



**E U R O P E A N   C E N T R A L   B A N K**

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 28 March 2003**

**at the request of the Bank of Greece**

**on amendments to the Statute of the Bank of Greece**

**(CON/2003/4)**

1. On 26 February 2003, the European Central Bank (ECB) received a request from the Bank of Greece for an opinion on proposed amendments to its Statute. The Bank of Greece informed the ECB that it would present these amendments at the general meeting of the Bank of Greece's shareholders scheduled for 22 April 2003 and, following approval by such general meeting, to the Greek Parliament for ratification.
2. In accordance with the second indent of Article 105(4) of the Treaty establishing the European Community and the second indent of Article 4(a) of the Statute of the European System of Central Banks and of the European Central Bank (ESCB Statute) and the third indent 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 provisions, the ECB is competent to deliver an opinion since the provisions concern the Statute of the Bank of Greece. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.
3. Most of the proposed amendments concern technical modifications to: general provisions (Article 2), the General Council (Article 27), the Monetary Policy Council (Article 35A), accounts and statements (Article 52), monetary policy instruments (Article 55D, Article 56 No 4 and Article 58) and the withdrawal of banknotes denominated in drachmae (Article 68). In addition, there are several insertions related to auditors (Article 44) and the business of the bank and monetary policy instruments (Article 55 Nos 5 and 18, Article 55B, Article 56 Nos 3 and 5). Each paragraph below will describe the proposed amendments, explain their rationale and provide for the ECB's views separately for each amendment. Additions to the Statute of the Bank of Greece are underlined, whilst deletions are crossed out.

4. Section (e) of Article 2

It is proposed that this Article read as follows:

*'The main tasks of the Bank of Greece shall be to:*

*[...]*

- e) promote and oversee the smooth operation and efficiency of payment systems and means of payment, as well as of trading, settlement or clearing systems for over-the-counter (OTC) transactions in securities and other financial instruments, in accordance with Article 55 no. 5 hereof;*

*[...]*'

This amendment is mainly intended to establish, for reasons of legal certainty, the authority of the Bank of Greece over means of payment. The ECB welcomes this clarification, which does not give rise to any specific observations from the ESCB's perspective.

5. Section (i) of Article 27

It is proposed that this Article read as follows:

*'The General Council shall decide on the following matters:*

*[...]*

- i) matters connected with the acquisition of immovable property ~~required for the business of the Bank and the temporary acquisition and sale of similar property under Article 58~~ under Articles 56 n° 3 and 58;*

*[...]*'

This amendment is intended to align the General Council's authority to acquire immovable property with the new content of the relevant substantive provisions of the Statute<sup>1</sup>. The above arrangement is a matter internal to the Bank of Greece and does not give rise to any specific observations from the ESCB's perspective.

6. Article 35A

It is proposed that this Article read as follows:

*'The Monetary Policy Council shall be responsible for decisions pertaining to monetary policy definition and implementation and to the conduct of exchange rate policy, the operation and efficiency of payment systems and means of payment and the issue of banknotes. These tasks shall be exercised by virtue of Acts of the said Council.*

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<sup>1</sup> See paragraphs 13 and 16 of this opinion for Article 56 Nos 3 and 58, respectively.

[...]'

This amendment is intended to align the content of this provision with that of Section (e) of Article 2 (see paragraph 4 above). The ECB's opinion applies here *mutatis mutandis* as well, i.e. the ECB welcomes the clarification which does not give rise to any specific observations from the ESCB's perspective. To avoid misunderstanding, and as already noted in the ECB's Opinion CON/00/07 of 17 April 2000 on previous amendments to the Statute of the Bank of Greece, the powers of the Monetary Policy Council of the Bank of Greece have to be read in conjunction with Article 2 of the Statute of the Bank of Greece. This Article recognises expressly that such powers have to be executed in the framework of and in accordance with the ESCB legal framework.

