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# Is there Health Insurance in Greece outside EOPYY? Feasibility analysis of creating an independent, private Health Fund for Employees of the Banking Sector

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## Υπάρχει Ασφάλιση Υγείας στην Ελλάδα εκτός ΕΟΠΥΥ; Η σκοπιμότητα δημιουργίας ενός ανεξάρτητου, ιδιωτικού δικαίου Ενιαίου Ταμείου Υγείας Τραπεζικών

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### ABSTRACT

The funding impasse and the operational malfunction of the new organization (ΕΟΠΥΥ) in 2011 necessitated the provision for an exemption from this rule, applicable to health insurance funds which could prove their sustainability outside ΕΟΠΥΥ. The objective of this paper is to assess the feasibility and viability of the creation of an independent health insurance fund for employees of the banking sector, which would operate as a private entity and would not burden the state budget with its deficits. The paper aims to develop a paradigm for further analyses as we move towards the establishment of a new, national, health insurance structure.

**KEY WORDS:** Health insurance, health policy, merging of health insurance funds, sustainability of health insurance, health expenditures

### ΠΕΡΙΛΗΨΗ

Το χρηματοδοτικό αδιέξοδο και οι λειτουργικές αδυναμίες του νέου ΕΟΠΥΥ το 2011 οδήγησαν την κεντρική διοίκηση στην -ορθή- πρόβλεψη της μη υποχρεωτικότητας της ένταξης στο νέο φορέα των κλάδων που αποδεδειγμένα έχουν προοπτικές βιωσιμότητας. Υπό τη συνθήκη αυτή, η παρούσα μελέτη εξετάζει το κατά πόσο είναι σκόπιμη και εφικτή η δημιουργία ενός αυτόνομου ενιαίου ταμείου υγείας τραπεζικών, το οποίο θα λειτουργεί ως νομικό πρόσωπο ιδιωτικού δικαίου και δεν θα επιβαρύνει με τυχόν ελλείμματα τον κρατικό προϋπολογισμό. Η εν λόγω προσέγγιση αποσκοπεί στο να διαμορφώσει ένα υπόδειγμα για περαιτέρω αντίστοιχες αναλύσεις εν όψει της ολοκλήρωσης του νέου χάρτη της ασφάλισης υγείας στη χώρα.

**ΛΕΞΕΙΣ-ΚΛΕΙΔΙΑ:** Ασφάλιση υγείας, πολιτική υγείας, ενοποίηση ασφαλιστικών φορέων, βιωσιμότητα, δαπάνες υγείας

## 1. Introduction

Under the pressure of an unprecedented fiscal crisis, the major challenge of the social security system in its current form is the sustainability of its welfare services. The significant increase in social services expenditure over a number of years and the deterioration of financial indicators of most pension funds do not leave much room for optimistic forecasts and prospects. What's more, the improvement of the economic environment and the return to positive growth rates seem distant, as the shocks in the labor market have already resulted in significant revenue decline for social security budgets. In this context, the implementation of radical reforms in the social security system is deemed necessary (Greber, 1996, Tsantilas, 2004).

It is obvious that the crisis facing the social protection system is not only a financial or accounting matter. It is indeed an efficiency crisis and -most importantly- a "institutional" crisis, connected to the two aforementioned aspects of the crisis. The dispute over the justification of the existence of the social security system continues to grow, due to, on one hand, the long term deficits of the numerous funds' and the inefficient execution of social policy by the state, and on the other hand, the gradual spread of attitudes and ideologies hostile to the fundamental principles of social insurance. The latter constitutes and could be used as a political excuse, in order to take decisions contrary to the principles and purposes of social security (Euzeby and van Langendonck, 1990), especially in times of economic recession. Under these circumstances, and in a period when it is confronted with increasing needs for welfare services provision, it is imperative that the social security system finds ways to adapt to the new financial and social challenges.

The recent establishment of the National Organization for Health Care Services Provision (EOPYY) is in fact the continuation of a reform that commenced 5 years ago aiming to merge large health insurance funds and the healthcare branches of social insurance funds- into a unified, national health insurance fund (Law 3655/2008), in an effort to:

- Confine the fragmentation of the system,
- Exercise effective control and achieve economies of scale,
- Overcome the administrative and organizational difficulties, and
- Reduce the operating cost of individual funds.

Comparing the two reforms, the legislation for the establishment of EOPYY appears to have a more "aggressive" character since, in the case of EOPYY, all of the consolidated funds operate uniformly applying the same framework of benefits. In contrast, according to the 2008 legislation there would be no change in the terms, conditions, amount and type of benefits for the beneficiaries of the funds undergoing consolidation. In addition, the unification would not affect the services, payment of wages, and career development of the employees of the insurance funds, while the reserve funds of each institution would remain separate and intact. It is noted that due continuing changes in legislation and in order to overcome reactions. The consolidation of funds did not however, materialize at the time, mainly due to the administrative and organizational difficulties arising from the heterogeneity of the funds being consolidated. In many cases, the number of beneficiaries, the range of benefits, the financial status, the structure, the style of management, and other parameters differed greatly between funds.

In this context, the previous experience essentially "dictated" the need to establish a single insurance scheme which would cover the health care needs of all beneficiaries in the same way. Yet, the anticipated financial and organizational difficulties arising from the operation of EOPYY put the discussion regarding the mandatory unification of all funds back on the

agenda, suggesting that the inclusion or not of each fund in EOPYY should depend on the real sustainability prospects of each fund. Thus, the possibility of exemption from EOPYY of insurance funds which can operate based on their own resources, in the form of private legal entities, appears to serve the overall goal of sustainability of health insurance.

In Based on the above, this study assesses the prospects, necessary requirements and conditions for the creation of a health insurance fund for the employees of the banking sector (ETYT), which will not be integrated in EOPYY but will instead operate as an independent private entity. The new fund will have to guarantee services equivalent or superior to those of EOPYY and will not burden the state budget with deficits.

