, respectively.

Pursuant to Article 7 of that statute, any amendment thereof is subject to a prescribed procedure and must involve specifically defined bodies (decision of the General Meeting of the Bank's Shareholders ratified by an act of Parliament). It cannot take effect directly and immediately by the enactment of a new law alone. The Bank of Greece should therefore be involved in any legislative procedure possibly affecting its status. With a view to the principle of central bank independence, the ECB would like to point out that limiting the Bank of Greece's role in this way is a potential tool to influence it unduly in fulfilling its tasks, thus limiting its independence. In this regard, it is useful to note that the ECB defines its staff policy autonomously and that this autonomy forms part of the ECB's independence as guaranteed by Article 108 of the Treaty and Article 36 of the Statute of the European System of Central Banks and of the European Central Bank[9].

6.4 In the light of the above, Article 1 of the draft law envisaging the integration of the now independent BoG Pension Fund into the IKA-ETAM might have implications for the legal relationships and career policies of the Bank of Greece, insofar as it could impair the Bank of Greece's ability to employ and retain the qualified staff necessary for the performance of its ESCB tasks. Sufficient safeguards are therefore necessary to avoid any potential reduction of the Bank of Greece's independence.

7. Cooperation with the Bank of Greece and the obligation to consult the ECB

Finally, the ECB underlines that the Greek Government should cooperate closely with the Bank of Greece and consult the ECB on any future amendment to the specific rules applicable to the Bank of Greece in accordance with Council Decision 98/415/EC, as the provisions of the Bank of Greece's statute entrust the Bank of Greece with the task of ensuring the social security coverage for its employees.

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

Done at Frankfurt am Main, 19 March 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

9 See ECB Opinion CON/2008/9.