ECEFIL
European Center of Economic and Financial Law
ΕΥΡΩΠΑΪΚΟ ΚΕΝΤΡΟ ΟΙΚΟΝΟΜΙΚΟΥ ΚΑΙ ΧΡΗΜΑΤΟΟΙΚΟΝΟΜΙΚΟΥ ΔΙΚΑΙΟΥ
REPORTER

Editorial

The Eurozone Summit of 21 July: A significant step in European integration

From the beginning of the eurozone sovereign debt crisis we have been predicting that European integration would move forward under the pressure of market forces, although the likelihood of disintegration could not be totally excluded. The multiple downgradings of the sovereign debt of Greece, Ireland and Portugal by the credit rating agencies, finally to junk status in May and June, and the beginning of the process of downgrading of the Italian debt in early July as well, served as catalysts to European policy-making. Eurozone officials realised that one by one the member states might be unable to borrow from the international financial markets to finance their debt.

The agreement reached at the "Eurozone Summit" on 21 July 2011 sets the principles for an orderly restructuring of Greek debt, involving substantial extensions of maturities and a lowering of interest rates on loans by official lenders, as well as the options for voluntary private participation described below. Greece also became a beneficiary of the European Financial Stability Facility (EFSF) and the maturities and interest rates of the other beneficiaries of the EFSF (Ireland and Portugal) were aligned to those of Greece.

More importantly, perhaps, it was agreed to adjust the EFSF in a way that was unthinkable a few weeks ago, when agreement was reached on the permanent stability mechanism, known as the ESM, which will become operative in 2013. In practice, the EFSF has been transformed into a European Monetary Fund, setting a precedent for the ESM as well. It will be able to act preemptively, helping countries facing temporary difficulty in raising debt in the international financial markets. It will also, in exceptional circumstances, buy back bonds from the secondary market, a task that the ECB has unwillingly performed since the beginning of the eurozone sovereign debt crisis under its "Securities Program".

The EFSF is also now involved in the Greece's restructuring program, under strict conditionality. Future EFSF loans to Greece will be provided for a maturity of up to 30 years at a relatively low interest rate. It is also foreseen that the EFSF will provide the necessary credit enhancement for bonds issued by the Greek government, in order to allow their use as collateral in liquidity operations between the Eurosystem and Greek credit institutions.

The private (financial) sector is involved, on a voluntary basis, as well (the so-called 'private sector involvement', 'PSI'.) The terms of the PSI, through a menu of options, will be finalized in the coming weeks and it is expected that its total net contribution will be at the range of 100 billion euros for the period extending until 2019. Nevertheless, it has been clearly stated that the PSI constitutes 'an exceptional and unique solution' for Greece, in order to prevent any moral hazard for other member states.

The turmoil of capital markets in the first week of August demonstrated, however, that further steps in economic and financial convergence are urgently required.

The European Banking Authority as a European “supervisory” authority

On 24 November 2010, the European Parliament and the Council adopted, within an admittedly extremely short period of time due to the urgency of the matter, three (3) Regulations establishing the three so-called “European Supervisory Authorities” to strengthen the efficiency of micro-prudential supervision of financial service providers in the European Union (hereinafter collectively referred to as the “Authorities” or the “three Authorities”):

- the European Banking Authority, hereinafter EBA pursuant to **Regulation (EC) 1093/2010**,
- the European Insurance and Occupational Pensions Authority, hereinafter EIOPA, pursuant to **Regulation (EC) 1094/2010**, and
- the European Securities and Markets Authority”, hereinafter ESMA, pursuant to **Regulation (EC) 1095/2010**.

The fact that exercising micro-prudential supervision of financial services providers in the Union is still a task of the competent national supervisors, according to an explicit provision of **para. 5**, **article 2** of the Regulations, and pursuant to the proposals of the de Larosière Report, is a key and material element of the European financial system’s architecture, even after the establishment of the three Authorities. According to **point 9 (sentence a) of the recitals** of Regulation 1093/2010: *“The ESFS should be an integrated network of national and Union supervisory authorities, leaving day-to-day supervision to the national level.*

Consequently, albeit the three Authorities on the header of their establishing Regulations are called “European Supervisory Authorities”, this term is most likely used excessively and in any case definitely not literally. Specifically:

(a) The Authorities, established on the basis of EU law, are European and indeed called “Union bodies”.

(b) Among others, their tasks include issues concerning the micro-prudential supervision of financial service providers operating in the EU member states.