7. Article 44

It is proposed that this Article read as follows:

*'The first General Meeting of Shareholders and, subsequently, the Annual General Meeting shall elect three qualified persons and two substitutes as Auditors, to examine and report upon the balance sheet of the Bank to be presented at the next Annual General Meeting, and shall determine their fees. No Councillor or other officer of the Bank shall be eligible as Auditor during his term of office. Instead of the above natural persons, the General Meeting may elect as auditors a corporation or syndicate of Chartered Accountants.*

[...]'

The new wording of the provision enables the Bank of Greece to appoint not only physical persons registered as auditors but also auditing firms that are, for example, organised as public companies limited by shares. The ECB notes that this does not rule out the possibility, for reasons of convenience, of the audit provided for by the Statute of the Bank of Greece coinciding with the audit prescribed by the Statute of the ESCB. The ECB welcomes this extension of the Bank of Greece's choice of auditors since it reflects current auditing practice.

8. Article 52

It is proposed that this Article read as follows:

*'The Bank shall draw up a statement of its assets and liabilities as at the 15<sup>th</sup> ~~and~~ last day of each month, and shall publish it not later than ~~a week after these dates~~ within a week.'*

This provision is in accordance with the prevailing practice within the ESCB and is therefore fully supported by the ECB.

9. Article 55 No 5

It is proposed that this Article read as follows:

*'The business of the Bank shall be restricted to the following operations. The Bank, acting in accordance with the provisions applicable each time in the ESCB legal framework, may:*

*[...]*

5. *establish operating rules and oversee payment systems and settlement systems for over-the counter transactions, with a view to ensuring the efficiency and soundness of these systems and in particular to reducing systemic risk and strengthening competition; the Bank may also manage such systems without prejudice to the rules applicable each time in the ESCB legal framework. Moreover, it may set rules and oversee the operational reliability and legal safety of means of payment with a view to safeguarding their efficiency.*

*These systems shall include systems for netting, settlement and clearing of payments, as well as systems for the settlement and clearing of over-the counter transactions in securities, in physical or book-entry form, and other financial instruments.*

*The Bank shall take all the necessary measures for the application of the rules set forth by the ECB with a view to ensuring efficient and sound clearing and payment systems in the sense of Article 22 of the ESCB Statute.*

*[...]*

The proposed amendment is intended to align Article 55 No 5 with the amendment to Section (e) of Article 2 (see paragraph 4 above). It specifies the powers of the Bank of Greece concerning means of payment. The ECB's opinion applies here *mutatis mutandis* as well, i.e. the ECB welcomes the clarification of the powers of the Bank of Greece over means of payment. However, in order to avoid any misunderstanding, the ECB recommends introducing the sentence 'in accordance with the provisions, if any, applicable each time in the ESCB legal framework' at the end of the above amendment. Such addition, similarly to other provisions of the Statute of the Bank of Greece, takes into account the applicable ESCB rules.

10. Article 55 No 18

It is proposed that this Article read as follows:

*'The business of the Bank shall be restricted to the following operations. The Bank, acting in accordance with the provisions applicable each time in the ESCB legal framework, may:*

*[...]*

18. *by securing and keeping the required technical equipment and necessary personnel, undertake the striking of metal coins and medals also on behalf of the Greek government ~~as~~*

~~well as~~ or of third parties. Moreover, the Bank may engage in printing activities of any nature whatsoever and dispose of the articles produced hereunder by way of derogation from the provision of Article 56 No 2<sup>2</sup> hereof;

[...]'

The proposed amendment is intended to clarify that the Bank of Greece on its own behalf may also carry out the activities provided for therein. In addition, the proposed insertion of the second sentence enables the Bank of Greece to utilise its plant, equipment and personnel by broadening the scope of its business, both to engage in printing activities of any kind and to sell the goods produced in its plant. Moreover, the proposed insertion provides a legal basis for activities traditionally undertaken by the Bank of Greece, which have so far been legitimised on an ad hoc basis, by statutory ratification of the agreements concluded from time to time. The above arrangement is a matter internal to the Bank of Greece and does not give rise to any specific observations from the ESCB's perspective.

