



OPINION OF THE EUROPEAN CENTRAL BANK
of 8 May 2007
at the request of the Bank of Greece on amendments to its Statute
(CON/2007/13)

Introduction and legal basis

On 29 March 2007 the European Central Bank (ECB) received a request from the Bank of Greece for an opinion on a set of draft amendments to its Statute (hereinafter the ‘draft amendments’).

The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and fifth 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 amendments relate to the Bank of Greece and payment and settlement systems. 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 amendments

As set out in the Explanatory Note accompanying the draft amendments, most of the proposed changes are intended to adapt the Bank of Greece’s Statute to recent developments in the Eurosystem’s collateral framework which specifies the assets acceptable as collateral for Eurosystem credit operations. In this regard, the draft amendments support the acceptance by the Bank of Greece of credit claims as collateral for monetary policy operations and the provision of intraday credit, in accordance with Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem², as incorporated into Greek law by the Act 61/6.12.2006 of the Monetary Policy Council of the Bank of Greece. In addition, the draft amendments are intended to improve the functioning of payment systems through increased protection of funds held in accounts in such systems, including the future Greek component of TARGET2, the new central bank payment system currently under establishment by the Eurosystem. Finally, the draft amendments are intended to enable the Bank of Greece, provided that there will be a further change to Greek law, to ensure control of the management of social security benefits

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 310, 11.12.2000, p. 1. Guideline as last amended by Guideline ECB/2006/12 (OJ L 352, 13.12.2006, p. 1).

granted to its staff, with such control to be performed through a special purpose legal entity controlled by the Bank of Greece.

2. General observations

Most of the draft amendments address the Bank of Greece's execution of monetary policy operations and its provision of intra-day credit. Other draft amendments are intended to further secure the safety of payment systems and provide increased protection from systemic risk. The ECB generally welcomes these draft amendments, as they support the conduct of monetary policy in Greece in accordance with the recent changes to the Eurosystem collateral framework and further enhance the smooth operation of Greek payment systems thereby already anticipating the future TARGET2 legal framework.

3. Specific changes introduced by the draft amendments

- 3.1 The type of assets acceptable as collateral to the Bank of Greece will be extended to credit claims such as bank loans and other bank credits. The ECB understands that this is intended to reflect the recent changes to the Eurosystem collateral framework in which credit claims became eligible from 1 January 2007 for Eurosystem credit operations in all euro area countries in accordance with the latest amendment to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem.
- 3.2 In addition, the Bank of Greece's legal pledge securing its claims arising from monetary policy lending operations or transactions through the systems referred to in Article 55(5) of the Bank of Greece's Statute will be extended to cover all assets deposited with the Bank of Greece³. The ECB also notes that the Bank of Greece's rights of pledge in relation to transactions through its component system of TARGET2 will be governed by the future TARGET2 legal framework. A pledge on a claim arising out of bank loans or other bank credits is permissible under Greek law.
- 3.3 The procedure for the realisation of eligible assets will become more flexible for the Bank of Greece. More specifically, the Bank of Greece will be granted discretion to proceed to the sale or cash collection of pledged securities or claims immediately as the claims of the Bank of Greece become due and without communicating a written notice to the debtor prior to initiating a sale or cash collection, in accordance with Community law, transposed into Greek law (Article 4 L. 3301/2004). The ECB proposes including a reference to claims in addition to securities in the draft amendment of the second paragraph of Article 57A of the Statute of the Bank of Greece, where the following is stated: 'or, if the securities are due and payable, cash them on its own behalf'.

³ The second indent of Article 55(5) of the Bank of Greece's Statute refers to systems for the netting, settlement and, in general, clearing of payments, as well as systems for the conclusion, netting, settlement and, in general, clearing of over-the-counter transactions regarding securities in physical or book-entry form and other financial instruments.

- 3.4 Under general Greek law, the attachment may not prejudice existing security interests or rights of set-off, so that transactions processed in payment systems or amounts already ear-marked for a transaction would be protected against attachment. To improve protection of those systems, also in the case of attachment, the draft amendments provide for an exemption from the attachment by third parties of accounts held in payment systems at the Bank of Greece. The ECB understands that the draft amendments thus constitute an exemption from the general provisions on set-off provided for in the Greek Civil Code, in particular AK 451 which prohibits any set-off of non-attachable claims, and do not prejudice the validity and enforceability of set-off rights of the Bank of Greece. Indeed, the draft amendments, which are limited to the specific situation of accounts held in payment systems or components thereof, do not impose a general prohibition against attachment and, under any circumstances, the claims dealt with under Article 57A of the Statute of the Bank of Greece are quite distinct from those enumerated as non-attachable in Article 982 of the Greek Code of Civil Procedure. Thus, particularly in view of the future requirements in this respect under the TARGET2 framework, the ECB welcomes this amendment. Furthermore, the ECB suggests extending the wording of the draft amendments to expressly cover also settlement systems operated by the Bank of Greece, since the same argumentation also applies to those systems.
- 3.5 Finally, the draft amendments would enable the Bank of Greece, following a further legislative provision to that effect, to establish or participate in legal entities specialised in the support or specific pursuit of objectives related to its staff's social security, notwithstanding the prohibition against engaging in trade, having a direct interest in commercial, industrial or other enterprise and purchasing shares of other banks or corporations. Although the relationship between the Bank of Greece and any such specialised legal entities is not yet specified, the ECB understands that, if the Bank of Greece performed or controlled such functions, it would assume full responsibility and liability for them, without prejudice to the provisions of the Treaty and the Statute, particularly those concerning central banks' financial independence and the prohibition against monetary financing.

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

Done at Frankfurt am Main, 8 May 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET