

OLAF - European Anti-Fraud Office
European Commission
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Madrid 21, September, 2015

Director General Giovanni Kessler

We are exceptionally disappointed to have to write this **Fraud Report Letter on the Governing Council of the European Central Bank ("ECB") and its President Mr. Mario Draghi**, having its address at Sonnemannstraße 20, 60314 Frankfurt am Main, Germany.

As you might be aware, the Governing Council of the ECB decided on 28 June 2015 "*to maintain the ceiling to the provision of emergency liquidity assistance (ELA) to Greek banks at the level decided on [...] 26 June 2015*" (please refer to <https://www.ecb.europa.eu/press/pr/date/2015/html/pr150628.en.html>).

In a further decision on, 6 July 2015, the ECB governing council decided "*to maintain the provision of emergency liquidity assistance (ELA) to Greek banks at the level decided on 26 June 2015 after discussing a proposal from the Bank of Greece*" and "*to adjust the haircuts on collateral accepted by the Bank of Greece for ELA*" (please refer to <https://www.ecb.europa.eu/press/pr/date/2015/html/pr150706.en.html>).

The above decisions inescapably resulted in the imposition of a bank holiday and capital controls in Greece, by virtue of an "act of legislative content" published in the Government Gazette of the Hellenic Republic on 28 June 2015 -Fascicule A, Issue No. 65; as amended by a further act dated 30 June 2015 (Issue No. 66) and extended and amended by decisions of the Greek Minister of Finance dated 6 and 8 July 2015 (Govt Gaz. Fascicule B, Issues Nos. 1391 and 1420)-, as there was no other way to satisfy the demands for withdrawal of deposits from Greek banks.

In summary, such decisions not only violate the below mentioned Treaty articles against the EU's financial interest, but also have been disruptive to the ECB independence and turned the ECB into a policy tool to overthrow governments without any democratic control:

(1) Firstly, we allege that the ECB acted in violation of para. 14.4 of the Statute of the European System of Central Banks, as the ECB's nonconsent to the request by the Bank

of Greece to increase ELA to Greek banks would not have interfered with the objectives and tasks of the ESCB.

(2) Secondly, the ECB acted in violation of Articles 4 and 5 TEU, as it was acting ultra vires when rejecting the request by the Bank of Greece.

(3) Thirdly, the ECB acted taking into account political considerations, and therefore violating Article 130 TFEU, which enshrines the independence of the ECB.

(4) Finally, the above ECB decisions fail the proportionality test, since the promotion of the smooth operation of payment systems per Article 127(2) TFEU is one of the four basic tasks to be carried out through the Eurosystem, while the extension of additional ELA to Greek banks with its potential minute effect on the implementation of the single monetary policy would have been less disruptive to the objectives of the ECB.

It should also be noted that the ECB decisions are of direct concern to European citizenship, since an unbroken chain of causation exists between the act and the loss or damage suffered to EU financial interest and to the Greek people. Clearly, the ECB left the Hellenic Republic no discretion in implementation, as the imposition of a bank holiday and capital controls was a direct and inescapable consequence of the contested acts. Even if one argues that the Hellenic Republic could choose whether or not to impose capital controls on the Greek banks, the possibility that they would not do so is "purely theoretical", as established in *Piraiki-Patraiki v Commission* (case 11/82). Furthermore, the decisions did not entail any implementing measures and, even if they did, there was certainly no discretion on the part of the Hellenic Republic.

As per the **legal basis for dispensing ELA**, according to para. 14.4 of the Statute of the European System of Central Banks (ESCB) and of the European Central Bank (OJ [2010] C326/230) "*National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB*". Furthermore, on 17 October 2013 the ECB published on its website "*the procedures underlying the Governing Council's role pursuant to Article 14.4 of the Statute of the European System of Central Banks and of the European Central Bank with regard to the provision of ELA to individual credit institutions*". According to said procedures "*ELA means the provision by a Eurosystem national central bank (NCB) of (a) central bank money and/or (b) any other assistance that may lead to an increase in central bank money to a solvent financial institution, or group of solvent financial institutions, that is facing temporary liquidity problems, without such operation being part of the single monetary policy. Responsibility for the provision of ELA lies with the NCB(s) concerned. This means that any costs of, and the risks arising from, the provision of ELA are incurred by the relevant NCB*".

