



OPINION OF THE EUROPEAN CENTRAL BANK

of 17 October 2008

**at the request of the Greek Ministry of Economy and Finance
on a draft law on, inter alia, the establishment of the ‘Depositors and Investors of Credit
Institutions Compensation Fund’**

(CON/2008/51)

Introduction and legal basis

On 24 September 2008 the European Central Bank (ECB) received a request from the Greek Ministry of Economy and Finance for an opinion on a draft law on, *inter alia*, the establishment of the ‘Depositors and Investors of Credit Institutions Compensation Fund’¹ (hereinafter the ‘draft law’). On 10 October 2008 the ECB received a related consultation request from the Ministry on a draft provision raising the coverage limit of the present deposit protection scheme in Greece (hereinafter, the ‘draft amendment on the amount of guaranteed deposits’), which is to be adopted separately from the draft law² and which stems from the decisions taken at the Ecofin Council meeting held in Luxembourg on 7 October 2008 to address the current turmoil in the financial sector. This opinion covers both the draft law and the draft amendment on the amount of guaranteed deposits.

The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and sixth indents 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 provisions³, as the draft law relates to the Bank of Greece and 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 The full title of the draft law is as follows: ‘Law on the Depositors and Investors of Credit Institutions Compensation Fund, the Athens Stock Exchange Members Guarantee Fund, the Dematerialised Securities System and other provisions’.

² The draft amendment on the amount of guaranteed deposits was submitted to the Greek Parliament on 9 October 2008 as an amendment-addendum to a draft law on the protection of borrowers which had already been submitted to Parliament at this point.

³ OJ L 189, 3.7.1998, p. 42.

1. Purpose of the draft law

1.1 The part of the draft law relating to compensation schemes is intended to achieve the following objectives: (i) replace the provisions of Law 2832/2000⁴ currently governing deposit guarantees; and (ii) codify the arrangements on deposit guarantees and investor compensation schemes in cases of insolvency of credit institutions, with the view to establishing a set of coherent, efficient and transparent compensation arrangements, enhancing confidence in the financial system and in the capital market. These objectives are to be achieved by the following means:

- (i) *Institutional consolidation of Greek compensation schemes with regard to credit institutions.*
This will be achieved by establishing a single entity under the name of the ‘Depositors and Investors of Credit Institutions Compensation Fund’ (hereinafter the ‘Fund’) which will be the compensation scheme for both deposits and covered investment services⁵ provided by credit institutions to their clients⁶. The Fund will replace the current ‘Hellenic Deposit Guarantee Fund’⁷ (HDGF) which has only guaranteed compensation payments to depositors with credit institutions, while other entities that provide investment services and are already members of the Athens Stock Exchange Members Guarantee Fund (ASEMGF) under Law 2533/1997⁸ will continue to be covered by the ASEMGF. In line with the extension of the Fund’s scope to cater for investor protection vis-à-vis credit institutions, the draft law provides for two separate dedicated branches within the Fund, which would secure compensation payments for depositors and for investors, as the case may be. Moreover, the draft law introduces specific arrangements as regards the scope of the Fund’s coverage as well as its financing and governance, as referred to in paragraphs 2 to 4 of this opinion.
- (ii) *Enhancement of the Bank of Greece’s supervisory functions relating to the operation of the Fund*

This arrangement, based on the supervisory function performed by the Bank of Greece in relation to the banking sector in Greece, will include measures such as: (i) the Bank of

⁴ Law 2832/2000 on the codification of the provisions on the establishment, organisation and operation of the deposit scheme and supplementing the Statute of the Bank of Greece (FEK Vol. A 141, 13.6.2000) codified and supplemented the provisions of Law 2324/1995 (FEK Vol. A 146, 17.7.1995) which, inter alia, transposed Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, OJ L 135, 31.5.1994, p. 5.

⁵ ‘Covered investment services’ include those listed in Article 4(1)(a) to (d), (f) and (g) of Law 3606/2007 on financial instrument markets and other provisions (FEK Vol. A 195, 17.8.2007) and the ancillary service referred to in Article 4(2)(a) of the same law.

⁶ According to the explanatory memorandum to the draft law, the proposal for combined coverage of deposits and investment services provided by credit institutions has been put forward by the Bank of Greece, the Hellenic Bank Association and the HDGF itself, as an arrangement which has also been adopted by other EU legislators (e.g. Austria, Luxembourg, the Netherlands and Sweden).

⁷ The HDGF, established under Article 2 of Law 2832/2000, is a legal person governed by private law and supervised by the Minister for Economy and Finance.

⁸ Law 2533/1997 on the stock exchange derivatives market and other provisions (FEK Vol. A 228, 11.11.1997) established the ASEMGF as a legal person governed by private law and supervised by the Hellenic Capital Market Committee. Its provisions replaced those of Legislative Decree No 3078 of 11 October 1994 establishing the ASEMGF’s predecessor fund, by restructuring and renaming it in order to better meet the needs of investment protection and ensure harmonisation with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

Greece's power to decide on the equivalence of coverage of Greek branches of credit institutions having their registered office outside the EU under the respective home country scheme; (ii) closer cooperation between the Bank of Greece and the EU supervisory authority concerned in the event of non-compliance by a Greek branch of a credit institution with a registered office in a Member State; and (iii) enhanced representation of the Bank of Greece on the Fund's Board.

- 1.2 Moreover, under the draft amendment on the amount of guaranteed deposits, the deposit guarantee will increase from EUR 20 000 to EUR 100 000, with the rates for calculating credit institutions' contributions to the deposit-guarantee scheme being adjusted accordingly. This arrangement will be valid until 31 December 2011 and may be extended by a decision of the Minister for Economy and Finance

2. General observations

- 2.1 The ECB welcomes the consolidation of compensation schemes for both deposits and investment services provided by credit institutions in Greece, as it will increase operational efficiency and enhance the confidence of credit institutions' clients in the scheme responsible for compensation in case of insolvency. However, it is noted that according to the draft law's final and transitional provisions, credit institutions that, at the time of entry into force of the draft law, are already members of the ASEMFGF will continue as such and will have no obligation to join the Investors' Cover Branch (ICB). This means that some credit institutions will not join the ICB of the Fund. The ECB notes that to ensure a level playing field, all credit institutions should be subject to the same regime as regards the calculation of contributions payable to the compensation scheme.
- 2.2 Moreover, the ECB welcomes the draft amendment on the amount of guaranteed deposits increasing the guaranteed amount for deposits to EUR 100 000 in accordance with the conclusions of the Ecofin Council held on 7 October 2008⁹. This proposed measure should facilitate prevention of the financial turmoil's impact on the real economy in Greece, while improving the stability of the banking system and protecting the deposits of individuals.

3. Financing of the Fund

- 3.1 The initial capital of the Fund will be taken over from the HDGF, to which the Fund is the universal successor, and which has had its capital covered as to 60 % by the Bank of Greece and as to 40 % by those credit institutions which are members of the Hellenic Bank Association¹⁰. The Fund's assets will be grouped in two distinct branches, namely the Depositors' Cover Branch

⁹ The Council (Ecofin) agreed in its 7 October meeting that 'all Member States would, for an initial period of at least one year, provide deposit guarantee protection for individuals for an amount of at least EUR 50 000, acknowledging that many Member States determine to raise their minimum protected amount to EUR 100 000'. See the press release of the 2894th Council meeting (13784/08), available on the Council's website, www.consilium.europa.eu.

¹⁰ See Article 2(5) of the draft law.

(DCB) and the ICB and will be exclusively dedicated to serving their respective purposes, i.e. compensation payments to depositors and investors concerned¹¹. The Fund's operating costs relating to the DCB and the ICB will be determined on an annual basis by a decision of the Board. Specifically, the costs incurred by the ICB will be allocated to each participating credit institution in proportion to the value of its participation¹².

- 3.2 Article 4 of the draft law lists the DCB's resources¹³ and Article 4(4) specifies the amount of a credit institution's regular annual contribution and the details of its calculation on the basis of scales. By decision of the Fund's Board, the contribution calculated will be adjusted, from 1 January 2009 onwards, using a coefficient ranging from 0.90 to 1.10, according to the ranking which, solely for the purposes of the application of the draft law's provisions establishing the Fund, will be attributed to the credit institution concerned by a decision of the Bank of Greece. The ranking will take into account the criteria of capital adequacy, liquidity and adequacy of internal audit systems, as reflected in Law 3601/2007 implementing Directives 2006/48/EC and 2006/49/EC¹⁴. In this respect the ECB welcomes the principle of risk-based premiums, which will align the calculation of a credit institution's contributions to the Fund to its risk profile.