#### 11. Article 55B

It is proposed that this Article read as follows:

*'The Bank, through the Monetary Policy Council, shall establish a framework of administrative sanctions and specify in detail how they are to be applied to persons who violate the provisions pertaining to the tasks of the Monetary Policy Council under Article 35A. These sanctions shall include in particular the following:*

[...]

- f) a fine in favour of the Greek State, calculated either as a rate of up to 40 per cent on the amount of the violation, or as a lump sum of up to two hundred thousand euro (€200,000) or, in case of relapse, up to three hundred thousand euro (€300,000), provided that the imposition of this sanction is not in conflict with the rules in force from time to time within the European System of Central Banks. The above ceilings may be adjusted by an act of the Monetary Policy Council.

[...]'

By adding a 'fine in favour of the Greek State' to the list of sanctions in Article 55B, the Bank of Greece is empowered to impose sanctions on entities other than credit institutions, when they breach provisions falling under the powers of the Monetary Policy Council. The ECB has noted with satisfaction that such sanctions may not be imposed if they conflict with ESCB rules, notably concerning breaches for which the ESCB rules restrictively list the sanctions imposed that exclude fines. However, the ECB would like to recommend caution when applying this Article. The

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<sup>2</sup> Article 56 No 2 reads as follows: "The Bank is not entitled to: [...] 2.: engage in trade, or otherwise have a direct interest in any commercial, industrial or other enterprise; [...]"

absence of rules within the ESCB in certain areas may be deliberate and thus preclude a national authority from assuming responsibility in this respect. For example, the TARGET legal documentation does not provide for a system of fines, and thus the Bank of Greece may not create such a system as far as TARGET-related matters are concerned. Therefore, the Bank of Greece is encouraged to liaise with the ECB in those cases where doubts might exist as to whether application of the Article could perhaps conflict with existing or possible future ESCB policies.

12. Article 55D

It is proposed that this Article read as follows:

*'Without prejudice to the provisions of Article 5 of the ESCB Statute and of complementary European Union legislation adopted in application thereof, the Bank of Greece, in addition to its controlling authority in the context of prudential supervision, shall have the right to examine and make copies of all the books and records belonging to any natural person or legal entity engaged in any sort of enterprise, provided that, in the Bank's judgement there are indications of a violation in the conduct of any activity which is related to the tasks of the Bank of Greece, ~~under Article 2 thereof.~~*

[...]'

The above provision, according to its current wording, provides for the Bank of Greece's power to examine the books and records of persons not supervised by it 'provided that, in the Bank's judgement, there are indications of a violation in the conduct of any activity which is related to the task of the Bank of Greece, under Article 2 hereof.' The deletion of the phrase 'under Article 2 hereof', which refers to the Bank of Greece's main activities only, is intended to make unambiguously clear that the above power to examine books and records extends to all activities related to the tasks of the Bank of Greece and not only to its main activities. The ECB welcomes this clarification, which does not give rise to any specific observations from the ESCB's perspective.

13. Article 56 No 3

It is proposed that this Article read as follows:

*'The Bank is not entitled to:*

[...]

3. *become the possessor of immovable property, except insofar as it is necessary for its own business, and with the exception provided for in Article 58 as well as with the exception of acquisitions under a specific provision of law or by universal or quasi-universal succession.*

*A justified decision of the General Council may permit the maintenance or acquisition of immovable property provided that it serves a specific interest of the Bank;*'

The proposed amendment is intended to relax the above prohibition, which, however, is maintained as the main rule and is associated with the prohibition of trade provided for in the immediately preceding paragraph<sup>3</sup>. Specifically, its intention is to enable the Bank of Greece to maintain its immovable property (e.g. its branch buildings) in the event that its business shrinks and/or to acquire immovable property within the context of a broader transfer of property, imposed by law or initiated for reasons of general concern (e.g. social security buildings, where the Bank of Greece itself provides social security coverage for its staff). The above arrangement is a matter internal to the Bank of Greece and does not give rise to any specific observations from the ESCB's perspective.