In regards of the ECB's position regarding the provision of ELA, as mentioned in the Monthly Bulletin for the 10th anniversary of the ECB (Annex No. 1: <http://www.ecb.europa.eu/pub/pdf/other/10thanniversaryoftheecbmb200806en.pdf>) "*the NCBs may provide – temporarily and against adequate collateral – emergency liquidity assistance (ELA) to illiquid but solvent credit institutions. The possible provision of ELA is undertaken at the discretion of the competent NCB, subject to the conditions set out in the Treaty relating to the prohibition of monetary financing, and only in exceptional circumstances*". This is line with what the ECB had mentioned in its 1999 Annual Report (Annex No.2: <http://www.ecb.europa.eu/pub/pdf/annrep/ar1999en.pdf>): "*The main guiding principle is that the competent NCB takes the decision concerning the provision of ELA to an institution operating in its jurisdiction. This would take place under the responsibility and at the cost of the NCB in question. Mechanisms ensuring an adequate flow of information are in place in order that any potential liquidity impact can be managed in a manner consistent with the maintenance of the appropriate single monetary policy stance*". Also in the Opinion of the ECB on 24 January 2012 on a guarantee scheme for the liabilities of Italian banks and on the exchange of lira banknotes (CON/2012/4

https://www.ecb.europa.eu/ecb/legal/pdf/en_con_2012_4_f.pdf) "[t]he ECB notes that emergency liquidity assistance, granted by the national central bank (NCB) independently and at its full discretion to a solvent credit institution on the basis of a collateral security [...] is in principle possible, provided that a number of conditions are met in order to ensure the NCB's compliance with the monetary financing prohibition under Article 123 of the Treaty".

Furthermore, in a letter by ECB Chairman Mr. Mario Draghi addressed to Mr. Andreas Pitsillides, Member of the European Parliament, dated 28 January 2014 (Annex No.3: (https://www.ecb.europa.eu/pub/pdf/other/20140128_pitsillides.en.pdf) Mr. Draghi states: "Emergency liquidity assistance (ELA) operations are undertaken by national central banks under national responsibility. However, in order to prevent these operations from interfering with the tasks and objectives of the Eurosystem – notably, the implementation of the single monetary policy – the Governing Council of the ECB has established rules and procedures with regard to the provision of ELA to individual credit institutions. These rules and procedures are available on the ECB's website and provide answers to some of the questions you raised. ELA is a specific tool available to central banks in crisis situations. Its aim is to provide liquidity support, in exceptional circumstances, to temporarily illiquid but solvent credit institutions which cannot obtain sufficient liquidity through the market and/or their participation in regular monetary policy operations."

In a letter by ECB Chairman Mr. Mario Draghi addressed to Mr. Dimitrios Papadimoulis, Member of the European Parliament, dated 7 May 2015 (Annex No.4: (https://www.ecb.europa.eu/pub/pdf/other/150506letter_papadomoulis_2.en.pdf) Mr. Draghi states: "The rules of the Eurosystem governing the provision of liquidity to the banking system are intended to ensure the singleness of monetary policy in the euro area". Also in a letter by ECB Chairman Mr. Mario Draghi addressed to Mr. Sven Giegold, Member of the European Parliament, dated 17 June 2015 (Annex No.5: (https://www.ecb.europa.eu/pub/pdf/other/150618letter_giegold.en.pdf?5c28b50385f872645ddb5b18eb2cd14a), Mr. Draghi states:

"Responsibility for the provision of emergency liquidity assistance (ELA) to Cypriot banks lies with the Central Bank of Cyprus. The role of the Governing Council of the ECB as regards the provision of ELA is to ensure that such operations do not interfere with the integrity of monetary policy within the Eurosystem, including the primary objective of maintaining price stability. Furthermore, ELA should not interfere with the prohibition on monetary financing.

The ECB is a rule-based institution bound by the EU Treaties, which require the Eurosystem to lend only to solvent banks, against adequate collateral, and, as mentioned above, to refrain from financing governments. Any direct or indirect financing of a government is incompatible with the prohibition on monetary financing enshrined in Article 123 of the Treaty on the Functioning of the European Union. Let me clarify that provision of ELA by a national central bank is aimed at supporting solvent banks facing liquidity problems, rather than providing solvency support. Therefore, a key requirement in this context is that recipient credit institutions remain solvent. Any decision (non-objection) by the Governing Council related to the provision of ELA depends on the assessment of the conditions of the recipient credit institution".

