

National Bank of Greece, S.A.
Aiolou 86
102 32, Athens
Greece
(hereinafter the “Supervised Entity”)

23 November 2015

Decision on whether instruments to be issued by National Bank of Greece S.A. (‘the Supervised Entity’) meet the criteria for Common Equity Tier 1 instruments in accordance with Article 31 of Regulation (EU) No 575/2013

Dear Sirs,

I am writing to notify you that the Governing Council of the European Central Bank (ECB), on the basis of a draft proposal of the Supervisory Board under Article 26(8) of Council Regulation (EU) No 1024/2013¹ has decided, pursuant to Article 31 of Regulation (EU) No 575/2013 of the European Parliament and of the Council², in conjunction with Article 4(3) of Regulation (EU) No 1024/2013 that the Supervised Entity is permitted to include in Common Equity Tier 1 (CET1) capital instruments (the ‘**Capital Instruments**’) to be issued in accordance with HFSF Law³ as amended by the Greek Recapitalisation Law⁴ and the Cabinet Act 36/2-11-2015⁵ (hereinafter the ‘**Cabinet Act**’) provided that:

- (1) The Capital Instruments to be issued shall comply with the Cabinet Act;
- (2) The Capital Instruments are clearly and separately disclosed on the balance sheet in the financial statements of the Supervised Entity; and
- (3) The European Commission approves the Capital Instruments as compliant with State aid rules.

¹ 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).

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 7.6.2013, p. 1).

³ Law No 3864/2010 on the foundation of the HFSF (FEK A 119/21-7-2010).

⁴ Law no 4340/2015 on the framework of the recapitalisation of the credit institutions and other provisions of Ministry of Finance (FEK A 134/1-11-2015).

⁵ Cabinet Act No 36/2-11-2015 on Regulating issues by implementation of paragraph 2 and 5(c) of article 7 of law 3864/2010 (A 119), as replaced by law 4340/2015 (A' 134) (FEK A 135/2-11-2015).

1. FACTS ON WHICH THE DECISION IS BASED

1.1 Application

On 16 November 2015, the Supervised Entity submitted to the ECB the application for permission to include the Capital Instruments in CET1 capital.

The Supervised Entity in its application states that:

- (a) the Capital Instruments are to be acquired by the HFSF, as part of the capital support offered by the HFSF, pursuant to Art. 7 (2) of HFSF Law;
- (b) the terms and conditions of the Capital Instruments will be in line with the Cabinet Act;
- (c) the Capital Instruments are to be clearly and separately disclosed on the balance sheet in its financial statements;
- (d) the Capital Instruments are to be included in the CET1 capital only once the European Commission approves the Capital Instruments under State aid rules; and
- (e) the Capital Instruments in case of conversion shall convert into instruments which meet the criteria to qualify as CET1 capital instruments.

1.2 Assessment

Article 31 of Regulation (EU) No 575/2013 gives the competent authority discretion whether to permit credit institutions to include in CET1 capital instruments complying with the conditions set out therein.

The ECB has concluded that the Capital Instruments comply with these conditions subject to the following conditions:

- (1) The Capital Instruments will be issued in accordance with the HFSF Law as amended by the Greek Recapitalisation Law and Cabinet Act and comply with the Cabinet Act;
- (2) The Capital Instruments are clearly and separately disclosed on the balance sheet in the financial statements of the Supervised Entity; and
- (3) The European Commission approves the Capital Instruments as compliant with the State aid rules.

The conclusion of the ECB is based on the following assessment:

Instruments fully paid up

The Capital Instruments shall be issued within the context of the capital support given by the HFSF, in accordance with Article 7(2) of the HFSF law. This means that Capital Instruments shall be fully paid up by the HFSF as a part of the capital support in accordance with the HFSF law.

Classification as equity

Under Article 1(3) of the Cabinet Act, the Capital Instruments qualify as equity capital of the Supervised Entity within the meaning of Article 22 of Directive 86/635/EEC.

Moreover, under the applicable accounting framework, the ECB understands that the Capital Instruments are to be classified as equity.

There is no balance sheet test for bankruptcy under Greek law.

In light of the above, the ECB considers that the Capital Instruments qualify as equity.

Disclosure in financial statements

The ECB requires that the Capital Instruments are clearly and separately disclosed on the balance sheet in the financial statements of the Supervised Entity as a condition of the permission to include the Capital Instruments in CET1.

Perpetuity

Under Article 1(5) of the Cabinet Act, the Capital Instruments are perpetual without any fixed repayment date.

Emergency situation

The ECB considers the current situation in Greek financial sector as an emergency situation in view of:

- (a) the erosion of depositor confidence following the past substantial outflow of deposits and the continuing risks to the financial stability of Greece;
- (b) the fact that capital controls and limits on withdrawals are still in place in Greece;
- (c) the fact that all four Greek significant entities are dependent on the emergency liquidity assistance from Bank of Greece;
- (d) the Eurogroup Statement from 14 August 2015 requiring the application of the bail in instrument for senior debt bondholders; and
- (e) the capital shortfall determined by the Comprehensive Assessment in AQR and Stress Tests in respect of all Greek significant credit institutions.

Capital Instruments as a recapitalisation measure and State aid

It is required that Capital Instruments are considered State aid by the European Commission and issued within the context of recapitalisation measures pursuant to State aid rules existing at the time of issuance.