(c) The Authorities have regulatory powers on those issues (i.e. they are regulatory authorities), since they have the power to issue guidelines and recommendations (European “soft” law acts), as well as decisions, apart from, of course, their decisive contribution to the shaping of regulatory and implementing technical standards issued by the European Commission by means of delegated acts, by preparing the relevant drafts.

(d) However, the Authorities do not have, at least initially, any micro-prudential supervisory powers over financial service providers operating in the Union’s member states, and consequently, are not “supervisory authorities” as such. For this reason, in the author’s opinion, it would be more correct if the Authorities were called “European quasi-supervisory authorities”, or “European supervisory bodies”.

Nevertheless, this remark becomes more relative in light of two elements which are innovative and suggest a tendency for gradual yet substantial further strengthening of the Authorities’ powers against competent national supervisors:

(a) Firstly, the EBA shall be entitled to substitute itself to the work of competent national supervisors, provided these do not comply with a Commission opinion or EBA decision pursuant to the provisions of **articles 17-19** of the Regulation. The same applies to the other Authorities as well.

(b) Moreover, the supervision of credit rating agencies operating in the Union has been conferred to ESMA (and not to competent national supervisors), according to the provisions of a Regulation of the European Parliament and the Council adopted in May 2011, whereby **Regulation (EC) 1060/2009** *“on credit rating agencies”* was amended (see in more detail the next contribution). Point 5 of the recitals of **Regulation 1095/2010** governing the functioning of ESMA, states the following:

“The European Council, in its conclusions of 19 June 2009, (...) emphasised that the European Supervisory Authorities should also have supervisory powers in relation to credit rating agencies and invited the Commission to prepare concrete proposals (...). The Commission has presented a Proposal for a Regulation amending Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. The European Parliament and the Council should consider that proposal in order to ensure that (...) European Securities and Markets Authority will have adequate supervisory powers over credit rating agencies (...)”

Professor Christos Gortsos

Supervision of Credit Rating Agencies: the new regime under Regulation (EU) 513/2011

According to the de Larosière Report, issued on February 2009, one of the major issues which arose during the recent global financial crisis was the role of the Credit Rating Agencies (CRAs). Notably, it was considered that CRAs have failed:

- to reflect early enough in their ratings the worsening market conditions, and
- to adjust their ratings in time following the deepening market crisis.

Despite their significant importance for the functioning of the financial markets, CRAs were subject to European law only in certain limited areas. It was considered, therefore, important to lay down rules ensuring that all credit ratings issued by the CRAs registered in the Community are issued by CRAs subject to stringent requirements and that their ratings are independent, objective and of high quality. In response to this objective Regulation (EC) No 1060/2009 of the European Parliament and of the Council on *"credit rating agencies"* was adopted.

According to this Regulation, the authorisation and supervision of CRAs was delegated to the national competent authorities, through a quite complex system. However, as credit ratings are used throughout the EU, the traditional distinction between the home competent authority and the other competent authorities and the use of supervisory coordination by colleges was considered inappropriate and ineffective. Following the establishment of the European Securities and Markets Authority (ESMA) (the successor of CESR) it was no longer considered necessary to maintain such a structure.

According to Regulation (EU) No 513/2011 of the European Parliament and of the Council *"amending Regulation (EC) No 1060/2009 on credit rating agencies"*, effective from 1st July 2011, ESMA should be exclusively responsible for the registration and supervision of CRAs in the Union. More specifically, ESMA shall:

(a) ensure that this Regulation is applied,

(b) issue and update guidelines on the cooperation between ESMA, the competent authorities and the sectoral competent authorities for the purposes of this Regulation and for those of the relevant sectoral legislation, and

(c) shall examine regularly compliance with the provisions of the Regulation. For this purpose, it may:

- by simple request or by decision require CRAs, persons involved in credit rating activities, rated entities and related third parties and persons closely and substantially related or connected to CRAs or credit rating activities to provide all information that is necessary in order to carry out its duties under this Regulation,
- conduct all necessary investigations of the above persons,
- conduct all necessary on-site inspections at the business premises of the abovementioned legal persons, and
- take supervisory measures (e.g. withdrawal of the registration of a CRA or temporary prohibition of the CRA from issuing credit ratings with effect throughout the Union, until the infringement has been brought to an end).

However, ESMA should not be responsible for the oversight of the users of credit ratings. Competent authorities designated under the relevant sectoral legislation for the supervision of financial services providers should therefore remain responsible for the supervision of the use of credit ratings by those financial institutions and entities which are supervised at national level.

It should be mentioned that it is the first time in the EU legislation in relation to financial services that the supervision of a certain category of financial services providers is exercised exclusively and to this extent at European level.