The ECB, therefore accepts that the only constraints to a NCB's decision to dispense ELA are any interference with the implementation of the single monetary policy and, possibly, the prohibition on monetary financing enshrined in Article 123 TFEU. This is in line with the principal of conferral, as per Articles 4 and 5 TEU.

Recently, the ECB changed its stance on the subject: in an ECB publication dated July 2015 titled "The financial risk management of the Eurosystem's monetary policy operations" (https://www.ecb.europa.eu/pub/pdf/other/financial_risk_management_of_eurosystem_monetary_policy_operations_201507.en.pdf) it is mentioned: "[t]he objective of ELA is to support solvent credit institutions that are facing temporary liquidity problems. ELA thus

addresses short-term liquidity problems and does not aim to provide solvency support. ELA takes the form of central bank money and/or any other assistance that may lead to an increase in central bank money. ELA needs to be distinguished from the Eurosystem's credit operations, which are designed to implement the monetary policy of the Eurosystem and with which ELA should not conflict. ELA should not conflict with the objectives and tasks of the ESCB. Interference with the objectives and tasks of the ESCB could, for instance, result from the following: (i) a threat to the singleness of monetary policy, (ii) a threat to the implementation of monetary policy, for example by making the steering of short-term rates more difficult, (iii) a threat to the financial independence of the NCB, for instance if ELA was not provided against sufficient collateral to safeguard such independence, (iv) an obvious concern about a possible breach of the monetary financing prohibition, or (v) provision of ELA at overly generous conditions, which, in turn, could increase the risk of moral hazard on the side of financial institutions or responsible authorities". The fact that the ECB decided to change (or, at least, publicize the change in) its position post factum, i.e., after the rejection of the request by the Greek NCB, is itself suspect. As we shall see, **even assuming these new rules were intra vires, their application should not have prevented the ECB from agreeing to the request of the Greek NCB.**

In the decisions of June 28 and July 2015, the ECB decided to leave the levels of ELA unchanged, despite requests by the Greek NCB. According to press reports, (<http://www.reuters.com/article/2015/06/29/us-ecb-greece-idUSKCN0P91N420150629>) the Greek NCB has submitted a request for an increase of ELA by €6bn, from a level previously of €89bn. And as discussed previously, **there are only two possible grounds for rejecting the request: possible interference with the implementation of the single monetary policy or the monetary financing prohibition under Article 123 TFEU:**

(1) Let us start by examining the latter. As Mr. Draghi mentioned in a press conference in Nicosia on 5 March 2015 (Annex No.6 <https://www.ecb.europa.eu/press/pressconf/2015/html/is150305.en.html>): *"The ECB is a rule-based institution. It's not a political institution. One of the rules that we comply with is contained in the Treaty, and it's Article 123, and it's the prohibition of monetary financing. Monetary financing is when the central bank of a country prints money to buy the government bonds in the primary market of that country, and it could be either direct or indirect, when banks bring collateral to the ECB in order to be financed in order to buy the sovereign debt of that country, and we are prohibited from doing that".* However, according to press reports (<http://www.bloomberg.com/news/articles/2015-03-24/ecb-said-to-limit-greek-lenders-treasury-bill-holdings>) the ECB had already put a limit on purchases of T-bills by Greek banks as early as 24 March 2015. Since the Hellenic Republic is only issuing T-bills, there was no way for Greek banks to use liquidity provided through ELA to finance the Greek State, and thus no breach of the prohibition on monetary financing under Article 123 TFEU could have taken place. **Could, however, the request by the Greek NCB, if accepted by the ECB, have interfered with the implementation of the single monetary policy?** First of all, it cannot be convincingly argued that an extension of an additional €6bn of ELA to Greek banks could have interfered with the implementation of the single monetary policy, as this amount is a tiny fraction of the Eurozone money supply, currently standing at approximately €10.5 trillion. But let's assume that even this tiny amount was high enough to influence the implementation of the single monetary policy. Would, in fact, the acceptance by the ECB of the request of the Greek NCB have interfered with it? This would have been the case, if the NCB were extending credit against insufficient collateral: if the recipient of ELA was not able to repay the Greek NCB, the default would, indeed, result in the Greek NCB having created new money, thus influencing the implementation of the single monetary policy. It is undisputable that the request to increase ELA was in response to a substantial increase in deposit outflows from Greece, as a result of the political instability. Any additional funding by the Greek NCB to Greek banks would be highly unlikely to be diverted to asset generation, as assets of Greek banks have been contracting steadily since February 2011 (according to data published by the Bank of Greece). The mere fact, therefore, that one type of liability (ELA) was substituted for another type of liability (deposits) can have no effect on the solvency of Greek banks. The ultimate arbiter of the

solvency of the four large major banks (which account for more than 90% of the total assets of the Greek banking system) is the Governing Council of the ECB, to which the Single Supervisory Mechanism reports.