With a view to this requirement, the Supervised Entity shall only be permitted to include the Capital Instruments in CET1 capital once the European Commission approves the Capital Instruments as compliant with the State aid rules.

Public ownership

It is required that the Capital Instruments are fully subscribed and held by the State or a relevant public authority or public-owned entity.

The ECB considers this condition fulfilled as under Article 7(2) of the HFSF Law and Article 1(1) of the Cabinet Act, the HFSF shall subscribe the Capital Instruments. Under Article 7(5) of the HFSF Law and Article 1(17) of the Cabinet Act, the Capital Instruments shall only be transferable with the consent of the competent authority. In case of the Supervised Entity, the ECB is the competent authority for this approval.

Loss absorption

The ECB considers the Capital Instruments to be able to absorb losses given that:

- (a) Trigger threshold for conversion is set at 7% CET1 ratio at which the Capital Instruments are converted into predetermined number of common shares. The ECB considers such trigger threshold to be sufficiently high to ensure that the conversion takes place sufficiently soon to absorb losses;
- (b) According to Article 1(11) of the Cabinet Act, payment of interest is at the full discretion of the Board of Directors of the Supervised Entity where if interest is paid it shall be in cash while if it shall not be paid it shall be cancelled and not accumulate. As an alternative to payment of interest being made in cash, newly issued common shares may be issued subject to the discretion of the Board of Directors. Any distribution is subject to restriction under Article 141 CRD IV;
- (c) The Capital Instruments are automatically converted into common shares in the event of second non-payment of interest. According to Article 1(9) of the Cabinet Act, the Capital instruments shall automatically convert into a predetermined number of common shares of the Supervised Entity if, for any reason, the Supervised Entity does not pay all or part of a scheduled interest payment on two interest payment dates, which do not need to be consecutive.
- (d) HFSF cannot transfer the Capital Instruments to a third party unless agreed with the Supervised Entity and subject to ECB's prior approval. HFSF has the right to convert to common shares 7 years after the issuance date and the Supervised Entity has an option to repay at any time, subject to the ECB's prior approval;
- (e) HFSF shall, in case of a special liquidation of the Supervised Entity rank junior to all claims of all creditors and *pari passu* with the common shares of the Supervised Entity (see also below).

Claim on the residual assets of the Supervised Entity

Under Article 1(6) of the Cabinet Act, the Capital Instruments are to constitute direct, unsecured and subordinated investments in the Supervised Entity ranking at all times *pari passu* without any preference amongst themselves and on a special liquidation of the credit institution will rank:

- (a) Junior to all claims of all creditors (including all subordinated creditors), including (but not limited to) claims on the Supervised Entity with respect of obligations which constitute Additional Tier 1 or Tier 2 capital; and
- (b) *pari passu* with the common shares of the credit institution and any other claims expressed to rank *pari passu* with the Capital Instruments.

HFSF shall, upon a special liquidation of the Supervised Entity prior to any conversion date, be entitled to claim upon any residual assets of the Supervised Entity (available for distribution after all claims of creditors senior to the Capital Instruments have been paid in full) for the nominal value of the Capital Instruments, plus any accrued but unpaid interest.

Adequate exit mechanisms

The ECB considers that adequate exit mechanisms exist as:

- (a) Under Article 1(10) of the Cabinet Act, the Supervised Entity has, in its sole discretion and subject to regulatory approval, the right to repay the whole or a part of the Capital Instruments, at any time, at their initial nominal value plus any accrued but unpaid interest (excluding interest which has been cancelled).
- (b) Under Article 1(7) of the Cabinet Act, a breach of the trigger threshold set at 7% CET 1 ratio, shall mandatorily and automatically convert the Capital Instruments into common shares; and
- (c) Under Article 1(10) of the Cabinet Act, the HFSF has the right to convert the Capital Instruments into common shares 7 years after the issuance date.

2. GENERAL

- 2.1 If the Supervised Entity ceases to comply with the conditions for granting this decision, the ECB will reconsider the terms of the permission, including a revocation in whole or in part.
- 2.2 The ECB has taken this decision on the basis of the facts provided and statements made by the Supervised Entity. If any of those facts or statements were not true, or no longer reflect the state of affairs described, this could constitute sufficient grounds to revoke this Decision.
- 2.3. This Decision takes effect on the day of its notification to the addressee. The Supervised Entity shall be permitted to include the Capital Instruments in CET1 capital once all conditions set in this Decision are met.

3. ADMINISTRATIVE AND JUDICIAL REVIEW

- 3.1 In accordance with Article 24 of Regulation (EU) No 1024/2013, within one month of the date of notification, the addressee of this Decision may write to the ECB's Administrative Board of Review requesting an internal administrative review of the Decision. A request for a review should be sent, preferably by electronic mail, to: ABoR@ecb.europa.eu,

or by post to:

The Secretary of the Administrative Board of Review
European Central Bank
Sonnemannstrasse 22
60314 Frankfurt am Main
Germany.

3.2 This Decision may be challenged before the *Court of Justice of the European Union* under the conditions and within the time limits provided for in Article 263 of the Treaty on the Functioning of the European Union.

Yours sincerely,

The President of the ECB

Mario DRAGHI