## 2. Feasibility of creating a health fund for the employees of the banking sector

**A**s already mentioned, the objective of the present study is to analyze the various aspects and to evaluate the proposal for a unified health insurance fund which will serve the employees of the banking sector and will operate in the form of a private entity. In this respect the following aspects of the new fund will be assessed:

- a) Demographics and insurance basis
- b) Contributions and other revenues
- c) Assets
- d) Health expenditure

At this point, it would be useful, to outline the structure of public health insurance provision of the banking sector, before and after the enactment of Law 3655/2008.

Before the enactment of Law 3655/2008, public health insurance was provided through either private entities which took the form of self-administered and self-managed associations, i.e. the Bank Employees Association of Greece Mutual Fund (ATPSYTE), the Employees of Agricultural Bank Health Fund (TYPATE) and Employees of National Bank Health Fund (TYPET), or public entities which were under the administration of the Ministry of Employment and Social Protection. The management of the latter was appointed by the Ministry and consisted of employees of the ETBA Insurance Fund (TAP-ETBA), employees of the Commercial Bank Insurance Fund (TAPETE) and employees of the Health Insurance Fund of Alpha Bank, General Bank and AMERICAN EXPRESS.

Under the provisions of Law 3655/2008, the health care branches of the various insurance funds of the banking sector, e.g. the health care branches of of TAPETE, of TAP-ETBA and the Health Insurance Fund of Alpha Bank, General Bank and AMERICAN EXPRESS, were integrated in a new Insurance Fund for Employees of the Banking Sector and of Public Utilities Companies (TAYTEKO).<sup>1</sup> This legislative reform faced serious administrative and managerial difficulties in its implementation, thus calling into question the fate of the merging of important funds and branches and leaving the issue of capital reserves management in limbo. Therefore, the present study focuses on evaluating the feasibility of a new comprehensive regulation for the banking sector, in which the funds that make up TAYTEKO will be integrated into ETYT.

### 3. Scientific approach

#### 3.1 Data and methodology

The basic frame of reference for this study draws upon the main aspects of the new insurance fund, i.e. the demographics, the insurance basis (number of beneficiaries), the contributions and other sources of revenue, the assets, and the health expenditure of the funds that are merged into ETYT. Thus, the required data for the study were collected, through the completion of structured forms by the representatives of the funds in 2010. It should be noted that for the purposes of this study, the revenues of the consolidated funds were calculated in relation to the insured population (current employees or former employees) in order to approximate a single point of integration for the beneficiaries of the different funds that enter into ETYT.

#### 3.2 Classification of Results

The analysis of the above data results in the following:

i) **Demographics and insurance basis**

As shown in Tables 1 and 2, the demographic profiles of the funds under consolidation are comparable, since there are no significant differences in the respective proportions of direct members, indirect members and pensioners between the various funds. A more favorable demographic indicator seems to apply in the case of TAAPTPGA, where the rate of pensioners is less than 25%, however, further evaluation of the effect of this factor on the sustainability of the "new fund" conducted on the basis of revenues from contributions, is required.

**Table 1. Insurance Database of the Members of ETYT (absolute numbers, 2010)**

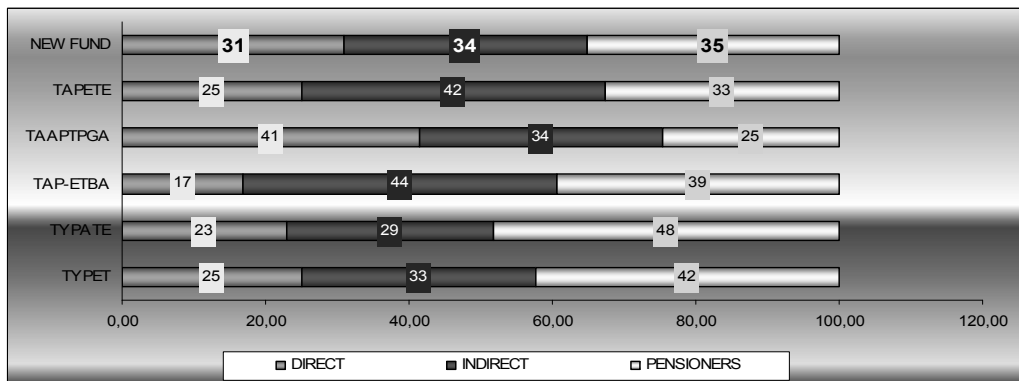
N/A	Name	Employer's Name	Legal Entity	Direct Members	Indirect Members	Pensioners	Total Insured
1	TYPET	National Bank	Private Entity	12.891	16.806	21.724	51.421
2	TYPATE	Agricultural Bank	Private Entity	5.978	7.511	12.572	26.061
3	TAP-ETBA	Piraeus Bank	Public Entity	240	622	561	1.423
4	TAAPTPGA	Alpha Bank, General Bank, Am. Express Etc	Public Entity	26.520	21.761	15.797	64.078
5	TAPETE	Commercial Bank	Public Entity	5.199	8.755	6.764	20.718
*	New Fund	Averages Calculation		50.828	55.455	57.418	163.701

**Table 2. Insurance Based Members ETYT (percentages, 2010)**

N/A	Name	Employer’s Name	Legal Entity	Percentage Distributions		
				Direct	Indirect	Pensioners
1	TYPET	National Bank	Private Entity	25,07	32,68	42,25
2	TYPATE	Agricultural Bank	Private Entity	22,94	28,82	48,24
3	TAP-ETBA	Piraeus Bank	Public Entity	16,87	43,71	39,42
4	TAAPTPGA	Alpha Bank, General Bank, Am. Express Etc	Public Entity	41,39	33,96	24,65
5	TAPETE	Commercial Bank	Public Entity	25,09	42,26	32,65
*	New Fund	Averages Calculation		31,05	33,88	35,07

As shown in Figure 1, a clear improvement of the demographic profile of individual funds can be achieved through their integration into ETYT, since in the new fund pensioners (will) represent 1/3 of the total number of insured members.

**Figure 1. Demographic Database ETYT, 2010**



ii) Status of contributions

The status of the various funds’ contributions level further supports the merging of the funds, since the merging will not result in dramatic changes on either the employers’ nor the employees’ side. As presented in Table 3, employers’ contributions range from 5.10% to 6.25%, while for 99% of the insured population, employers’ contributions range from 6% to 6.25%.

**Table 3. Status of Contributions, 2010**

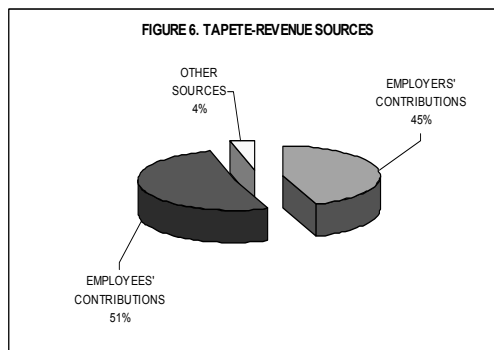
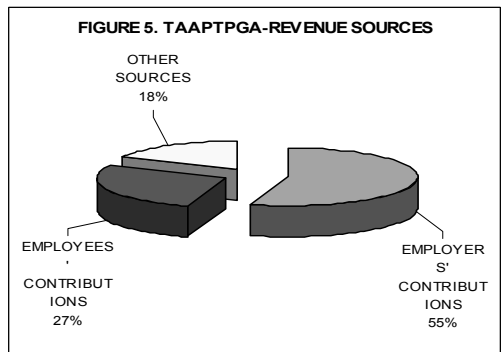
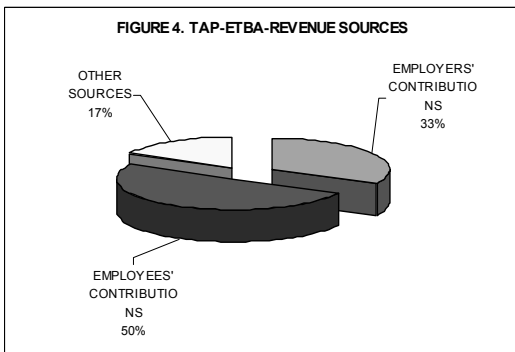
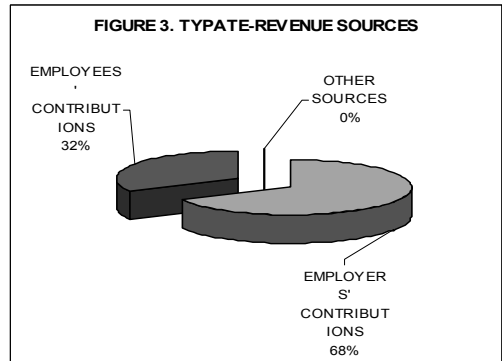
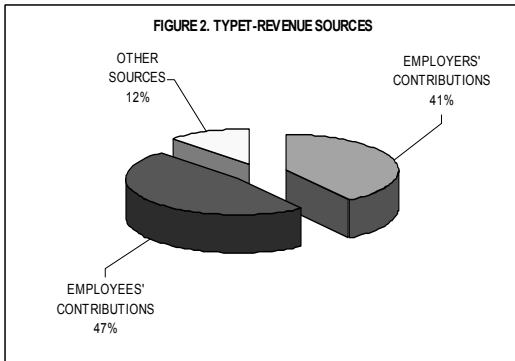
N/A	Name	Employer's Name	Legal Entity	Employers' Contributions (%)	Employees' Contributions (%)	Pensioners' Contributions (%)
1	TYPET	National Bank	Private Entity	6,25	2,5	4,00
2	TYPATE	Agricultural Bank	Private Entity	6,25	2,00	2,00
3	TAP-ETBA	Piraeus Bank	Public Entity	5,10	3,00	4,00
4	TAAPTPGA	Alpha Bank, General Bank, Am. Express Etc	Public Entity	6,00	3,00	4,00
5	TAPETE	Commercial Bank	Public Entity	6,00	3,00	3,00
*	New Fund	Averages Calculation		5,92	2,70	3,40

### iii) Revenue Analysis

One of the key benefits of the integration of funds into ETYT is the ability of the new fund to utilize revenues coming from different sources and operational modes. For example, some funds have used investment opportunities in an excellent manner in order to maintain their capital reserves, some other funds have substantial real estate property, and other funds have their own medical facilities for the provision of health care services. The latter not only constitutes an important source of revenue but also contributes to the control of health expenditure, limiting the use of third parties, such as private sector health care providers. Table 4 gives an overview of the main sources of revenue of the funds that are to be merged using 2009 data, while Figures 2 - 6 present the breakdown of these revenue sources for each fund.

**Table 4. Analysis of Revenue, 2009**

N/A	Name	Employer's Name	Legal Entity	Revenue Analysis 2009 (In€)			
				Employers' Contributions	Employees' Contributions	Other Sources	Total
1	TYPET	National Bank	Private Entity	28.847.334,82	33.702.796,83	8.561.837,61	71.111.969,26
2	TYPATE	Agricultural Bank	Private Entity	21.900.000,00	10.500.000,00	0,00	32.400.000,00
3	TAP-ETBA	Piraeus Bank	Public Entity	547.079,45	842.045,02	287.644,32	1.676.768,79
4	TAAPTPGA	Alpha Bank, General Bank, Am. Express Etc	Public Entity	38.931.346,00	19.503.575,00	12.597.121,00	71.032.042,00
5	TAPETE	Commercial Bank	Public Entity	8.055.347,92	9.290.295,94	734.302,00	18.079.945,86
*	New Fund	Averages Calculation		98.281.108,19	73.838.712,79	22.180.904,93	194.300.725,91



iv) Capital Reserve

The amount and the management of the funds' capital reserve remains a thorny issue for social security in Greece. Attempts to merge social security funds have failed in the past due to the ambiguity surrounding the estimation and, above all, the responsibility of the management of the capital reserve of the funds, especially in cases where funds with surpluses were consolidated with funds with deficits. However, this does not apply in the case of ETYT as shown in Table 5. The capital reserve of the funds under consideration can constitute an important starting point, securing their viability, in the new organizational and operational structure.