4. Governance of the Fund

- 4.1 Article 23 of the draft law introduces certain changes to the current regime, namely it proposes an increase to the number of members of the Fund's Board from seven to nine. The Board will continue to be chaired by one of the Deputy Governors of the Bank of Greece, the other members coming from the Ministry of Economy and Finance (one member), the Bank of Greece (three members as opposed to two under the current regime), the Hellenic Bank Association (three members) and the Association of Cooperative Banks of Greece (one member). It also introduces the possibility to renew the Board's five-year mandate more than once and enables the Board Chairman to delegate representation of the Fund before any authority or third party, judicially and extra-judicially to another Board member, the Director or another officer of the Fund. The ECB

¹¹ In accordance with Article 2(6) of the draft law, the Fund's DCB assets are clearly distinct from its ICB assets, as specified in the draft law. Moreover, in accordance with Article 4(10) of the draft law, contributions to the DCB's initial capital and any other form of contribution made by a credit institution to the DCB do not constitute assets of the credit institution and may not be refunded. To contrast, Article 5(2) stipulates that ICB assets constitute a 'group of assets' managed by the Fund, the individual components of which shall be jointly owned by the participating credit institutions in proportion to their participation therein. Consistently, Article 8 specifies that in the event that a credit institution withdraws from the ICB, for any legal reason, its individual share's value, as assessed at the time of withdrawal, will be refunded to it in cash.

¹² See Article 24(4) of the draft law.

¹³ These include the following: (i) initial and annual regular contributions of credit institutions participating in the DCB; (ii) an additional contribution levied in the event that DCB resources are insufficient to cover compensation payments; (iii) donations; and (iv) revenue deriving from liquidation of claims and management of DCB assets. Similarly, ICB resources are listed in Article 6 of the draft law.

¹⁴ Directives 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1) and 2006/49/EC on the capital adequacy of investment firms and credit institutions (recast) (OJ L 177, 30.6.2006, p. 201), implemented by Law 3601/2007 on the taking up and pursuit of the business of credit institutions, on capital adequacy of credit institutions and investment firms and other provisions (FEK Vol A 178/1.8.2007).

further notes that the draft law, as referred to in paragraph 1.1(ii) above, transfers certain supervisory powers previously entrusted to the HDGF¹⁵ to the Bank of Greece. The ECB welcomes these proposed amendments to the extent that they maintain a significant level of central bank involvement.

- 4.2 As a general point, the ECB repeats its earlier observation that central banks are in general in the best position to take on responsibility for financial stability, given their insight into money and financial market developments and their involvement in payment systems and monetary policy operations¹⁶. At the same time, as deposit-guarantee schemes in particular are a key element of the financial safety net, the governance framework should ensure that the important function of such schemes is carried out professionally and efficiently¹⁷. Moreover, effective coordination with the overall role of central banks in safeguarding financial stability should be ensured. This aim may be achieved, inter alia, through maintaining an adequate level of involvement of the central bank in the governance and regulation of national deposit-guarantee schemes.

5. Concluding remarks

For reasons of consistency and to ensure clarity and legal certainty, the ECB recommends that the two sets of provisions, namely the draft law and the draft amendment on the amount of guaranteed deposits, should be properly aligned. In particular, as the latter amends Law 2832/2000 and will be adopted prior to the draft law, which in turn will replace Law 2832/2000 itself, the draft law should be amended to reflect the exceptional nature and, thus, the limited life of the draft amendment on the amount of guaranteed deposits, for example by including a transitional provision or by any other means that the Greek legislator considers appropriate.

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

Done at Frankfurt am Main, 17 October 2008.

[signed]

The President of the ECB
Jean-Claude TRICHET

¹⁵ See Article 3(4) and Article 22(2) of the draft law.

¹⁶ See e.g. paragraph 7 of ECB Opinion CON/2001/10 of 25 May 2001 at the request of the Austrian Ministry of Finance on a draft Federal law establishing and organising the financial market supervisory authority.

¹⁷ See Financial Stability Forum, 'Guidance for Developing Effective Deposit Insurance Systems', September 2001, point V.1(c) ('Basic governance arrangements'), p. 19. According to these recommendations, the governing body of a deposit-guarantee scheme should include individuals with the requisite knowledge to allow them to understand the environment in which the scheme operates.