Either Greek banks were, in the opinion of the Governing Council of the ECB, solvent at the time of the requests by the Greek NCB, or not. **If they were indeed solvent, then the substitution of one type of liability for the other could not have affected their solvency. Greek banks would still be able to repay ELA;** thus no new money would be created and the implementation of the single monetary policy would have not been affected. **And if Greek banks were insolvent at the time, then it would be the duty of the ECB to exercise its supervisory powers, as conferred upon it by Article 16 of Council Regulation (EU) No 1024/2013.** In this case, it is evident from statements made by senior ECB officers that Greek banks were solvent and, as such, the increase in ELA could not be lawfully refused on that ground. For instance Ms. Danièle Nouy, Chair of the Supervisory Board of the SSM, said as recently as 7 June 2015 that *"[Greek] banks continue to be solvent and liquid. The Greek supervisors have done good work over the past years in order to recapitalise and restructure the financial sector. That was also visible in the outcome of our stress test. The Greek institutions have experienced difficult phases in the past. But they have never before been so well prepared for them"* (<https://www.bankingsupervision.europa.eu/press/interviews/date/2015/html/sn150607.en.html>). It cannot, obviously, be the case that only twenty-one days later the same banks were in practice deemed to be insolvent: assuming that were the case, the ECB would have prescribed measures to rectify the situation.

It cannot, of course, be that the ECB, wearing its supervisory hat considers one institution solvent, while considering it insolvent when acting as guardian of the single monetary policy. Nevertheless this is, in fact, a situation which Ms. Nouy, considers perfectly possible, when saying (in the same interview): *"Monetary policy and supervision work in strict separation. We have different staff and are located in different buildings. We share access to data and work closely together in the field of financial stability. Otherwise, we only inform each other about facts of cases for which it is absolutely necessary. When it comes to monetary policy decisions such as emergency loans, it is therefore up to the ECB Governing Council to decide on which banks it classifies as solvent. We carry out our own examination independently."* When asked further *"what would [she] do if one ECB board still classified the Greek banks as solvent and the other one didn't?"* Ms. Nouy avoided the question by saying *"That is a hypothetical question that I will not answer. I simply do my supervisory job and send the results to the ECB Governing Council"*. This hypothetical question is no longer hypothetical: this is exactly the situation the ECB has brought itself in this case. **The Governing Council, wearing its supervisory hat, considers Greek banks solvent. Wearing a different hat, it considers them insolvent. This can only be the outcome of political influence on the ECB, which of course violates ECB's independence, enshrined in Article 130 TFEU. Alternatively, therefore, as a result, the decisions were issued in violation of the law on that ground, too. 7**

(2) Let us now turn to the question of collateral. It needs to be said, that the application of collateral rules by the ECB has been inconsistent at best. Indeed, according to press reports *"Belgium's central bank accepted Fortis' branch network as collateral for an ELA advance back in 2008"* (<http://www.independent.ie/business/irish/state-of-emergency-some-truths-on-the-funds-keeping-our-banks-a-float-26679262.html>). In an email dated 31 July 2012 Mr. Benoît Coeuré, member of the ECB's executive board, suggests to the Governor of the Cypriot NCB as a potential measure *"revising the ELA valuation and methodology, in particular for credit claims (non-tradable instruments)"*. Mr. Coeuré further notes that *"[t]he Central Bank of Cyprus has in principle the possibility to apply less stringent valuations and haircuts compared to the approach followed by the Eurosystem in credit operations. This should of course be done in a transparent and reasoned way, substantiating the claim that standard Eurosystem haircuts are not necessary in the case of certain types of collateral accepted under ELA"*. In a report requested by the European Parliament's Committee on Economic and Monetary Affairs titled *"The ECB's Collateral Policy and Its Future as Lender of Last Resort"* and dated November 2014 (Annex No.7:

