



EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 6 October 2020

on conferral of additional tasks related to the single euro payments area (SEPA)

on the Bank of Greece as national competent authority

(CON/2020/23)

Introduction and legal basis

On 11 September 2020 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a draft amendment of paragraph 2 of Article 30 of Law 4141/2013¹ (hereinafter the 'draft amendment').

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 fifth indents of Article 2(1) of Council Decision 98/415/EC², as the draft amendment relates to rules applicable to the Bank of Greece (BoG) and to payment and settlement systems. 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 amendment

1.1 Under Article 10 of Regulation (EU) No 260/2012 of the European Parliament and of the Council³ which established technical and business requirements for credit transfers and direct debits in euro (hereinafter the 'SEPA Regulation'), Member States are required to designate competent authorities responsible for ensuring compliance with the SEPA Regulation. Article 10 stipulates that Member States shall designate as competent authorities public authorities, bodies recognised by national law or public authorities expressly empowered for that purpose by national law, including central banks. Article 10 further requires Member States to ensure that the designated competent authorities have all the powers necessary for the performance of their duties and that where there is more than one competent authority for matters covered by the SEPA Regulation on its territory, those authorities cooperate closely so that they can discharge their respective duties effectively⁴.

¹ Article 30 of Law 4141/2013 ('measures for implementing Regulation (EC) 924/2009 and Regulation (EU) 260/2012') is published in the Government Gazette A'81/2013.

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).

³ Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

⁴ Article 10(2) of the SEPA Regulation requires Member States to have notified the European Commission by 1 February 2013 of the competent authorities designated, and to notify the European Commission and the European Banking Authority without delay of any subsequent change concerning those authorities. Paragraph 4 of that Article provides that the competent authorities shall monitor compliance by payment service providers with the SEPA Regulation effectively and take all necessary measures to ensure such compliance. Paragraph 4 of the same Article also requires that competent authorities shall cooperate with each other.

- 1.2 Article 30 of Law 4141/2013⁵ (a) designates the BoG as the competent authority responsible for ensuring compliance with Regulation (EC) 924/2009 of the European Parliament and of the Council⁶ (hereinafter the ‘cross-border payments Regulation’) and with the SEPA Regulation; and (b) confers on the BoG the task of imposing sanctions for infringements of Article 8 of the cross-border payments Regulation and of Articles 3, 4, 5 and 9 of the SEPA Regulation. Article 30 of Law 4141/2013 also designates (a) the General Secretariat for Commerce and Consumers of the Greek Ministry of Development and Investment as the competent authority for managing complaints and imposing the relevant sanctions under Articles 3, 4, 6 and 7 of the cross-border payments Regulation and under Articles 7 and 8 of the SEPA Regulation; and (b) the Hellenic Consumers’ Ombudsman, the Hellenic Financial Ombudsman and the Amicable Settlement Committees referred to in Greek consumer protection law as the competent bodies for the resolution and/or out-of-court settlement of disputes arising between payment service users (PSUs) and payment service providers (PSPs) concerning their rights and obligations under the SEPA Regulation.
- 1.3 The current wording of Article 30(2) of Law 4141/2013 does not explicitly state whether the BoG’s sanctioning power with regard to infringements of Article 9 of the SEPA Regulation is exercisable in relation to payment service providers (PSPs) or to payment service users (PSUs), both as defined in the SEPA Regulation⁷.
- 1.4 In addition, Article 30(2) currently stipulates that the relevant decision of the BoG to impose a fine is to be taken in accordance with Article 55A of the Statute of the BoG. Article 55A of the Statute of the BoG regulates the supervisory tasks of the BoG with respect to credit institutions, insurance companies, financial leasing companies, factoring companies, mutual guarantee companies, bureaux de change, companies intermediating in interbank markets, money-market broker companies, counter-guarantee funds, and payment institutions – all of which are financial institutions.
- 1.5 According to the draft explanatory report accompanying the draft amendment, it therefore appears that the task conferred on the BoG of ensuring compliance with Article 9 of the SEPA Regulation, and the relevant sanctioning powers, are restricted to entities that are subject to the BoG’s supervision.
- 1.6 The draft amendment aims to clarify that the BoG is empowered to sanction both PSPs and PSUs for infringements of Article 9 of the SEPA Regulation, whether or not the relevant PSP or PSU is supervised by the BoG. In particular, the draft amendment provides that the BoG is empowered to impose sanctions for infringements of Article 8 of Regulation (EC) 924/2009 and of Articles 3, 4, 5 and 9 of the SEPA Regulation, by PSPs or PSUs and irrespective of whether the relevant PSP or