Lecturer Christina Livada

Deployment of a nationwide FTTH network in Greece

In August of 2009 the minister of public works presented a new draft law regarding the deployment of a nation-wide FTTH passive network, drafted by a team of experts including the writer of this presentation. The main elements of this new network would be a) secured trespassing rights, b) colocation and facility sharing with any adequate installed network (not necessarily telecommunications networks), and c) the creation of an open access network (dark fiber).

Deploying FTTH instead of other fiber networks (such as VDSL) provides a more promising technological and business environment. The project is indeed more expensive than VDSL, but only if you see it on a short term. The aim of this law is to create a nation-wide communications highway to facilitate even remote areas of the country to have access to new generation networks. It is a long term project that will secure open access to all operators and will foster competition and, thus, the upcoming of the relevant market and, altogether, the Greek economy.

This new FTTH network will be totally independent of the installed copper one, so all operators (both the incumbent and the alternative ones) shall compete on the same basis. VDSL (or FTTC) is a less expensive solution, thus, it stands more chances within this deteriorating economic climate. On the other hand VDSL should have been deployed already from the mid 00's. Now it is a short term solution that will not increase broadband penetration in Greece and shall only preserve the significant market power of the incumbent operator in the relevant market, if not substantially regulated.

Spiros Tassis, LLM

Structure of ECEFIL

MANAGEMENT COMMITTEE

- **Stephanou Constantine**, Professor, Dept. of International and European Studies, Panteion University, Director ECEFIL
- **Gortsos Christos**, Associate Professor, Dept. IES, Panteion University
- **Papantoni Maria,** Assistant Professor, Dept. IES, Panteion University
- **Livada Christina**, Lecturer, Dept. of Law, National University of Athens
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Post-Doctoral Researchers

- **Karayannis Vassilios,** Dr., Université Libre de Bruxelles, Attorney at law
- **Stefou Marina,** Dr., Panteion University, Attorney at law
- **Ziakou Sophia,** Dr., Panteion University

Doctoral Candidates

- Dionysiou Evita
- Kafetzis Georgios
- Lagaria Katerina
- Leonidou Petros
- Panagiotidis Vasilis
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Other Research Fellows

- Giotaki Jenny
- Katsigianni Angeliki
- Lazaridis Nikolaos
- Mandilara Sofia
- Parasyri Irini
- Stringaris Michael

PRESS RELEASE

Conference on "Market Regulation and Supervision: Challenges and Prospects" 18-19 May 2011

ECEFIL organized its first annual conference on ***Market Regulation and Supervision: Challenges and Prospects*** in Athens on 18th and 19th of May 2011.

The first day was devoted to ***Network Services Infrastructures***, and Professor C. Stephanou, Director of ECEFIL opened the floor for discussion. The first panel chaired by Mr L. Kanellos, President of the Hellenic Telecommunications and Post Commission analyzed the regulatory framework of the new generation networks. Mr C. Ploumbis, General Manager of Regulatory Issues of OTE spoke on VDSL versus FttH and Mr S. Tassis, Attorney at Law analyzed the national law for their implementation, while Mr G. Katapodis, Attorney at Law and member of ECEFIL concluded the basic remarks. The next panel was chaired by Professor A. Syrigos, Vice-President of the Hellenic Telecommunications and Post Commission and was devoted to the transition to digital television. Mr A. Oikonomou, Attorney at Law and Special Advisor of the National Council of Radio-television, and Mr G. Mathios, DIGEA CEO, cited the legal issues and the problems faced through the transition to digital television. Mr V. Karagiannis, Attorney at Law and Member of ECEFIL made the concluding remarks. Both of the above panels complemented one another as to electronic communication. The first day was concluded with the third panel on the participation in the production and supply of electricity by independent suppliers chaired by Professor M. Papantoni, Member of the Management Committee of ECEFIL. Mr M. Aslanoglou, Vice-President of the Regulatory Authority for Energy (RAE) introduced to the audience the data for the Greek energy market, while Mrs A. Trokoudi, Legal Advisor of RAE analyzed the role of the regulator. Then Mr H. Synodinos, Director of Regulatory Framework and Capital of Public Power Corporation S.A. spoke on the role of the electric power provider, and Professor G. Dellis, Attorney at Law, on the role of private investors in the energy market. The concluding remarks were made by Professor N. Farantouris, Member of ECEFIL.