<http://www.karlwhelan.com/EU-Dialogue/Whelan-November-2014.pdf>) it is stated: "*The rules for the provision of credit via ELA, and the conditions required for agreement from the ECB Governing Council are not at all clear. Indeed they appear to be completely ad hoc, with decisions or threats to end ELA programmes producing a number of controversies in recent years. In this important sense, the Eurosystem does not really have a comprehensive collateral policy because when the most difficult cases occur, its standard rule-book goes out the window*". **The inconsistent application of collateral rules further substantiates the claim that the ECB's independence has been violated, in breach of Article 130 TFEU.** However, it can be argued that collateral was needed for ELA operations when the ECB was not the supervisory authority for the ELA recipient institutions. Since the ECB at the time had no view on the solvency of these institutions, it needed to request adequate collateral to ensure that credit extended under ELA would indeed be repaid and thus no new money would be created. Now that the ECB (through the SSM) is the ultimate arbiter of the solvency of systemic European banks (including Eurobank Ergasias S.A. and the three other Greek banks which account for more than 90% of the assets of the Greek banking system), collateral could not be the decisive factor. Either Greek banks are solvent (in which case, by definition, even their unsecured deposits are safe) or they are insolvent. If unsecured deposits are safe, then credit extended under ELA to replace said deposits should also be safe.

Lastly, let us deal with the five conditions, which according to the ECB could result in interference with the objectives and tasks of the ESCB:

(i) a threat to the singleness of monetary policy This has already been dealt with at length hereinabove.

(ii) a threat to the implementation of monetary policy, for example by making the steering of short-term rates more difficult

It cannot be convincingly argued that the mere extension of ELA by €6bn would be "a threat to the implementation of monetary policy, for example by making the steering of short-term rates more difficult", as the amounts involved are too small.

(iii) a threat to the financial independence of the NCB, for instance if ELA was not provided against sufficient collateral to safeguard such independence

There is no obvious relationship between the financial independence of the NCB and the provision of ELA against inadequate collateral—unless there are suspicions that the granting of ELA was politically influenced. There are no facts substantiating such a claim, particularly in view of the fact that Greek banks remain, in the opinion of the ECB, solvent.

(iv) an obvious concern about a possible breach of the monetary financing prohibition

This has been dealt with hereinabove in detail.

(v) provision of ELA at overly generous conditions, which, in turn, could increase the risk of moral hazard on the side of financial institutions or responsible authorities.

While the ECB makes no effort to define when such conditions would be "overly generous", they can certainly not be overly generous in a situation in which not extending ELA to solvent institutions inescapably results in a bank holiday and the imposition of capital controls. **Furthermore, since the promotion of the smooth operation of payment systems per Article 127(2) TFEU is one of the four basic tasks to be carried out through the Eurosystem, it can be argued that the ECB's decision which led to the disruption of payment systems in an entire Eurozone country fails the proportionality test.** The extension of additional ELA to Greek banks with its potential

minute effect on the implementation of the single monetary policy would have certainly interfered less with the tasks of the ECB.

In light of the arguments presented above, we argue that ECB, in issuing the decisions, has acted in violation of para. 14.4 of the Statute of the European System of Central Banks, of Articles 4 and 5 TEU, and of Article 130 TFEU.

This creative intervention is clearly at the extreme limit of ECB mandate and beyond. Such decisions violate current EU institutions regulation and threatens the EU financial interest in the event of fresh financial problems or economic policy errors, as the ECB is operating at the outer limits of what a broad interpretation of its mandate authorises.

There is a very clear overriding irregularity, being an act which doesn't comply with EU rules and which has a potentially negative impact on EU financial interests. It may even be the result of deliberate acts committed by the authorities responsible for managing and monitoring the funds involved.

It is obvious that the Governing Council of the European Central Bank needs to reconcile transparency requirements and basic European regulatory principles that must be applied in carrying out its activities and legal status within democratic principles.

We are extremely concerned at this behaviour and trust that you will find this report informative and useful to improve the legislative framework governing the work of OLAF and new legislative proposals on the protection of EU financial interests as well as recommendations for judicial, disciplinary and financial action to be taken by institutions and Member States.

This Fraud Report Letter is signed by ALBERTO SOTILLOS, acting as legal representative of DECIDE EN COMUN, a social democratic political party nationwide established under the laws of Spain, with its registered seat in Madrid (C/*****) from the values of accountability, transparency, sustainability, commitment, trust, plurality and independence.

Yours sincerely,

Alberto Sotillos Villalobos
President of Decide en Común-DECIDIMOS Political Party
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FINANCIAL CRISIS MANAGEMENT

Despite the substantial improvements in cross-border financial crisis prevention, the emergence of financial disturbances with potential cross-border financial stability implications cannot be excluded. A private-sector solution to resolve the respective financial difficulties is again the main line of recourse. Should private action prove insufficient to contain the crisis, complementary public measures may also be considered. However, such possible involvement is at the discretion of the public sector and based on the concept of “constructive ambiguity” in order to counter the risk of moral hazard.

The allocation of crisis management responsibilities among the Eurosystem, national central banks, supervisory authorities and finance ministries depends on whether the crisis is one of liquidity or solvency.

During a general liquidity crisis, the ECB may contribute through its liquidity operations (see Chapter 3) to an orderly functioning of the money market, based on operational procedures agreed at Eurosystem level. Furthermore, the NCBs may provide – temporarily and against adequate collateral – emergency liquidity assistance (ELA) to illiquid but solvent credit institutions. The possible provision of ELA is undertaken at the discretion of the competent NCB, subject to the conditions set out in the Treaty relating to the prohibition of monetary financing, and only in exceptional circumstances. NCBs may consider such assistance justified particularly on the grounds of preventing or mitigating potential systemic effects as a result of contagion through other financial institutions or market infrastructures. In 1999, the Eurosystem agreed on specific procedures for information-sharing when ELA is granted by a Eurosystem NCB. These procedures aim to ensure that

Private sector as first line of defence

Role of the Eurosystem ...

... during liquidity crises...

- 13 An important element of this contribution related to the Commission's 2005 review of the functioning of the Lamfalussy framework in respect of securities markets legislation, see the document “Review of the application of the Lamfalussy framework to EU securities markets legislation. Contribution to the Commission's Public Consultation” of 17 February 2005, which is available on the ECB's website at: <http://www.ecb.europa.eu/pub/pdf/other/lamfalussy-reviewen.pdf>. The Eurosystem was also involved in the preparation of the Financial Services Committee's Report on Financial Supervision, finalised in February 2006 and endorsed by ECOFIN in May 2006. Most recently, the Eurosystem contributed to the first full review of the Lamfalussy framework across financial sectors. See the document “Review of the Lamfalussy framework. Eurosystem contribution” of 30 November 2007, which is available on the ECB's website at: <http://www.ecb.europa.eu/pub/pdf/other/lamfalussy-review2007en.pdf>.
- 14 These priorities were also highlighted in the previously mentioned contribution by the Eurosystem to the Lamfalussy review. See the article “Developments in the EU arrangements for financial stability” in the ECB's Monthly Bulletin of April 2008 for further information.

ANNEX No.2

www.ecb.europa.eu/pub/pdf/annrep/ar1999en.pdf

The Treaty provides the instruments needed in Stage Three of Economic and Monetary Union (EMU) to link the jurisdiction of the single monetary policy (i.e. the euro area) with those of national supervisory policies (domestically chartered institutions). First, the Eurosystem is to "contribute to the smooth conduct of policies pursued by competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system" (Article 105 (5) of the Treaty). Second, the ECB is accorded an advisory function in the regulatory process (Article 105 (4) of the Treaty and Article 25.1 of the Statute of the ESCB). These provisions reflect the interest of the Eurosystem, as the central bank of the euro area, in the maintenance of the stability of the financial system.

The Banking Supervision Committee (BSC), a group of high-ranking representatives of central banks and banking supervisory authorities, is the main body which assists the Eurosystem in the fulfilment of its above-mentioned tasks. Although Article 105 (5) of the Treaty applies only to participating countries, the co-operation within the BSC involves all central banks and supervisory authorities of the 15 Member States. At the same time, the BSC may also act as a forum for consultations among EU banking supervisors on issues not related to the supervisory tasks of the Eurosystem. In the accomplishment of this twofold mandate, it contributes to ensure the ability of both NCBs and supervisory authorities to co-operate across national borders, whenever