**Table 5. Analysis of Capital Reserve, 2009**

N/A	Name	Employer's Name	Legal Entity	Capital Reserve 2009
1	TYPET	National Bank	Private Entity	47.299.671,94
2	TYPATE	Agricultural Bank	Private Entity	7.714.884,97
3	TAP-ETBA	Piraeus Bank	Public Entity	5.155.745,90
4	TAAPTPGA	Alpha Bank, General Bank, Am. Express Etc	Public Entity	440.535.212,00
5	TAPETE	Commercial Bank	Public Entity	84.308.436,00
*	New Fund	Averages Calculation		585.013.950,81

#### v) Real estate (property)

Based on the data provided by the representatives of the insurance funds, the value of real estate property of the individual funds and the new fund is presented in Table 6.<sup>2</sup>

**Table 6. Valuation of Real Estate Property, 2009**

N/A	Name	Employer's Name	Legal Entity	Real Estate Property 2009
1	TYPET	National Bank	Private Entity	22.288.918,250
2	TYPATE	Agricultural Bank	Private Entity	
3	TAP-ETBA	Piraeus Bank	Public Entity	687.047,05
4	TAAPTPGA	Alpha Bank, General Bank, Am. Express Etc	Public Entity	880.363,00
5	TAPETE	Commercial Bank	Public Entity	1.291.003,00

#### vi) Health services

As noted in the literature, public health care services in Greece are provided through a variety of schemes and structures. Some health insurance funds have chosen to develop their own medical facilities in order to provide health care to their members, while other funds operate as "purchasers" of services from the National Health System (ESY) and /or through a network of contracted private sector providers. However, in both cases, the demand-insurance side is "protected" by a particularly favorable price scheme, which passes the cost burden on to the producer/supplier side, given that the reimbursement price does not represent the actual cost of health services provided (Souliotis and Kyriopoulos , 2001).

While the consequences for the National Health System (ESY) take the form of deficits and debts, which are settled retrospectively by burdening the state budget,<sup>3</sup> buying services from the private sector at low prices seems to be linked to the phenomenon of "induced demand" (Souliotis and Kyriopoulos, 2003), particularly in the field of diagnostic services. Similar conditions prevail in the insurance funds under examination, since the TYPET and the TYPATE<sup>4</sup> operate their own health service structures, but the rest of the funds cover the needs of their members through contracted providers.

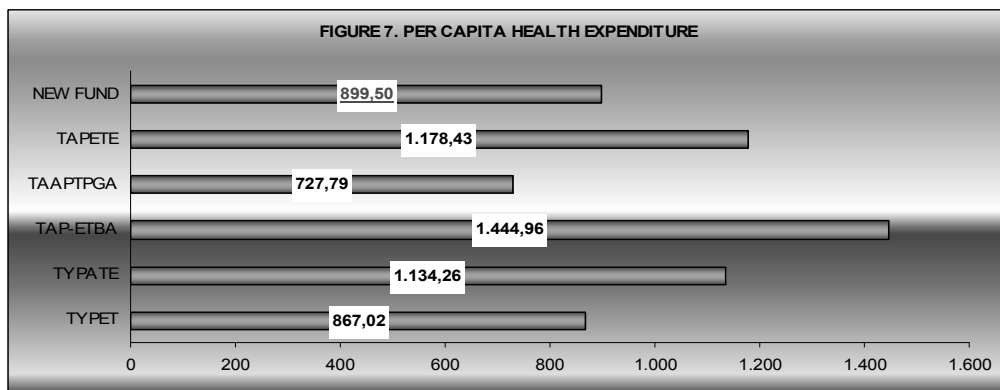
vii) Analysis of health expenditure

The differences in the organization of health service provision are reflected, as expected, in the different levels of health expenditure incurred by each fund. As the classification of the different categories of health expenditure is not performed using a common system by all funds, and because the range of health insurance coverage varies among funds, it was decided to present only the total health expenditure of each fund, as shown in Table 7.

