



OPINION OF THE EUROPEAN CENTRAL BANK

of 22 July 2014

on the resolution of credit and other institutions

(CON/2014/60)

Introduction and legal basis

On 23 May 2014, the European Central Bank (ECB) received a request from the Minister for Finance of the Republic of Cyprus for an opinion on a draft law (hereinafter the ‘draft law’) amending the Resolution of Credit and Other Institutions Laws of 2013 (hereinafter the ‘Law’)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 and sixth indents of Article 2(1) of Council Decision 98/415/EC², as the draft law relates to the Central Bank of Cyprus (CBC) 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. Purpose of the draft law

The draft law amends certain provisions of the Law, with the overall aim of improving the operational effectiveness and efficiency of the CBC in its resolution tasks. More specifically, the draft law:

- (a) designates the CBC as the Resolution Authority (the CBC in its capacity as resolution authority is hereinafter referred to as the ‘Resolution Authority’);
- (b) establishes the Resolution Committee of the Resolution Authority, which is composed of the CBC’s Governor and the two executive members of the CBC’s Board of Directors and whose primary responsibilities are to implement the provisions of the Law and to take decisions and issue decrees;
- (c) establishes a resolution unit within the CBC, the main duty of which is to assist the Resolution Authority and the Resolution Committee in the exercise of their duties;
- (d) confers on the CBC, in its capacity as the competent supervisory authority, the power to decide whether an institution is no longer viable or likely no longer to be viable, after consultation with the Resolution Committee; and

¹ Law 17(I)/2013, as amended.

² Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

- (e) inserts new sections into the Law, empowering the Resolution Authority to collect information and conduct investigations for the exercise of its responsibilities and to impose administrative fines in the event of breaches of the Law.

2. General observations

Directive 2014/59/EU of the European Parliament and of the Council (hereinafter the ‘BRRD’)³ lays down rules and procedures that must be transposed by the Member States by 31 December 2014. The ECB understands that the framework established under the Law, as amended by the draft law once it has been adopted, will be reviewed in due course in order to ensure full transposition of the BRRD into Cypriot law. This framework will also be reviewed to ensure full consistency with all developments at Union level, such as the provisions of the proposed regulation on the Single Resolution Mechanism (hereinafter ‘the proposed SRM regulation’)⁴, when the latter has been adopted and enters into force.

Once the proposed SRM regulation is applicable, the Single Resolution Board of the Single Resolution Mechanism (SRM) will be responsible for institutions: (a) that are considered significant under the terms of Council Regulation (EU) No 1024/2013⁵; (b) in relation to which the ECB has decided to exercise directly itself all the relevant powers in accordance with Regulation (EU) No 1024/2013; or (c) that constitute other cross-border groups⁶. However, the Resolution Authority will still retain some tasks in relation to institutions under the responsibility of the Single Resolution Board. According to the proposed SRM regulation, national resolution authorities will be required to assist the Single Resolution Board in resolution planning and in preparing resolution decisions for institutions under the Single Resolution Board’s responsibility. The national resolution authorities should implement the resolution scheme established by the Board by exercising resolution powers and tools in relation to the institutions in question.

3. Appropriate time to consult the ECB

The ECB received the consultation request on 23 May 2014. The ECB notes that the draft law has already been enacted and was published in the Official Gazette of the Republic on 30 June 2014⁷. The consultation request did not refer to such timetable and did not indicate a deadline for preparing the opinion. Pursuant to Article 4 of Decision 98/415/EC, the ECB must be consulted at an appropriate stage in the legislative process. This implies that the consultation should take place at a point in the legislative process that allows the ECB sufficient time to examine the draft legislative provisions and adopt its

³ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 173, 12.6.2014, p. 190).

⁴ Proposal for a regulation of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund (COM (2013) 520 final). See also Outcome of the European Parliament’s first reading, 23 April 2014, available on the Council’s website at www.consilium.europa.eu.

⁵ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁶ Article 6a of the proposed SRM regulation.

⁷ Law 90(I)/2014, *Episimi Efimerida tis Dimokratias, Annex. I(I)*, No. 4450, 30.6.2014

opinion, and the national authorities to take into account the ECB's views in accordance with Decision 98/415/EC. Therefore, the ECB would appreciate the consulting authority honouring its obligation to consult the ECB in good time in the future.

4. Specific observations

4.1 *The Resolution Authority*

The ECB welcomes the draft law as it substantially improves the operational effectiveness and efficiency of the Resolution Authority and allocates sole responsibility to the CBC for the execution of tasks which are broadly consistent with the CBC's financial stability role. Furthermore, the ECB understands that these tasks do not interfere with the performance of the CBC's Eurosystem-related tasks provided for in the Treaty and do not prejudice the financial means necessary for carrying out the CBC's Eurosystem-related tasks. Any involvement of the CBC and the members of its decision-making bodies in measures to strengthen financial stability must be compatible with the Treaty and, consequently, with the CBC's institutional and financial independence, as well as with the personal independence of the members of its decision-making bodies safeguarding the proper performance of their tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank⁸.

4.2 *Separation and operational independence of supervisory and resolution tasks*

The draft law provides that the CBC must take all measures necessary to ensure: (a) the effective separation between its supervisory tasks pursuant to the Central Bank of Cyprus Laws of 2002 to (No 3) of 2013⁹ and its resolution tasks laid down in the draft law; (b) operational independence of its supervisory tasks pursuant to the Central Bank of Cyprus Laws of 2002 to (No 3) of 2013 and its resolution tasks laid down in the draft law; and (c) adequate expertise, resources and operational capacity to apply the resolution measures¹⁰. The draft law further provides that the Resolution Authority must have access to all information in the possession of the competent supervisory authority that is necessary for the implementation of the resolution measures and the exercise of its tasks¹¹.

In accordance with the draft law, the CBC will also establish a resolution unit consisting of CBC staff members¹². The staff of the resolution unit will be structurally separate from the staff involved in carrying out the CBC's supervisory tasks and must report directly to the Resolution Committee. The ECB takes note of the solution adopted in the draft law which is one of the organisational arrangements that can ensure the effective separation and operational independence between the CBC's supervisory tasks and its resolution tasks, as well as the expertise and the operational capacity of the CBC to implement any of the Resolution Committee's decisions.

⁸ See Opinion CON/2013/3, paragraph 3. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁹ Law 138(I)/2002.

¹⁰ Section 5(6) of the draft law.

¹¹ Section 5(13) of the draft law.

¹² Section 5A(2) of the draft law.

The ECB welcomes this section of the draft law and reiterates that any resolution powers vested in the CBC need to be functionally separate from its supervisory and other tasks, in order to ensure independence and to avoid conflicts of interest. That separation should not prevent the exchange of information and close cooperation between the resolution function and the supervisory function¹³.

4.3 *Minister for Finance's consent to the Resolution Committee's decisions*

Under the draft law, the Resolution Committee, with the consent of the Minister for Finance, where required, may decide to adopt some of the resolution measures provided for in the Law. The Minister for Finance's consent is required in order to apply the sale of operations tool without complying with the associated marketing requirements¹⁴, for the transfer of all or some assets, rights or obligations of an institution under resolution to a bridge bank¹⁵, for the transfer of assets and rights to an asset management company¹⁶ and for the application of the bail-in tool¹⁷.

The ECB understands that this requirement for the Minister's consent to the Resolution Committee's decisions is limited to situations where a resolution measure with a direct fiscal impact or systemic implications is being applied¹⁸. If so, it would be preferable to make this clearer in section 7(1) of the Law.

4.4 *Powers of the Resolution Authority to collect information and conduct investigations*

4.4.1 The draft law includes new sections empowering the Resolution Authority to collect information and conduct investigations for the exercise of its responsibilities and to impose administrative fines if it establishes that a person has acted in breach of any provision of the Law¹⁹. In addition, criminal offences are introduced for cases where a person makes a false, misleading or deceitful statement as to any fact, or fails to submit facts in the course of providing information to the Resolution Authority²⁰.

4.4.2 The ECB acknowledges that both the CBC's resolution function and its supervisory function should have all the information-gathering and investigatory powers that are necessary for the exercise of their respective functions²¹. However, activities such as requesting information and on-site inspections should be coordinated to avoid duplication of tasks; in that sense, a possible solution would be to require that these activities should primarily be conducted by the supervisory function, which, in such case, would be the main provider of the information necessary to the Resolution Authority in order to prepare for the resolution of the institution.

13 See Opinion CON/2013/42, paragraph 2.2, and Opinion CON/2013/28, paragraph 2.4. See also Article 3(3) of the BRRD.

14 Section 9(9) of the Law.

15 Section 10 of the Law.

16 Section 11 of the Law.

17 Section 12 of the Law.

18 In accordance with Article 3(6) of the BRRD.

19 Sections 28A to 28D of the draft law.

20 Sections 35 and 36 of the draft law.

21 See Article 110(3) of the BRRD.

5. Credit institutions subject to resolution measures

The draft law provides that a decision of the Resolution Committee may be made in relation to a ‘subsidiary’ of an affected institution, as well as in relation to the affected institution itself²². The ECB understands that the term ‘subsidiary’ may include companies incorporated in countries other than the Republic of Cyprus. Therefore, it must be assumed that the resolution measures contained in the draft law are intended also to apply to foreign incorporated subsidiaries of the affected institutions. The ECB notes that these measures may only be enforceable against such foreign legal entities to the extent permitted under the foreign law applicable to them.

6. Cooperation with the ECB

- 6.1 According to the Law, the supervisory and resolution functions of the CBC will cooperate in a number of instances: for example, in determining whether a credit institution is no longer viable or is likely no longer to be viable for the purpose of taking resolution measures in relation to an affected institution.
- 6.2 As clarified in Section 2 above, following the forthcoming adoption and entry into force of the proposed SRM regulation the Resolution Authority will only be competent in relation to the resolution of institutions that do not fall within the competence of the Single Resolution Board of the SRM. In order to ensure cooperation between the competent supervisory authority and the Resolution Authority once the proposed SRM regulation is adopted and enters into force, the competent supervisory authority should only exercise its supervisory tasks and, in turn, decide that the affected institution is no longer viable or is likely no longer to be viable in respect of institutions for which both it and the Resolution Authority remain competent.
- 6.3 In this regard, the ECB will assume the supervisory tasks conferred on it by Regulation (EU) No 1024/2013 on 4 November 2014. There is a need to ensure consistency during the period after which the ECB has assumed its tasks under Regulation (EU) No 1024/2013, but before all the provisions of the proposed SRM regulation are applicable (most likely from 1 January 2016). During this period, elements of the Law will apply to credit institutions under ECB supervision. Therefore, the Resolution Authority should also be obliged to cooperate closely with the ECB in accordance with Article 3 of Regulation (EU) No 1024/2013.
- 6.4 The consulting authority is also requested to consider the provisions of the Law in order to ensure compatibility with the exclusive competence of the ECB to authorise credit institutions and to withdraw authorisations of credit institutions under Regulation (EU) No 1024/2013. Relevant procedures for conducting those tasks are provided for in Regulation (EU) No 468/2014 (ECB/2014/17) of the European Central Bank²³ (hereinafter the ‘SSM Framework Regulation’), which applies to public authorities and credit institutions. Both Regulation (EU) No 1024/2013 and

²² Section 8 of the draft law.

²³ Regulation (EU) No 468/2014 (ECB/2014/17) of the European Central Bank of 16 April 2014 establishing the framework for cooperation between the European Central Bank and national competent authorities and with national designated authorities (OJ L 141, 14.5.2014, p. 1).

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the SSM Framework Regulation have primacy over the Law and the draft law, once the latter is adopted. These national laws must therefore be read and applied in conjunction with the aforementioned Union-level regulations.

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

Done at Frankfurt am Main, 22 July 2014.

[signed]

The President of the ECB

Mario DRAGHI