14. Article 56 No 4

It is proposed that this Article read as follows:

*'The Bank is not entitled to:*

*[...]*

4. *purchase ~~its own shares, or~~ the shares of any other Bank, or corporation, except for the shares of the Bank for International Settlements;'*

The new wording of this provision repeals the prohibition on acquisition by the Bank of Greece of its own shares, which, at the time of its introduction, referred to a rule applicable to all public companies limited by shares so as to harmonise its Statute with the current derogations from the general prohibition, which, however, continues to be the main rule according to Article 16(1) of Law 2190/1920<sup>4</sup>. As a result of the repeal of that prohibition, in conjunction with the express provision of Article 72 of the Statute<sup>5</sup>, the cases of legitimate acquisition referred to in Article 16(2) and (5) of Law 2190/1920<sup>6</sup> also apply to the Bank of Greece. Such cases of legitimate acquisition derive from EC Directive [...]. The above arrangement is a matter internal to the Bank of Greece and does not give rise to any specific observations from the ESCB's perspective.

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<sup>3</sup> See footnote 3 for the text of Article 56 No 2.

<sup>4</sup> Article 16(1) of Law 2190/1920 reads as follows: "A company limited by shares may not acquire its own shares".

<sup>5</sup> Article 72 of the Statute reads as follows: "The provision of the laws on corporations (*sociétés anonymes*) and Banks shall not apply to the Bank of Greece when in conflict with this Statute".

<sup>6</sup> Article 16(2) of Law 2190/1920 reads as follows: "This provision shall not apply in the case of a) acquisitions made in view of amortisation of the capital ..., b) acquisitions made in view of reduction of capital ..., c) acquisitions by way of compulsory attachment in satisfaction of the company's own claims, d) acquisitions made by banking companies by order of a third party e) acquisitions made gratuitously provided they have been paid off completely, f) acquisitions made for the purpose of distribution of shares to the company personnel or to the personnel of a company connected herewith..."

Article 16(5) of Law 2190/1920 reads as follows: "Companies the shares of which are quoted on the Athens Stock Exchange may, following a decision of the General Meeting of Shareholders taken by virtue of the provisions of Articles 29 paras 1 and 2 and 31, para 1, acquire their own shares through the Stock Exchange up to 10% of the total of their shares ..."

15. Article 56 No 5

It is proposed that this Article read as follows:

*'The Bank is not entitled to:*

*[...]*

5. *pay interest on deposits or current accounts with the Bank. The Bank may, in derogation to the general prohibition, pay interest to the Greek State as provided for in Article 45<sup>7</sup>, as well as on deposits of other Banks in Greece. Furthermore, interest may be paid on ~~time~~ deposits kept with the Bank ~~in foreign convertible exchange~~, of other Banks, or of natural persons or legal entities established abroad as well as on advances made to the Bank by the said persons and in the cases where payment of interest is provided for by the rules in force from time to time within the European System of Central Banks.*

*[...]*'

According to the current wording of the above provision, one of the exceptions to the continuing basic prohibition of payment of interest by the Bank of Greece on deposits or accounts is its right to pay interest 'on time deposits kept with the Bank in foreign convertible exchange, of other Banks, or of natural persons or legal entities established abroad, as well as on advances made to the Bank in foreign convertible exchange by the said person'. The repeal of this condition for payment of interest on deposits (i.e. to be in foreign convertible exchange) is proposed in response to reasonable requests by legal entities established abroad (e.g. the Commission of the European Communities), particularly in relation to deposits in currencies of EU Member States in the name of legal entities established abroad, on which interest used to accrue, as long as they were deposits in foreign exchange, but this ceased to apply on conversion into euro deposits. The ECB welcomes this clarification, which does not give rise to any observations from the ESCB's perspective.