The second day was devoted to ***the ongoing European developments on the Financial Sector.*** Professor Ch. Gortsos, member of the Management Committee of ECEFIL, made the introductory remarks and spoke on the European System of Financial Supervision. The first panel that followed, chaired by Professor C. Stephanou, Director of ECEFIL, was devoted to Banks. Mr I. Gousios, Director of Banking Supervision of the Bank of Greece, spoke on the role of the European Banking Authority, while Mr I. Mourgelas, Legal Advisor of Hellenic Bank Association and President of TIRESIAS Bank Information System S.A. spoke on the European dimension of credit information files, and Mrs A. Paxinou, Director of the Hellenic Deposit and Investment Guarantee Fund, spoke on the progress made towards a European system of deposit guarantee. The second panel chaired by Professor Ch. Gortsos, member of the Management Committee of ECEFIL, was devoted to Capital Markets. Mr X. Avlonitis, Vice-President of the Hellenic Capital Market Commission, spoke on the new European supervisory system, while Dr. Ch. Livada, Special Legal Advisor of the Hellenic Bank Association and member of the Management Board of ECEFIL, analyzed the new duties and powers of the European Securities and Markets Authority versus CESR. Mrs M.M. Vassilikou, General Director of the Hellenic Fund and Asset Management Association, spoke on the future of collective investment, and Mr V. Panagiotidis, Special Advisor of the Hellenic Bank Association and member of ECEFIL made the concluding remarks. The last panel devoted to Private Insurance, and was chaired by Professor M. Papantoni, Member of the Management Committee of ECEFIL. At this panel, Mrs M. Antonaki, General Director of the Hellenic Association of Insurance Companies made an introduction for the regulatory and supervisory system of the insurance market, Professor G. Chiotis, Vice Chancellor of IST College followed with the certification of intermediaries in private insurance, and Mr I. Hadjivasiloglou, Deputy of the Section of Financial Supervision of Private Insurance of the Bank of Greece, spoke on Solvency II and EIOPA. Remarks were made by Mrs J. Giotaki, Attorney at Law, Member of ECEFIL.

The conference ended by the Final Remarks of the Director of ECEFIL, who thanked everybody for their involvement in the success of the conference.

PRESS RELEASE

Conference on
"A Year after the Crisis: Adjustment in Greece and the Eurozone"

31st May 2011

EKEME/ the Greek Centre of European Studies and Research, TEPSA/ the Trans-European Policy Studies Association and ECEFIL/ the European Center of Economic & Financial Law successfully organized, on the 31st of May at the European Parliament (EP) in Brussels (Paul-Henri Spaak building) a conference with the title "A year after the crisis: adjustment in Greece and the Eurozone".

Initially, the President of EKEME, N. Frangakis addressed the conference – on behalf of the organizers – and emphasized the deficit of information by the media and that the conference seeks to mend it, while in his introductory remarks, the Vice-President of the EP, S. Lambrinidis referred to the misunderstood concept of solidarity. Followed by the keynote speech, of J.-V. Louis, Emeritus Professor at the ULB, on the Commission's proposals under discussion for the new economic governance; he observed that the Member States fight tooth and nail to retain control of decisions.

In the panel that followed, chaired by the MEP and Head of the Greek EPP Delegation to the EP, M. Giannakou, Professor C. Stephanou, Director of ECEFIL and Member of EKEME, argued that the eurozone has surpassed the institutional obstacles in order to support Member States who are experiencing crisis and successfully resist the pressures of the markets. On its part, the MEP (Committee on Economic and Monetary Affairs) A. Podimata reported the political reactions to the rescue of Greece, Ireland and Portugal. Then, P. Kazakos, Emeritus Professor at the National & Kapodistrian University of Athens, said that the coercion of Greece to undertake a massive privatization in order to pay back the loans, means leaving behind the stagnant ideologies that nurtured a customer-centric political system. The panel was completed by Professor Ch. Gortsos, (ECEFIL, Secretary General of the Hellenic Bank Association), who referred to the strength of the Greek banking system and the determination of the European Central Bank to support it. The Vice-President of the EP, R. Kratsa-Tsagaropoulou, in her concluding remarks stressed the need for the European Union to develop appropriate standards and mechanisms to assist the development of the Greek economy during the financial period 2014-2020.

FORTHCOMING EVENTS OF ECEFIL

The Issue of International Debt:
Economic, Political and Regulatory Aspects

Geneva, November 2011

ECEFIL and the International Relations Program of Webster University of Geneva jointly organize a conference on *"The Issue of International Debt: Economic, Political and Regulatory Aspects"* in Geneva in November 2011.

The program will address the economic, monetary and regulatory aspects of this complex topic. Well known experts and academics will open the floor for discussion, transmission of information, and exchange of views and good practices.

For more information visit our website at:

www.ecefil.eu

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