⁵ Article 30 of Law 4141/2013 (‘measures for implementing Regulation (EC) 924/2009 and Regulation (EU) 260/2012’) is published in the Government Gazette A’81/2013.

⁶ Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).

⁷ See Article 2(8) and Article 2(9) of the SEPA Regulation. ‘PSP’ is defined to mean ‘a payment service provider falling under any of the categories referred to in Article 1(1) of Directive 2007/64/EC and the legal and natural persons referred to in Article 26 of Directive 2007/64/EC, but excludes the bodies listed in Article 2 of Directive 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 benefiting from a waiver under Article 2(3) of Directive 2007/64/EC’. ‘PSU’ is defined to mean ‘a natural or legal person making use of a payment service in the capacity of payer or payee’.

the PSU is an entity supervised by the BoG. The draft amendment also removes the reference to Article 55A of the Statute of the BoG.

2. General observation

The ECB welcomes the objective of the draft amendment to close a regulatory gap in the designation of competent authorities in Greece responsible for ensuring compliance with Article 9 of the SEPA Regulation⁸. The ECB considers that the closure of this gap will contribute to the continued success of the single euro payments area (SEPA) project launched in 2012, which has been a significant step in the effort to achieve a fully integrated internal market for payments and payment services, and in enhancing the confidence of the public in the single currency.

3. Substantial amendment of tasks conferred on the BoG

3.1 *BoG's new functions*

3.1.1 The BoG is currently one of the competent authorities in Greece responsible for ensuring compliance with the SEPA Regulation. The draft amendment confers on the BoG the task of imposing sanctions for infringements of, among others, Article 9 of the SEPA Regulation by PSPs or PSUs alike and irrespective of whether the relevant PSP or the PSU is an entity supervised by the BoG. Article 9 of the SEPA Regulation relates to the acceptance of any euro payment account within the EU for making or receiving payments and contains obligations vis-à-vis PSUs, including payers and payees⁹. In particular, Article 9 ensures that payers (are able to) send credit transfers and payees (are able to) receive debit payments to payment accounts held with PSPs which are located in any Member State, provided that the payment account is reachable in accordance with Article 3 of the SEPA Regulation. Examples of natural or legal persons making use of a payment service in the capacity of payer or payee include consumers, businesses, tax and other public authorities, energy providers, telecommunication operators, insurance companies or other utility companies.

3.1.2 The addition of PSUs to the group of entities whose compliance the BoG is now tasked to monitor and sanction is a substantial expansion of the BoG's existing task – which is to monitor compliance of, and sanction, entities supervised by it as well as PSPs. In this respect, the BoG now also has conferred upon it the task of receiving complaints concerning the infringement of Article 9 of the SEPA Regulation.

3.1.3 The ECB emphasises that a proposed conferral of new tasks on a national central bank (NCB) in the European System of Central Banks (ESCB) must be assessed against the prohibition on monetary financing laid down in Article 123 of the Treaty. For the purposes of that prohibition,

⁸ The ECB understands that on 14 May 2020 the European Commission sent a reasoned opinion to Greece for non-compliance with the SEPA Regulation and set a deadline of four months to Greece to take all necessary measures to rectify its failure to comply with the SEPA Regulation.