case-by-case basis to temporarily illiquid institutions and markets. At the outset, it is necessary to stress that the importance of ELA should not be overemphasised. Central bank support should not be seen as a primary means for ensuring financial stability, since it bears the risk of moral hazard. Preventive measures aimed at fostering the adoption of sound risk management practices on the part of financial institutions, and the effectiveness of prudential regulation and supervision in achieving this goal, are the first line of defence against excessive risk-taking behaviour and financial distress. Furthermore, the provision of ELA has been a very rare event in industrial countries over the past few decades, while other elements of the safety net have gained importance in the management of crises. However, if and when appropriate, the necessary mechanisms to tackle a financial crisis are in place. The main guiding principle is that the competent NCB takes the decision concerning the provision of ELA to an institution operating in its jurisdiction. This would take place under the responsibility and at the cost of the NCB in question. Mechanisms ensuring an adequate flow of information are in place in order that any potential liquidity impact can be managed in a manner consistent with the maintenance of the appropriate single monetary policy stance. The agreement on ELA is internal to the Eurosystem and therefore does not affect the existing arrangements between central banks and supervisors at the national level or bilateral and multilateral co-operation among supervisors and between the latter and the Eurosystem. However, their smooth



Mario DRAGHI

President

Mr Andreas Pitsillides
Member of the European Parliament
European Parliament
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Frankfurt, 28 January 2014

L/MD/14/57

Re: Your letter

Dear Mr Pitsillides,

Thank you for your letter, which was passed on to me by Ms Sharon Bowles, Chairwoman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 20 December 2013.

Emergency liquidity assistance (ELA) operations are undertaken by national central banks under national responsibility. However, in order to prevent these operations from interfering with the tasks and objectives of the Eurosystem – notably, the implementation of the single monetary policy – the Governing Council of the ECB has established rules and procedures with regard to the provision of ELA to individual credit institutions. These rules and procedures are available on the ECB's website and provide answers to some of the questions you raised.¹

ELA is a specific tool available to central banks in crisis situations. Its aim is to provide liquidity support, in exceptional circumstances, to temporarily illiquid but solvent credit institutions which cannot obtain sufficient liquidity through the market and/or their participation in regular monetary policy operations. Hence, each individual ELA operation must be temporary, and the amounts involved in each case depend on the size of the liquidity shortage of the financial institution concerned and the availability of adequate collateral.

¹ <http://www.ecb.europa.eu/pub/pdf/other/elaprocedures.en.pdf?e0e0688fa82a174563d3cc838d775de1>; also attached.

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Finally, in the specific case of Cyprus, Bank of Cyprus owes the outstanding amount of its ELA borrowings to the Central Bank of Cyprus, not to the ECB. A successful implementation of its restructuring plan, in particular via an effective loan workout, should help Bank of Cyprus to gradually reduce its reliance on ELA.

Yours sincerely,

[signed]

Mario Draghi



COURTESY TRANSLATION

Mario DRAGHI
President

Mr Dimitrios Papadimoulis
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt, 7 May 2015
L/MD/15/300

Re: Your letter (QZ-56)

Honourable Member of the European Parliament, dear Mr Papadimoulis,

Thank you for your letter, which was passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 23 March 2015.

Article 14.4 of the Statute of the European System of Central Banks and of the European Central Bank assigns to the ECB Governing Council the responsibility for restricting emergency liquidity assistance (ELA) operations if these operations are found to interfere with the objectives and tasks of the Eurosystem.¹

The Governing Council carefully assesses the features of the transactions, their liquidity effects and whether it would be appropriate to impose specific conditions in order to protect the integrity of the ECB's monetary policy. Additional procedures underlying the Governing Council's role with regard to the provision of ELA are aimed at adequately ensuring that these arrangements and their potential effects do not interfere with the single monetary policy.

The rules of the Eurosystem governing the provision of liquidity to the banking system are intended to ensure the singleness of monetary policy in the euro area. Their consistent application is of crucial importance for

¹ Article 14.4 of the Statute of the ESCB stipulates that "National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB."

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enabling the ECB to fulfil its mandate, i.e. to meet the primary objective of maintaining price stability over the medium term in the euro area as a whole.

Please note that the ECB does not comment on interaction with individual banks, be it in connection with ELA or other operations. Therefore, the ECB does not publish data related to ELA operations.

Yours sincerely,
[signed]

Mario Draghi



COURTESY TRANSLATION

Mario DRAGHI
President

Mr Sven Giegold
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt, 17 June 2015

L/MD/15/382

Re: Your letter (QZ-78)

Honourable Member of the European Parliament, dear Mr Giegold,

Thank you for your letter, which was passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 5 May 2015.

