



EUROPEAN CENTRAL BANK

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## OPINION OF THE EUROPEAN CENTRAL BANK

of 15 March 2017

on certain amendments to the deferred tax assets legal framework in Greece

(CON/2017/7)

### Introduction and legal basis

On 8 March 2017, the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on certain draft amendments to Articles 27 and 27A of Law No 4172/2013<sup>1</sup> on deferred tax assets (DTAs) arising from debit differences (hereinafter the 'draft amending provisions').

The ECB's competence to deliver an opinion on the draft amending provisions is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and on the sixth indent of Article 2(1) of Council Decision 98/415/EC<sup>2</sup>, as the draft amending provisions relate to 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<sup>3</sup>.

### **1. Background and purpose of the draft amending provisions**

1.1 Article 36(1)(c) and Article 38 of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>4</sup> (hereinafter the 'CRR'), which implements Basel III standards<sup>5</sup>, provide that DTAs relying on the future profitability of a credit institution are to be deducted from its Common Equity Tier 1 (CET1) items, subject to threshold exemptions and transitional provisions<sup>6</sup>. Conversely, Article 39(2) of the CRR lays down the requirements under which DTAs *not* relying on future profitability and arising from temporary differences shall not be deducted from CET1 items but to which a risk weight of 100 % is applied.

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<sup>1</sup> Article 27A of Law No 4172/2013 (FEK A 167/23.7.2013) was inserted by Law No 4302/2014 (FEK A 225/8.10.2014) and was further amended by Law No 4303/2014 (FEK A 231/17.10.2014) and Law No 4340/2015 (FEK A 134/1.11.2015).

<sup>2</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

<sup>3</sup> See also Opinion CON/2014/66. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu)

<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>5</sup> See 'Basel III: A global regulatory framework for more resilient banks and banking systems', Basel Committee on Banking Supervision, December 2010, revised version June 2011.

<sup>6</sup> Article 48 CRR. DTAs that rely on future profitability and arise from debit differences are subject to a threshold exemption whereby only amounts above a particular threshold are to be deducted. Amounts below the threshold shall be risk weighted.

1.2 Article 27 of Law No 4172/2013 provides that losses generated by the business of an eligible institution (including a credit institution) may be carried over and set off (amortised) against its profits over a period of five consecutive years. Article 27A makes certain types of DTAs eligible for conversion into tax credits and, assuming that all the conditions of Article 39(2) are met, *not* subject to deduction from CET1 capital of the respective institutions. Article 27A limits the scope of DTAs which must not be deducted from CET1 items to those accounted for as at 30 June 2015.

1.3 The draft amending provisions seek to attain two distinct aims.

First, the draft amending provisions seek to provide a legal basis for eligible institutions to apply Article 39(2) of the CRR to DTAs related to non-performing loans (NPLs), linked to the temporary difference created owing to a different recognition in the applicable tax and accounting provisions when the NPL is written off, forgiven or sold to another institution. The relevant temporary differences resulting in DTAs shall be amortised over a 20-year period. In particular, the draft amending provisions seek to ensure that, in the event of NPL write-offs, loan forgiveness or sales, the stock of DTAs that must not be deducted from CET1 items can be gradually reduced through the prescribed amortisation over 20 years.

Second, the draft amending provisions seek to ensure that the maximum amount of DTAs not to be deducted from CET1 (DTAs/CET1) is gradually lowered. At present, the maximum amount of DTAs/CET1 is the amount of the income tax payable by a credit institution, which is to be calculated by multiplying the applicable tax rate by the eligible temporary differences accounted for as at 30 June 2015. By introducing a cap on the tax rate (the one applicable for the 2015 tax year) the amount of DTAs/CET1 cannot increase. Additionally, the draft amending provisions provide rules to reduce annually the relevant temporary differences, by deducting any subsequent additional tax provisions linked to the relevant NPLs and also deducting, as explained above, the amortised DTA/CET1 related to NPLs that are written off, forgiven or sold. Accordingly, the draft amending provisions seek to avoid additional State aid being granted and to ensure the gradual reduction of DTAs that are not to be deducted from CET1.

1.4 The amendments to Article 27 of Law No 4172/2013 are to take effect retroactively (as of 1 January 2016), while the amendments to Article 27A thereof are to capture DTAs impacted in the 2016 tax year. In this regard, the consultation request letter states that the adoption of the draft amending provisions is relevant to the publication of the annual financial statements of credit institutions in Greece for the 2016 tax year (currently scheduled for the second half of March 2017).

## **2. Observations on the draft amending provisions**

2.1 The ECB expects that the draft amending provisions will not affect the current legal basis for DTAs, meaning that if the DTAs covered by the draft amending provisions previously fulfilled all the requirements of Article 39(2) of the CRR, the new amendment to the tax law should not lead to a different treatment. This being said, if in any circumstances a lack of profitability is observed, the ECB expects that these DTAs are replaced with a direct claim on the Greek Government.

2.2 The ECB understands that the draft amending provisions aim to adjust the accounting and regulatory framework applicable to credit institutions in Greece so as to better enable these

institutions to resolve the high stock of NPLs accumulated by credit institutions in Greece in line with the non-performing exposure (NPE)/NPL targets agreed by Greek banks in 2016. The draft amending provisions aim to reduce existing tax disincentives regarding the loan loss provisioning and write-off policies of credit institutions in Greece, as required under the draft Supplemental Memorandum of Understanding between the Hellenic Republic and the European Commission<sup>7</sup>.

- 2.3 The ECB notes that the draft amending provisions allow credit institutions in Greece to implement the agreed NPL resolution targets, while avoiding large reductions of their own funds, which would endanger financial stability. Without the draft amending provisions, which address tax impediments to the implementation of the NPL resolution targets, there is a risk that the capital adequacy of credit institutions would be jeopardised by the timely implementation of those targets, hence the desirability and necessity of their adoption.

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

Done at Frankfurt am Main, 15 March 2017.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>7</sup> November 2016 version.