⁹ A 'payer' is defined in Article 2(3) of the SEPA Regulation to mean a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no payer's payment account, a natural or legal person who makes a payment order to a payee's payment account. A 'payee' is defined in Article 2(4) of the SEPA Regulation to mean a natural or legal person who holds a payment account and who is the intended recipient of funds which have been the subject of a payment transaction.

Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93¹⁰ defines ‘other type of credit facility’ as ‘any financing of the public sector’s obligations vis-à-vis third parties’.

3.1.4 Ensuring that Member States implement a sound budgetary policy is one of the key objectives of the prohibition on monetary financing and may not be circumvented¹¹. Therefore, the task of financing measures – which are usually the responsibility of the Member States and financed from their budgetary sources rather than by the NCBs – must not be entrusted to NCBs. To decide what constitutes financing of the public sector’s obligations vis-à-vis third parties, which can be interpreted as financing provided by an NCB outside the scope of central bank tasks, it is necessary to carry out an assessment, on a case-by-case basis, of whether the task to be undertaken by an NCB is a central bank task or a government task, i.e. a task within the responsibility of the Member States. In other words, adequate safeguards must be in place to ensure no circumventions of the objective of the monetary financing prohibition that Member States maintain a sound budgetary policy.

3.1.5 In the exercise of its duty to ensure that NCBs honour their obligations laid down in the Treaty, the Governing Council has, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’), exercised the discretion available to it and endorsed safeguards against the breach of those obligations. These safeguards take the form of criteria for determining which tasks should be considered as falling within the scope of ‘the public sector’s obligations vis-à-vis third parties’ within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, what constitutes a government task, as follows:

First, central bank tasks are those tasks that are related to the tasks that have been conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB. These tasks are mainly defined in Article 127(2), (5) and (6) and Article 128(1) of the Treaty, and in Article 22 and Article 25.1 of the Statute of the ESCB.

Second, as Article 14.4 of the Statute of the ESCB allows NCBs to perform ‘functions other than those specified in [the Statute of the ESCB]’, new tasks, i.e. tasks that are not related to tasks that have been conferred upon the ECB and the NCBs, are not precluded per se. However, new tasks which are atypical of NCB tasks or which are clearly discharged on behalf of, and in the exclusive interest of, the government or of other public sector entities, should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly discharged on behalf of, and in the exclusive interest of, the government or other public sector entities, is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

¹⁰ 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 Treaty (OJ L 332, 31.12.1993, p. 1).

¹¹ Article 123 of the Treaty also serves the objective of maintaining price stability and reinforces central bank independence.

- (a) whether the performance of the new task would create conflicts of interest with existing central bank tasks which are not adequately addressed and does not necessarily complement those existing central bank tasks. If a conflict of interest arises between existing and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should be interpreted narrowly, so as to avoid leading to the creation of an indefinite chain of ancillary tasks. Such complementarity should also be examined in relation to the financing of those tasks;
 - (b) whether without new financial resources the performance of the new task is disproportionate to the NCB's financial or organisational capacity and may have a negative impact on the capacity to properly perform the existing central bank tasks;
 - (c) whether the performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations;
 - (d) whether the performance of the new task harbours substantial financial risks;
 - (e) whether the performance of the new task exposes the members of the NCB decision-making bodies to political risks which are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute of the ESCB.
- 3.1.6 The systematic categorisation of tasks assigned to NCBs as central banking or government tasks applies to genuinely new tasks that did not exist in the past or did not form an integral part of the central banking tasks already assigned to the NCB in the past. In recognition of the different Member States' legal frameworks, central banking traditions and national set-ups, the tasks currently discharged by an NCB as central banking tasks are not reviewed and re-categorised, but may be reassessed if they are subject to legislative amendments of substance¹². On the basis of the criteria set out in paragraph 3.1.5, the following paragraphs assess whether the substantial amendment to the task conferred on the BoG as a result of the draft amendment is in line with the prohibition on monetary financing.