Responsibility for the provision of emergency liquidity assistance (ELA) to Cypriot banks lies with the Central Bank of Cyprus. The role of the Governing Council of the ECB as regards the provision of ELA is to ensure that such operations do not interfere with the integrity of monetary policy within the Eurosystem, including the primary objective of maintaining price stability. Furthermore, ELA should not interfere with the prohibition on monetary financing.¹

The ECB is a rule-based institution bound by the EU Treaties, which require the Eurosystem to lend only to solvent banks, against adequate collateral, and, as mentioned above, to refrain from financing governments. Any direct or indirect financing of a government is incompatible with the prohibition on monetary financing enshrined in Article 123 of the Treaty on the Functioning of the European Union.

Let me clarify that provision of ELA by a national central bank is aimed at supporting solvent banks facing liquidity problems, rather than providing solvency support. Therefore, a key requirement in this context is that

¹ Article 14.4 of the Statute of the ESCB stipulates that "National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB."

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recipient credit institutions remain solvent. Any decision (non-objection) by the Governing Council related to the provision of ELA depends on the assessment of the conditions of the recipient credit institution.

In the specific case you are referring to, without a credible prospect of recapitalisation, the two banks could no longer have been considered solvent. Further provision of ELA to these banks would not have been in line with the rules of the Eurosystem and, ultimately, with the Treaty provisions discussed above.²

Yours sincerely,
[signed]

Mario Draghi

ANNEX No.6

<https://www.ecb.europa.eu/press/pressconf/2015/html/is150305.en.html>

Media

Explaners

Research & Publications

Statistics

The Euro

Monetary Policy

Payments & Markets

Careers

Media > Press conferences > 2015 > 5 March 2015


Question: Mr Draghi, could you explain to us what the Governing Council means by sustained adjustment in the path of inflation? That seems to be the criteria for success of your asset purchase programme.

My second question is about Greece. The Greek government would like to be able to fund its short-term obligations by issuing more T-bills. The ECB has one of these T-bill limits in its control, namely the ceiling that is set on T-bills that can be placed as collateral. My question is, would you be willing, or would the Governing Council be willing, to raise this ceiling at some point, and under what conditions?

Draghi: The sustained improvement, it just says what it says. There is no other way to answer your first question. In other words, a material dislocation from the foreseen objective would be the criteria, but at this point in time, we see absolutely no reason to think or plan or act in any different way from what we've planned, namely the purchasing of €60 billion a month of securities until September 2016, or beyond, if needed.

On your second point, a quick answer to your question is the following. The ECB is a rule-based institution. It's not a political institution. One of the rules that we comply with is contained in the Treaty, and it's Article 123, and it's the prohibition of monetary financing. Monetary financing is when the central bank of a country prints money to buy the government bonds in the primary market of that country, and it could be either direct or indirect, when banks bring collateral to the ECB in order to be financed in order to buy the sovereign debt of that country, and we are prohibited from doing that.

ANNEX No.7

 www.karlwhelan.com/EU-Dialogue/Whelan-November-2014.pdf

Policy Department A: Economic and Scientific Policy

collateral and have been granted credit via various Emergency Liquidity Assistance (ELA) programmes that are officially provided only by NCBs, with all risk incurred by the issuing central bank. That said, the ECB Governing Council can stop any ELA programme that it deems to be inconsistent with its monetary policy goals via a two-thirds majority vote.

The rules for the provision of credit via ELA, and the conditions required for agreement from the ECB Governing Council are not at all clear. Indeed they appear to be completely ad hoc, with decisions or threats to end ELA programmes producing a number of controversies in recent years. In this important sense, the Eurosystem does not really have a comprehensive collateral policy because when the most difficult cases occur, its standard rule-book goes out the window. Section 4 thus highlights a number of deficiencies in the Eurosystem's current approach to ELA and provides detailed illustrations of how ELA programmes were implemented in three countries.

Section 5 argues that now is a good time for this current approach to ELA to come to an end. With the ECB assuming the role of single supervisor of the euro area's banks, it is appropriate now that there also be a shared approach to the emergency provision of credit to banks. This new approach should focus on making this provision temporary and addressing the structural problems with the banks involved as quickly as possible.