16. Article 58

It is proposed that this Article read as follows:

*'[...]*

*In the case of failure to repay a debt due to the Bank, any immovable property coming into the possession of the Bank under this article shall be realised as speedily as possible by public auction or private sale. No such property may be retained by the Bank for its own purposes, ~~unless required for the carrying on of the business of the Bank~~ without prejudice to Article 56 No 3.*

*[...]*'

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<sup>7</sup> Article 45 reads as follows: "[...] The Bank shall pay interest on such accounts. The interest rate shall be determined in an agreement to be entered into between the parties concerned and shall in any case reflect the market terms and conditions."

The proposed amendment is intended to align Article 58 with the amended provision on acquisition of immovable property as per Article 56 No 3 (see paragraph 13 above). The above arrangement is a matter internal to the Bank of Greece and does not give rise to any specific observations from the ESCB's perspective.

17. Article 68

It is proposed that this Article read as follows:

*'In the event of calling in of any series of banknotes denominated in drachmae, the General Council shall determine and publicly announce the period within which the said notes should be presented for exchange. After expiration of such period, the banknotes denominated in drachmae recalled shall cease to be legal tender except within the Bank of Greece.'*

~~Two years~~ *After the expiration of the latest date publicly announced for the calling in of a series of banknotes denominated in drachmae, the Bank is entitled to deduct from the amount of note circulation the amount of the banknotes denominated in drachmae of the series then outstanding and unpaid, and the notes shall no longer be considered in circulation. Ten years after the expiration of the same as above date, these notes shall be considered as having been prescribed and the bearer of same shall have no valid claim whatsoever arising therefrom.'*

In so far as this paragraph and the preceding paragraph (i.e. Article 68 in whole) concern withdrawal of illegal tender, it could be totally repealed. However, this is not, for the time being, considered by the Bank of Greece, as the drachma withdrawal procedure is still in progress and both the Bank of Greece General Council decision on withdrawal and the exchange of drachmae and Article 5 of Law 2948/2001<sup>8</sup> on the same issue expressly refer to Article 68. Since there can be no confusion as to the meaning of the first paragraph of Article 68 now that the drachma has been replaced by the euro, the ECB does not have any reservations on this point. However, the ECB would of course recommend revising the first paragraph so as to reflect the actual situation once the above reasons not to do so have disappeared (it being acknowledged that this may only be in 2012 when the exchange period for drachmae against euro banknotes has expired). In addition, the Bank of Greece's right 'to deduct from the amount of note circulation the amount of the banknotes denominated in drachma of the series then outstanding and unpaid' so that 'the notes shall no longer be considered in circulation' (first sentence of the provision), as it is exclusively associated with currency in circulation, can no longer be subject to a time limit (since it would now concern a totally withdrawn currency) and can only be exercised from the moment of withdrawal onwards. Therefore, the proposed amendment abolishes the time limit (of two years), so that this issue will

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<sup>8</sup> Article 5 of Law 2948/2001 reads as follows: "1. From 1<sup>st</sup> March 2002 up to 1<sup>st</sup> March 2012 drachmae banknotes shall continue to be accepted for exchange with euro banknotes from the Bank of Greece, pursuant to Article 68 of its Statute. 2. From the 1<sup>st</sup> March 2002 up to 1<sup>st</sup> March 2004 drachmae coins shall continue to be accepted for exchange with euro banknotes from the Bank of Greece and the public financial offices [...]"

not seem to be addressed *contra litteram legis*. The ECB welcomes this clarification, which does not give rise to any specific observations from the ESCB's perspective.

18. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB's website six months after the date of its adoption.

Done at Frankfurt am Main on 28 March 2003.

*The President of the ECB*

[signed]

Willem F. DUISENBERG