3.2 *Task related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB*

The tasks relating to the SEPA Regulation, including that of monitoring, sanctioning and receiving complaints in respect of infringements by PSUs with Article 9 thereof, are not among the basic tasks listed in Article 127(2) and (5) of the Treaty or otherwise conferred upon the NCBs by the Statute of the ESCB. However, insofar as the SEPA project is designed to achieve a fully integrated internal market for payments and payment services, thereby enhancing the confidence of the public in the euro, the substantial amendment to the task conferred on the BoG as a result of the draft amendment could be regarded as being linked to the basic ESCB task of promoting the smooth operation of payment systems.

3.3 *Task which is atypical of central bank tasks*

¹² This statement of the approach reflects, for example, paragraph 2.3.1 of Opinion CON/2015/22. All ECB Opinions are published on EUR-Lex.

The ECB notes that Member States have followed different approaches when designating authorities responsible to ensure the compliance by PSPs and PSUs with the SEPA Regulation. The majority of Member States, including in the euro area, have followed a bifurcated approach whereby the competent authority as regards compliance by PSPs is the respective central bank or financial supervision authority, and the competent authority as regards compliance by PSUs is a national consumer protection or competition authority. However, a number of Member States, including in the euro area, have designated their respective NCBs as the competent authority as regards compliance by both PSPs and PSUs¹³. For that reason, the task conferred on the BoG by the draft amendment is not atypical of central bank tasks.

3.4 *Task clearly discharged on behalf of and in the exclusive interest of the government*

The promotion of the smooth operation of payment systems is one of the core tasks to be carried out by the European System of Central Banks (ESCB). In that respect, the ECB has always been firmly committed to, and has actively promoted, a fully integrated payment area for the euro, recognising that this would help reduce substantially and eventually eliminate the differences in cost and convenience of making domestic and cross-border payments. As previously noted, the ECB considers that the creation of a single payment area for the euro is desirable in order to enhance the confidence of the public in the single currency¹⁴. The preamble to the SEPA Regulation clarifies that the creation of a single payment area for the euro is necessary for the proper functioning of the internal market and aims to provide Union citizens and businesses with secure, competitively priced, user-friendly, and reliable payment services in euro, regardless of location within the Union. The task conferred on the BoG by the draft amendment is directly connected with these overarching objectives of the SEPA project and is therefore not considered a task that is clearly discharged on behalf of and in the exclusive interest of the government.

3.5 *Extent to which performance of the new task creates conflicts of interest with existing central bank tasks*

In principle, the new task regarding PSUs that is conferred upon the BoG as a result of the draft amendment are not expected to create any conflict of interest with existing central bank tasks. The ECB understands that the new task will supplement the BoG's supervisory powers over credit institutions and payment institutions, which are two categories of PSPs, as well as the BoG's existing tasks under the SEPA Regulation regarding compliance by PSPs. In that regard, the new task is expected to ensure compliance by all participants in the market for payments and payment services, including PSUs, with the SEPA Regulation and thereby enhance confidence in the single currency. The conferral of this new task on the BoG is therefore aligned with the conferral on it of its existing tasks under the SEPA Regulation. The conferral of this task is also aligned with the BoG's competence to oversee payment systems and payment instruments¹⁵.

¹³ See the Annex to the Report to the European Parliament and to the Council on the application of Regulation EU n° 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009, available at https://ec.europa.eu/info/sites/info/files/171123-report-sepa-requirements-annex_en.pdf.

¹⁴ See, for example, Opinion CON/2009/1 on a proposal for a Regulation of the European Parliament and of the Council on cross-border payments in the Community; Opinion CON/2014/3 on a proposal for a regulation on the postponement of SEPA migration date; Opinion CON/2011/32 on a proposal for a Regulation establishing technical requirements for credit transfers and direct debits in euro.

¹⁵ Monetary Policy Council Act 50/31.7.2002.

