



OPINION OF THE EUROPEAN CENTRAL BANK

of 15 June 2007

**at the request of the Greek Ministry of Economy and Finance
on certain provisions of a draft law on the taking up and pursuit of the business of credit
institutions, the sufficiency of own funds of credit institutions, undertakings providing
investment services and other provisions**

(CON/2007/15)

Introduction and legal basis

On 25 April 2007 the European Central Bank (ECB) received a request from the Greek Ministry of Economy and Finance for an opinion on certain provisions of a draft law on the taking up and pursuit of the business of credit institutions, the sufficiency of own funds of credit institutions, undertakings providing investment services and other provisions (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third, fifth and sixth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law relates to a national central bank, payment and settlement systems and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft law

The draft law implements Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)² and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)³. The draft law complements the soon to be adopted amendments to the Bank of Greece's Statute, with the aim of providing for acceptance of credit claims as eligible collateral, in line with the Eurosystem's single list of eligible collateral for credit

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 177, 30.6.2006, p. 1.

³ OJ L 177, 30.6.2006, p. 201.

operations⁴ (hereinafter the ‘single list’). The draft provisions on which the ECB was consulted concern: (i) supervision, in particular its costs and sanctions; (ii) the provision of collateral to the Bank of Greece in the context of the exercise of monetary policy, especially as a consequence of the introduction of the single list; and (iii) the liability regime.

2. Costs of supervision

Article 86 of the draft law provides that the costs of auditing should be borne by the supervised credit and financial institutions. It empowers the Bank of Greece to determine the nature and extent of the costs, as well as criteria on the basis of which such costs may be differentiated by category of supervised institutions or audited activities. The ECB welcomes the fact that financial supervision will be financed by supervised institutions, since this would further enhance the Bank of Greece's financial soundness.

3. Provision of collateral to the Bank of Greece

3.1 The draft law makes clear that the Bank of Greece accepts credit claims as collateral in order to secure its claims arising out of monetary policy operations and the provision of intraday credit. Such credit claims will fulfil the Eurosystem's eligibility criteria for collateral following the introduction of the single list.

3.2 In connection with the above, the draft law stipulates that announcement to a debtor of the establishment of collateral (including a pledge) provided by a credit institution in favour of the Bank of Greece or another central bank of the Eurosystem, in the context of monetary policy operations or the provision of intraday liquidity on its claims from a bank loan or a credit of any kind granted to the debtor, takes priority over any subsequent announcement or registration of collateral on the same, already collateralised claim. This is to ensure that collateral consisting of credit claims in favour of the Eurosystem that have not been registered in the public books pursuant to Law 2844/2000 still take priority over subsequent collateral on the same claims registered therein, if the debtor has been notified of the provision of collateral to the Eurosystem prior to such registration. Hence, with specific regard to collateral consisting of credit claims established in favour of the Eurosystem, priority is not determined on the basis of the time of registration in the public books, but a more flexible approach has been adopted, in line with the Eurosystem procedures. The ECB therefore welcomes these provisions of the draft law.

3.3 Regarding Article 89, which provides for additional collateral coverage within two working days for cases where the claims are not covered by the pledge, it is noted that such collateral coverage should be fulfilled at all times. The debtor should be obliged to supplement the additional collateral immediately so that at the end of the business day sufficient collateral coverage is restored. Therefore, it is suggested to amend the wording of this article.

⁴ See ECB Opinion CON/2007/13 of 8 May 2007 at the request of the Bank of Greece on amendments to its Statute.

3.4 Regarding Article 90 on the amendment of Law 2789/2000, the legislator is invited to clarify the wording of Article 90(2), in order to extend to the ECB or another central bank of the Eurosystem the possibility of an off-the-stock-market sale of collateral.

4. Publication of sanctions

Article 69(4) of the draft law provides for publication of the Bank of Greece's decisions on the imposition of sanctions, in order to ensure transparency in the market. The ECB welcomes the reference to the stability of the financial markets in this paragraph: the Bank of Greece can only publish a decision on the imposition of sanctions if it considers that such publication is not related to the supervisory requirements set out in the draft law and is not likely to create a risk of serious disruption of the financial markets or disproportionate loss to interested parties. Such publication is accompanied by sufficient safeguards.

5. Liability regime

The ECB also welcomes Article 69(5) of the draft law, which adequately reflects the Core Principles for Effective Banking Supervision adopted by the Basel Committee on Banking Supervision⁵ by requiring protection from personal and institutional liability for supervisory actions taken by bodies and staff of the Bank of Greece in good faith in the course of performing their supervisory duties⁶.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 15 June 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁵ Available on the Bank for International Settlements' website at www.bis.org.

⁶ See also paragraph 3.4 of ECB Opinion CON/2006/38 of 25 July 2006 at the request of the Bank of Greece on a draft provision on the Bank of Greece's powers in the field of consumer protection.