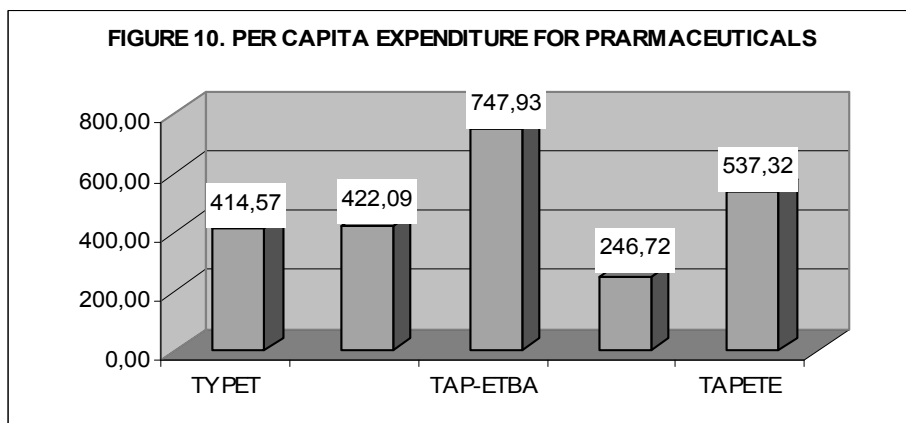
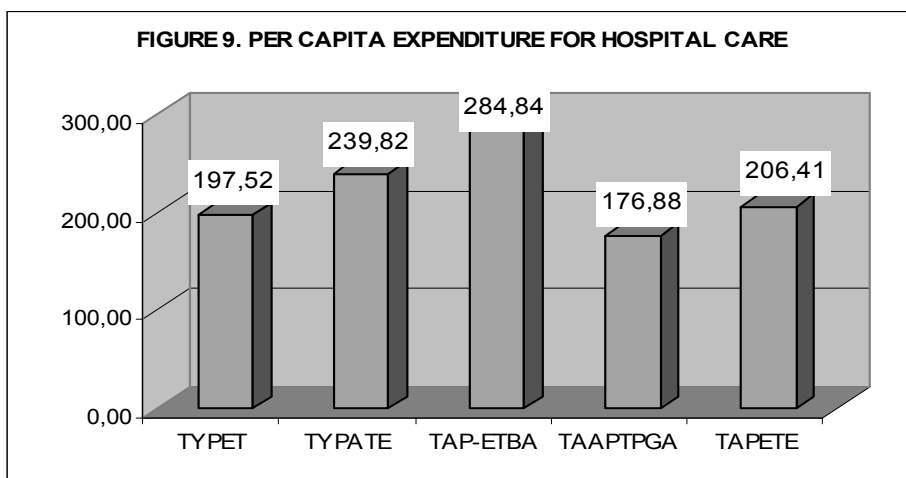
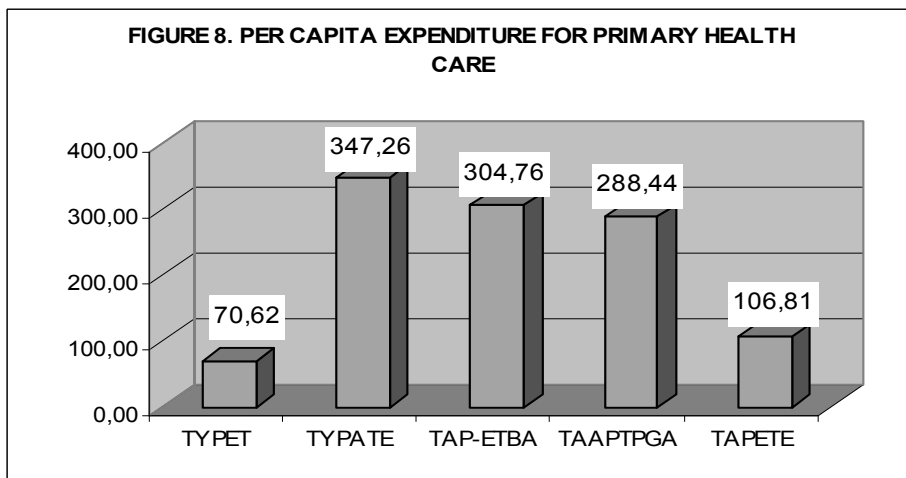
**Table 7. Analysis of Health Expenditure, 2009**

N/A	Name	Total Insured	Health Expenditure					Total
			Primary Care	Hospital	Pharmaceutical	Dental	Other	
1	TYPET	51.421	3.631.142	10.156.784	21.317.431	2.089.453	7.388.464	44.583.277
2	TYPATE	26.061	9.050.000	6.250.000	11.000.000	1.635.000	1.625.000	29.560.000
3	TAP-ETBA	1.423	433.673	405.325	1.064.307	44.679	108.193	2.056.179
4	TAAPTPGA	64.078	18.482.722	11.333.823	15.809.458	1.009.552	0,00	46.635.555
5	TAPETE	20.718	2.212.988	4.276.461	11.132.183	802.354	5.990.778	24.414.765
*	NEW FUND	163.701						147.249.776

As shown in Figure 7, the per capita health expenditure ranges from 727€ (TAAPTPGA) to 1.444€ (TAP ETBA), as a result of the differences in the organization of health service provision among funds, while the respective average per capita expenditure of the new fund is estimated at 900€.



Moreover, the average health expenditure per insured and per category of expenditure has been estimated and is shown in the figures 8,9,10 and 11 below.



Despite the limitations of the study some relatively robust conclusions can be drawn based on the previous analyses:

- The high expenditure of TAP-ETBA in all categories can be attributed to the small number of insured members, which does not allow the fund to either negotiate with providers and or obtain economies of scale.
- Given that the aging of the population is widely considered as the most important factor in health expenditure growth, the relatively high expenditure of TYPATE in all categories can be attributed, to some extent, to its burdened demographic indicator.
- The TYPET is utilizing its own facilities for primary and hospital care effectively, keeping the average per capita expenditure at lower levels compared to most of the other funds.

## 4. Financial conditions and merger procedures

Given the constraints arising from the different "position" of the insurance funds that make up the ETYT, the point of integration for the insured members of these different funds needs to be calculated. The calculation of this point will determine the conditions of consolidation, which, as expected, will vary depending on the added value that each fund will bring to the single fund.

To calculate the point of integration of the insured population of each fund, the following are taken into account:

- The property that each fund will contribute to ETYT, namely capital reserve and real estate, interpreted in terms of capital.
- The number of the directly insured members of each fund (active and pensioners, former employees) that shaped the above property.
- The added value created by the possession of means of production, as far as health services are concerned, interpreted in terms of capital.
- Specifically:

Point of integration= (Capital reserve<sup>i</sup> + Real estate<sup>i,ii</sup> +Health care provision added value<sup>i,ii</sup>)/ (Active insured + Pensioners<sup>iii</sup>)

$$\text{Point of integration}^i = \frac{\text{Capital reserve}^i + \text{Real Estate}^{i,ii} + \text{Health care provision added value}^{i,ii}}{\text{Active insured} + \text{Pensioners}^{iii}}$$

i = for each fund, ii = in monetary terms, iii=former employees

Based on the above formula, the estimated integration point for each fund is calculated as follows:

$$\begin{aligned} \text{TYPET} &= \frac{47.299.671 + 70.000.000 + 163.750.000}{12.142 + 12.386} = \frac{281.049.671}{24.528} = 11.458 \\ \text{TYPATE} &= \frac{7.714.885 + 20.000.000 + 40.600.000}{5.978 + 5.264} = \frac{68.314.885}{11.242} = 6.076 \\ \text{TAP-ETBA} &= \frac{5.155.745 + 687.047}{240 + 216} = \frac{5.842.792}{12.813} = 12.813 \end{aligned}$$

$$\text{TAAPTPGA} = \frac{440.535.212 + 880.363}{26.520 + 6.042} = \frac{441.415.575}{32.562} = 13.556$$

$$\text{TAPETE} = \frac{84.308.436 + 1.291.003}{5.199 + 6.764} = \frac{85.599.439}{11.963} = 7.155$$

It is noted that the added value of TYPET and TYPATE resulting from the health care provision facilities they operate is calculated based on:

- The volume of activity and the relation between the operational costs of the funds compared to the corresponding market prices achieved through contracts and agreements.
- The revenue that can be generated through the sale of health care facilities or the provision of care to third parties.

Specifically:

- Primary Health Care (PHC) facilities- TYPET: 125.000 medical visits + 50.000 lab tests
- Primary Health Care (PHC) facilities- TYPATE: 70.000 medical visits + 80.000 lab tests
- TYPET Clinic: 33.000 days of hospitalization

Source: Bank Insurance Funds

It should be noted that the benefit stemming from the provision of health care services through their own facilities is double, as it results from both the price difference as well as the control of demand.

#### *Estimated benefit: \**

- PHC facilities - TYPET: 125.000 medical visits x 40€ = 5.000.000€/annually  
50.000 lab tests x 30€=1.500.000€/annually
- PHC facilities - TYPATE: 70.000 medical visits x 40€ = 2.800.000€/annually  
80.000 lab tests x 30€=2.400.000€/annually
- TYPET Clinic: 33.000 days of hospitalization x 750€ = 24.750.000€/annually

\* The unit costs used in the calculations come from the funds' cost accounting.

#### *In Total:*

- PHC facilities- TYPET: 6.500.000€ annually (19.500.000€ in three years' time without the need for further investment)
- PHC facilities- TYPATE: 5.200.000€ annually (15.600.000€ in three years' time without the need for further investment)
- TYPET Clinic: 24.750.000€ annually (74.250.000€ in three years' time without the need for further investment)

#### *Value of facilities (and equipment)\**

TYPET sanitary complex: 70.000.000€

ATE polyclinics: 25.000.000€

\* Rough estimates in accordance with the funds' balance sheets.

The integration point of each fund can be determined in two ways, according to the financial operation requirements of ETYT:

- At the highest point, accompanied by the payment of the difference by the other funds.
- At an intermediate point, in which case any differences will be deposited in a specific ring-fenced account for the insured.

## 5. Legal conditions and merger procedures

The implementation of this project requires legislative regulation. It is noted that, in terms of the content of the regulation, particularly critical issues are considered to be:

- The type of management style of the new fund
- The integration process of the insured population, in accordance with the designated point of integration
- The assignment and transfer of property of the individual funds
- The avoidance of numerous transitional provisions
- A clearly defined framework of the organization and operation of the new fund, i.e. ETYT, at its establishment

### 5.1 Constitutional and legislative restrictions

The provision of article 22 par. 5 of the Constitution protects the institution of social security<sup>5</sup> which is divided into three fundamental pillars, the basic and complementary insurance, the professional insurance and the private insurance.<sup>6</sup> In the strict sense, the term "social security" is understood to be the compulsory social security (the first pillar), and the common legislator is mandated to regulate the way that legal entities forming compulsory social security funds are organized and managed.<sup>7</sup>

The common legislator's power in restructuring social security funds is extensive, yet not unlimited (Kazakos, Manitakis, Travlos-Tzanetakos, 2006).<sup>8</sup> According to the legislative practice, the restructuring of social security funds is achieved by either the merger of individual funds or their integration into general or similar types of organizations. In the past, following a series of legislative regulations, two types of mergers have been accomplished. The first refers to the merger of distinct funds into general ones, due to the financial inability of former to provide their members with benefits equivalent to the benefits of the latter. The second concerns mergers with the sole purpose of restructuring the social security system.<sup>9</sup> In both types of mergers, the legislator chooses to merge funds that are linked in some way, either through a distinct - general fund type of relationship or due to related fields. This legislative practice is mainly justified by administrative reasons that refer to management issues, but is also dictated by general principles of social security such as the equal treatment of insured persons that are under equal circumstances.<sup>10</sup>

The merging of health care funds differs from the merging of basic and complementary insurance funds. The difference lies in the type of service provided by each type of insurance, which in the case of health insurance, becomes an even bigger burden on the budget in the course of time, firstly due to the rising costs of health care, and secondly because of the increased demand for these services as a result of the aging of the population (Kremalis, 1987).

In this context, the merging of health funds with other similar funds is preferred, in both theoretical and practical terms. On a theoretical level, the merging of similar health funds mitigates the systematic conflict of the general principle of equality which requires the standardization of benefits and limits the use of discretion, through the principle of individualization of insurance benefits, which promotes deviations, so that the extent of benefit protection varies among the insured (Kremalis, 1991, Contiades, 2004). Furthermore, on a practical level by merging similar health funds, economies of scale are achieved. In particular savings in human resource

management are accomplished, firstly due to the uniform and transactional character of services, secondly due to the specialization of the administrative bodies resulting in appropriate training of staff, and thirdly due to more rational planning on the part of the administration team, resulting in efficient management of the staff and safer state supervision. Regarding the operation of the uniform health fund, the identity of the insurance example implies the provision of uniform health benefits. Therefore, the rationalization of medical and pharmaceutical expenditure is achieved through the development of a single mechanism for both preventive and curative control, the uncontrolled growth of expenditure is contained, and a strong negotiating power towards the healthcare providers (hospitals, private clinics, diagnostic centers, etc.) is ensured.

The issue concerns the constitutionality of consolidation, since it may not be permissible, under the Constitution, to take advantage of a merger in order to make changes that lead to the loss of established social security rights of the insured, in the funds that are merging. Specifically, from the principle of sustainable development the principle of viable social policy is deduced, according to which it is permissible, under Article 22 par.4 of the constitution, to merge only homogeneous insurance organizations that are at a similar level of sustainability, which must result from scientific studies.

Consequently, the merger of similar health funds:

- Contributes to savings of resources while maintaining a good level of health care services,
- Reinforces the meaningful and effective supervision by the central administration,
- Promotes the enforcement of uniform rules of administration and operation, addressing any organizational and operational problems.

## ***5.2 Conditions for the establishment and operation of ETYT***

After the enactment of Law 3655/08,<sup>11</sup> bank employees belong to one of four different health funds,<sup>12</sup> of which three are private entities and one is a public entity.

The establishment of ETYT requires the legislative initiative on the part of the Government in which the Bank Employees Association of Greece Mutual Fund (ATPSYTE), the Employees of Agricultural Bank Health Fund (TYPATE) and the Employees of National Bank Health Fund (TYPET) should merge. Any intervention in the ATPSYTE assumes the obligation of the government to consult with the European Central Bank since the work status of the staff of the Bank of Greece falls under the jurisdiction of the European Central Bank.<sup>13</sup> Furthermore the provisions of the articles of Chapter Z of Law 3655/08 should be amended, namely to secede from the health care branch of the Insurance Fund for Employees of the Banking Sector and of Public Utilities Companies (TAYTEKO), the Healthcare Branches of the Staff of Commercial Bank of Greece (TAPETE), of ETBA (TAP-ETBA) and of the Health Insurance Fund of Alpha Bank, General Bank and AMERICAN EXPRESS (TAAPTPGAE) and be merged into ETYT

Moreover, the issue surrounding the merging of the property of the insurance funds undergoing consolidation requires particular legislative regulation. Generally, according to the jurisprudence of the State Council,<sup>14</sup> the property of public entity social security organizations is not recognized as private property, but is considered to serve (by itself or through its resources) state purposes. Consequently, in the event of public entity insurance funds merger, the merging of properties of insurance funds that have the same legal entity is acceptable. In the present case-study, the merger of public entity insurance funds and private entity insurance funds into ETYP, requires specific legislative provision, in order to secure the property rights

of the insured population of the private entity insurance fund,<sup>15</sup> and preserve the principle of equality in the distribution of insurance charges. Consequently, the merging of insurance funds' properties requires the undertaking of an actuarial study for each individual health fund, which will estimate the insurance capital ratio per insured member. Furthermore, according to the estimated ratio, the amount of the capital contribution of each fund will be set, to avoid potential impairment of the insurance capital.

The draft law that will regulate the establishment and operation of ETYT will have to provide for a transitional period during which the establishment of the new fund will be completed. Specifically, the timeline of the transition, the interim board of trustees and the Interim Governing Board of each segment will have to be defined. It is the responsibility of these bodies to implement the legislative provisions regarding the establishment of the new fund, where the governing board will mainly have an assisting role, namely to ensure a. the smooth operation of the services of the individual segments and b. the introduction and submission of proposals to the board of trustees for all matters related to the organization of individual sectors and the management and utilization of their property.

The fundamental principle stemming from the constitutional provision of Article 22 par. 5, is the participation of the insured population in the administration of the new insurance fund, which will be a private entity. Therefore in the composition of the interim and the final bodies of the new fund, there should be a legislative provision for adequate and substantial representation of all of merging funds. The term 'adequate representation' means that representatives of each merging fund will participate in the bodies of the new fund, while the term 'substantial representation' means that the participation of minorities in the bodies of the new fund should also be ensured.

### ***5.3 The fate of existing contracts***

In the transitional provisions there should be a legislative provision regarding the status of the existing contracts of the merging funds, i.e. the contracts signed between insurance funds and independent health care providers. The existing contracts need to be revised before the development of the new contracts, which will be uniform towards the members of all the individual merging funds. With regards to the contracts of public entities, these are administrative contracts which are subject to the specific regulations of each contract and additionally to the provisions of the Civil Code.<sup>16</sup> As far as contracts of private entities are concerned, namely private law contracts, the provisions of the Civil Code are applicable, while, any specific provisions included in the contract are also applicable.

The legislative provision for unilateral review of the existing contracts of individual funds, notwithstanding the principles of binding agreement and equality of contracting parties (according to the law of private contracts), is lawful, as long as it is justified by the protection of the interests of the general public (Gerontas et al., 2004), the principle of proportionality, and the unpredictable change of conditions. In particular, public administration, while exercising its right to unilaterally amend the terms of administrative contracts, is limited primarily by the purpose of this right and secondly, by the principle of legality. Regarding the purpose of this right, it allows the alteration of terms and conditions in order to adjust the administrative contract to the changing conditions, with the aim of serving the public interest. Regarding the principle of legality, the administration can exercise this right, as long as it does not infringe the rights of the



contracting parties, and with respect to the other constitutional principles. With regards to the modification of private law contracts, the administration is limited by trade /commercial ethics and the principle of good faith between the parties.

The transfer of assets of existing insurance funds is a particular issue, as is the tax treatment of this transfer. According to the proposed solution, the assets of the funds that are in the process of being merged into ETYT, namely movable and immovable property, are passed ipso jure to the new fund, together with all the rights and obligations arising from these assets. In cases of mergers in the past,<sup>17</sup> the transfer of ownership of real estate has as prerequisite the issuance of a declaratory act by the Minister of Labor and Social Protection, which is transcribed in the pertinent books of the relevant mortgage registry. A prerequisite in order to avoid the possibility of the merging funds being taxed is the explicit legislative provision that the transfers of the assets are not subject to fees and charges payable to the State, municipality, community or third party.

### ***5.4 Issuance of a unified benefits regulation***

The procedure for the issuance of a unified benefits regulation for ETYT includes two stages. Specifically, the Board of Trustees, based on the outcomes of an economic study conducted specifically for this purpose and the advice of the competent agency or committee, submits the draft benefits regulation to the General Assembly, which then issues the regulation. With the exception of the process of issuing the regulation which is determined by the statutory provisions of the Fund, the General Assembly's power is not unlimited, as it is subject to limitations imposed by basic constitutional mandates and in particular the provision of Article 22 par. 5 of the Constitution.

First of all, the General Assembly, which has the decision making power, is obliged to actually ensure that the new regulation of health benefits does not imply a reduction in the quality or quantity of health care benefits of the insured population of the new fund. Secondly, the level of health protection provided by the individual funds which are going to be merged into ETYT should also be considered. Of course, the level and extent of health benefits could be limited for reasons of public interest, if and only if a harsh measure would be deemed necessary based on evidence from an actuarial study.<sup>18</sup>

## **6. Conclusions – proposals**

**T**aking into account the limitations of this study and the recent legislative developments, the above analysis leads to the following conclusions:

1. By merging similar health funds instead of merging funds into a general insurance fund, savings in human resources are ensured, the specialization of administrative bodies is promoted, rational administration planning is achieved, the effective and meaningful exercise of supervision by the central administration is enhanced, the application of uniform management and operation regulations is promoted, the rationalization of health care costs is achieved, a single mechanism of preventive and curative control is developed, the excessive increase in costs is significantly reduced and strong negotiating ability towards health care providers is achieved for the administration of the fund.
2. The establishment of the Health Fund for the Employees of the Banking Sector requires legislative initiatives from the part of the Government, based on which the Bank Employees

Association of Greece Mutual Fund, the Employees of Agricultural Bank Health Fund and Employees of National Bank Health Fund should merge. Furthermore, they should secede from the health care branch of the Insurance Fund for Employees of the Banking Sector and of Public Utilities Companies, the Healthcare Branches of the Staff of Commercial Bank of Greece, of ETBA and of the Health Insurance Fund of Alpha Bank, General Bank and AMERICAN EXPRESS (TAAPPGAE) and be merged in the ETYT

Consequently, the merging of the properties of the insurance funds requires the execution of an actuarial study for each individual health fund, in order to estimate the insurance capital ratio per insured. According to this ratio, the amount of the capital contribution of each fund that is undergoing consolidation will be determined.

3. During the transition period required for the establishment of the new fund, the legislative regulation should define the timeline of the transition, the interim board of trustees and the interim governing board of each segment with adequate, substantial and proportional representation of all of the merging funds.
4. The revision of existing contracts is imposed before the drafting of new contracts which will be uniform for the insured population of all of the individual merging funds. With regards to administrative contracts, the administration is limited firstly by the purpose of that right and secondly by the principle of legality, while with regards to private law contracts, the signatory party is limited by the commercial ethics and the principle of good faith among the parties. Consequently, changing the conditions of the contracts is permitted in order to achieve their adjustment to the changing conditions.
5. The assets of the individual funds are passed (together with the rights and obligations stemming from them) ipso jure to the new fund. The transfer of ownership of real estate has as a prerequisite the issuance of a declaratory act by the Minister of Labor and Social Protection, which is transcribed in the relevant books of the pertinent mortgage registry as tax free, provided there is explicit legislative provision.
6. Following specific economic study and the advice of the competent agency or committee, the Board of Trustees of the ETYT submits the draft benefits regulation to the General Assembly and the latter, issues the unified health care benefits regulation, provided that the level of health protection of the individual consolidating funds to the ETYT is taken into account and that the level of health protection of the insured will not be reduced in quality or quantity.
7. Finally, the key prerequisite for the above is the implementation of the relevant regulation, suspending the consolidation of the health branch of TAYTEKO into EOPYY. In this way, TAYTEKO can be merged into ETYT upon submission of scientific evidence produced by a feasibility study.

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## Notes

1. This is the health care branch of TAP-OTE, the mutual funds of the employees of ILPAP and ISAP, the health care branch of OAP-DEI and the health care branch of the insurance fund of the staff of the private insurance company "The National."
2. A valuation of real estate property in a uniform manner would be clearly more appropriate. However, in the context of the present study the valuations published in the official financial statements were adopted.
3. It has been estimated that in recent years, debt of NHS hospitals exceeded 1 billion € annually.
4. These two funds cover 47% of the total insured population of the integrated fund.
5. State Council 2253/1976, No B 25, 1977, page 605, etc.
6. Explanatory Memorandum of Law 3655/08, page 5.
7. State Council 3096/2001, Arm 2001, page 1414.
8. Initially subject to restrictions imposed by the principles deriving from the provision of Article 22 par. 5 of the Constitution, but also by restrictions imposed from other Constitutional provisions and international texts of superseding legislative power.
9. Regarding the first type of indicative consolidation see N. 1902/90, and FEK/A/138/17.10.1990 N. 1976/91, and FEK/A/184/4.12.1991 and regarding the second type of integration see Law 2676/99, FEK/A/1/5.01.1999 Article 15 whereby smaller similar funds of supplementary insurance for the employees of the public sector are merged and a single Supplementary Insurance Fund for Public Employees is formed.
10. State Council A' Section 2805/1991.
11. Law 3655 FEK 58 A/03.04.2008 "Administrative and organizational reform of the Social Security System and other insurance provisions."
12. Bank Employees Association of Greece Mutual Fund (A.T.P.S.Y.T.E.), the Employees of Agricultural Bank Health Fund (T.Y.P.A.T.E.), Employees of National Bank Health Fund (TY P.E.T.), and Insurance Fund for Employees of the Banking Sector and of Public Utilities Companies (TAYTEKO).
13. Treaty on European Union, Chapter 2, Article 105 par. 5 (92 / C 191/01) «The opinion of the

ECB is asked – for every proposed act that comes in its jurisdiction – by the national authorities regarding any draft legislative provision within the scope of competence within the limits and under the conditions specified by the Council with the procedure laid down in Article 106 paragraph 6.”

14. See plenary session of State Council 3029/01, Armenopoulos 2001, page 1414.
15. It has been ruled that in the sense of Article 1 of the First Addition Protocol the social benefits constitute property, even when they are not based on the obligation of contributions payment. See E.D.D.A. Decision of 16 September 1966, Gaygusuz vs Austria E.D.A. 1997, page 11.
16. State Council 5362/1996, DDIKI 1998, page 998.
17. See Article 31 of Law 2676/99 concerning the abolition of the Provinces’ Lawyers Social Care Funds.

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