3.6 *Extent to which performance of the new task is disproportionate to the financial or organisational capacity of the BoG*

The ECB notes that PSUs are not entities already supervised by the BoG, and that the BoG will be required to commit additional resources – both human and financial – to carry out the new task conferred on it by the draft amendment. In this regard, the ECB would like to reiterate that Member States may not put their NCBs in a position where they have insufficient operational and financial resources to carry out their ESCB- or Eurosystem-related tasks, as applicable. Therefore, it is necessary that the performance of this additional task does not affect the BoG's operational or financial capacity to carry out other ESCB-related tasks.

The draft amendment does not specify the resources to be used by the BoG for the discharge of the above-mentioned tasks, nor does it provide an estimate of the costs likely to be incurred in the performance of these tasks. It can therefore not be excluded that the new task may have an impact on the regular budget of BoG. It is therefore important that adequate resources are available to the BoG in order to ensure that it can properly perform its tasks, while maintaining, at all times, sufficient means to carry out its ESCB-related as well as national tasks and to meet its administrative and operational expenses.

3.7 *Extent to which performance of the new task fits into the institutional set-up of the BoG, in the light of central bank independence and accountability considerations*

The performance of the BoG's new task appears to be consistent with its institutional set-up and not to raise any issues in terms of accountability considerations, as the BoG has been carrying out other tasks in relation to the SEPA Regulation – as one of the competent authorities – since 2013. That said, it is likely that additional organisational units may need to be established to allow the BoG to perform the new tasks.

It should also be noted that, insofar as the draft amendment extends the BoG's existing competence to non-supervised entities, notably non-supervised PSUs, it deviates from the existing allocation of competences in relation to infringement of rights of PSUs under the SEPA Regulation. In this regard, the ECB takes note of the fact that Article 30 of Law 4141/2013 already designates the General Secretariat for Commerce and Consumers of the Greek Ministry of Development and Investment as the competent authority for managing complaints and imposing the relevant sanctions under Articles 7 and 8 of the SEPA Regulation, and the Hellenic Consumers' Ombudsman, the Hellenic Financial Ombudsman and the Amicable Settlement Committees as the competent bodies for the resolution and/or out-of-court settlement of disputes arising between PSUs and PSPs concerning their rights and obligations under the SEPA Regulation.

3.8 *Extent to which the performance of the task harbours substantial financial risks*

The draft amendment does not contain any specific provision limiting the BoG's liability in relation to the exercise of the new task conferred upon it. The BoG could, therefore, potentially be held liable for such damages in accordance with the rules of Greek law on the liability applicable to the BoG.

3.9 *Extent to which performance of the new task exposes members of the decision-making bodies of the BoG to disproportionate political risks and impacts on their personal independence*

The performance of the new task conferred on the BoG by the draft amendment does not appear to expose the members of the BoG's decision-making bodies to disproportionate political risks or to impact their personal independence. However, it cannot be entirely excluded that the BoG and/or the members of its decision-making bodies might be exposed to reputational risks in the performance of the new task.

3.10 *Conclusion*

Insofar as the SEPA project is designed to achieve a fully integrated internal market for payments and payment services, thereby enhancing the confidence of the public in the single currency, the task conferred on the BoG by the draft amendment is considered to be linked to the basic ESCB task of promoting the smooth operation of payment systems. Moreover, this task is not atypical of central bank tasks, as a number of Member States have designated their respective NCBs as competent authorities for ensuring compliance by PSUs with the SEPA Regulation. Additionally, insofar as the draft amendment extends the BoG's existing competence to non-supervised entities, notably non-supervised PSUs, it deviates from the existing allocation of competences in relation to infringement of rights of PSUs under the SEPA Regulation. It will be necessary to ensure that the BoG has adequate resources in order to be able to perform its new task, and that the performance of this additional task does not affect the BoG's operational or financial capacity to carry out other ESCB-related tasks.

The ECB recommends that the consulting authority take the above considerations into account when deciding on whether to confer the new task on the BoG.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 6 October 2020.

[signed]

The President of the ECB

Christine LAGARDE