



OPINION OF THE EUROPEAN CENTRAL BANK

of 4 June 2008

at the request of the Bank of Greece on a draft decision establishing a derogation from Article 23a of Codified Law 2190/1920 on *sociétés anonymes*

(CON/2008/24)

Introduction and legal basis

On 19 May 2008 the European Central Bank (ECB) received a request from the Bank of Greece for an opinion on a draft decision of the Banking and Credit Issues Committee of the Bank of Greece establishing a derogation from Article 23a of Codified Law No 2190/1920 on *sociétés anonymes*¹ (hereinafter the ‘draft decision’)².

The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and, in particular, on the 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 provisions³, as the draft decision relates to payment and settlement systems and 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.

1. Purpose of the draft decision

1.1 The aim of the draft decision is to adjust the scope of specific Greek company law provisions, in order to enable certain transactions relating to credit institutions to be conducted, taking into account their nature and function. Indeed, pursuant to Article 5(12)(e) of Law No 3601/2007⁴, the Bank of Greece may, by way of derogation from the general provisions applying to *sociétés anonymes*, determine the procedures, maximum amounts and all other terms for the provision by credit institutions of any type of loans and other credits to persons with which they maintain a ‘special relationship’, guarantees in favour of such persons, as well as for the participation by credit institutions in such persons, in order to ensure that such transactions are not conducted on

1 Government Gazette Vol. A 37/30.3.1963.

2 The draft decision was discussed by the Banking and Credit Issues Committee of the Bank of Greece on 22 April 2008 (meeting No 258, topic No 14).

3 OJ L 189, 3.7.1998, p. 42.

4 Law relating to the taking up and pursuit of the business of credit institutions, capital adequacy of credit institutions and investment firms and other provisions, Government Gazette Vol. A 178/1.8.2007.

preferential terms or in a manner that could operate to the detriment of the sound and prudent management of the credit institution. Pursuant to the abovementioned provision, the draft decision introduces a derogation from Article 23a⁵ of Codified Law No 2190/1920 with regard to the conduct of certain financial transactions between credit institutions and natural or legal persons with which they maintain a ‘special relationship’⁶, specifying that such transactions should not be conducted on preferential terms or in a manner that could operate to the detriment of the sound and prudent management of the credit institution concerned⁷.

- 1.2 In the same context, the draft decision further allows credit institutions which maintain a special relationship with each other and which belong to the same ‘aggregated liquidity group’ within the meaning of Guideline ECB/2007/2⁸, as implemented in Greece by means of Monetary Policy Council Act No 66/8.4.2008⁹, to conduct specific transactions unconditionally, without being subject to the limitations of Article 23a of Codified Law No 2190/1920. This is intended to ensure a smooth migration of the domestic payment system to TARGET2 and an appropriate implementation of the TARGET2 legal framework, in particular for liquidity pooling purposes.

2. General observations

This opinion addresses the provisions of the draft decision that pertain to the migration of Bank of Greece to TARGET2. Taking into account the fact that the Bank of Greece belongs to the third group of national central banks that migrated to TARGET2 on 19 May 2008, the ECB welcomes the draft decision as a necessary measure which will enable the Bank of Greece to successfully complete such migration and properly implement the TARGET2 legal framework, such implementation being subject to a separate assessment by the ECB. The ECB understands that pending the adoption of the draft decision, no credit institutions established in Greece may be admitted to the groups eligible to use the aggregated liquidity mode.

5 Subject to the provisions applying from time to time to transactions of credit and financial institutions with persons with which they have a special relationship, Article 23a sets out restrictions as regards the provision of credit, guarantees and collateral to or in favour of persons maintaining a ‘special relationship’ with the relevant credit institution.

6 As defined in Act No 2606/21.2.2008 of the Governor of the Bank of Greece, Codification of data and information that credit institutions are required to transmit to the Bank of Greece periodically for the supervision purposes – Replacement of Act No 2563/19.7.2005 of the Governor of the Bank of Greece – Determining of persons maintaining a special relationship with the credit institution, Government Gazette Vol. B 526/26.3.2008. Such Act was adopted pursuant to Article 5(12)(d) of Law No 3601/2007 which authorised the Bank of Greece, in order to fulfil its supervisory purposes and for transparency reasons, to determine the criteria according to which natural and legal persons are deemed to directly or indirectly maintain a ‘special relationship’ with a credit institution.

7 As for the rest, such transactions are governed by Sections 11 and 12 of Chapter II of Act No 2577/9.3.2006 of the Governor of the Bank of Greece on the principles of operation and evaluation of internal audit systems of credit and financial institution, Government Gazette Vol A 59/20.3.2006.

8 Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L 237, 8.9.2007, p. 1).

9 Government Gazette Vol B 697/21.4.2008.

3. Specific observations

The ECB has no specific observations on the draft decision.

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

Done at Frankfurt am Main, 4 June 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET