EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 April 2012

on the Statute of the Bank of Greece

(CON/2012/31)

Introduction and legal basis

On 5 April 2012 the European Central Bank (ECB) received a request from the Bank of Greece for an opinion on draft legislative provisions introducing amendments to the Statute of the Bank of Greece (hereinafter the 'draft provisions').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and on the third 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 provisions[1], as the draft provisions relate to the Bank of Greece 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 provisions

The draft provisions introduce a number of amendments to the Statute of the Bank of Greece, related to its operation, tasks and governance, participation in its share capital and the distribution of its profits.

1.1 As regards the operation, tasks and distribution of profits of the Bank of Greece, the proposed amendments: (a) extend the duration of the Bank of Greece from 2020 to 2050; (b) enable the Bank of Greece's General Council to convene and take action with special composition in relation to urgent matters; (c) expressly entrust the Bank of Greece with macro-prudential authority; (d) specify for the financial years 2012-2020 the way in which the income of the Bank of Greece stemming from Greek government bonds forming part of its investment portfolio on 31 December 2011 will be transferred to the Greek State.

1 OJ L 189, 3.7.1998, p. 42.

1.2 As regards governance and participation in share capital, the proposed amendments: (a) prohibit persons[2] supervised by the Bank of Greece from holding Bank of Greece shares and introduce a 2% cap on the voting rights that may be exercised by any private shareholder, with the exception of entities governed by public law, social security organisations and organisations providing services in the public interest and (b) provide that the Executive Committee, consisting of the Governor and the two Deputy Governors, will take decisions based on a quorum and majority of two members, one of which must be the Governor. The Executive Committee will be responsible for the prudential supervision of entities supervised by the Bank of Greece, and will exercise all powers related to this task by issuing acts or empowering other competent bodies of the Bank of Greece to exercise such powers. The Executive Committee's work will be monitored by three non-executive General Council members.

2. General observations

In general, the ECB welcomes the proposed amendments to the Statute of the Bank of Greece as they enhance the operation of the Bank of Greece and the exercise of its tasks.

Moreover, the ECB understands that the proposed amendments are aimed at bringing the Statute of the Bank of Greece in line with some of the objectives set out in the Memorandum of Economic and Financial Policies (hereinafter the 'Memorandum')[3], in accordance with the time frame provided for therein. In the light of the Bank of Greece's responsibility for resolution, restructuring and supervision, the draft provisions provide for collegial decision-making at the executive level, i.e. the Governor and Deputy Governors, and establish on-going accountability through internal oversight by nonexecutives in the General Council. The draft provisions revise the structure and rights of the Bank of Greece's shareholders to eliminate possible conflicts of interest in the Bank of Greece's public policy role. In this respect, the draft provisions prohibit supervised institutions from shareholdings and set a cap on the number of votes that each or related private shareholders can exercise.

3. Specific observations

3.1 *Distribution of profits*

3.1.1 The transfer of the income of the Bank of Greece from Greek government bonds forming part of its investment portfolio on 31 December 2011 provided for in Article 71(3) of the draft provisions must comply with the monetary financing prohibition laid down in Article 123 of the Treaty, which prohibits overdraft facilities or any other type of credit facility with an NCB in favour of the public sector. Article 123 of the Treaty prohibits, in particular, the distribution of central bank profits that have not been fully realised, accounted for and audited and the distribution of income outside the statutory profit distribution rules. In order to comply with the monetary financing prohibition, the

2 This term includes both physical persons and legal entities.

3 The Second Economic Adjustment Programme for Greece, March 2012, p. 117; http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp94_en.pdf; also as an Annex V to Law 4046/2012. FEK A 28/14.2.2012.

Bank of Greece's income from Greek government bonds may only be transferred to the State as part of the normal profit distribution and subject to the condition that the net profit of the year exceeds that income. The draft Article 71(3) may create the impression that the income stemming from Greek government bonds should be distributed separately and therefore should be amended accordingly.

3.1.2 In addition, the distribution of profits must also comply with the principle of financial independence. The transfer of the income of the Bank of Greece from Greek government bonds forming part of its investment portfolio on 31 December 2011 before the allocation of funds to the regular reserve fund could affect the Bank of Greece's financial independence in periods during which the regular reserve fund is below its maximum statutory level.

Article 71(3) should therefore clarify that in years where the size of the regular reserve fund is at its statutory limit, such income is to be distributed to the State budget as part of and up to the limit of the net profits of the Bank of Greece. In years where the size of the regular reserve fund is below its statutory limit, such income should be distributed to the State budget up to the remaining surplus after the regular reserve fund has been funded according to Article 71(1).

3.2 *Shareholder rights*

The ECB welcomes the proposed amendments that prohibit persons supervised by the Bank of Greece from participating in its share capital and that cap the voting rights that may be exercised by any private shareholder at general meetings of the Bank of Greece to votes attached to shares that do not exceed the percentage that corresponds to 2% of the Bank of Greece's share capital. These amendments aim at preventing possible interference in the exercise by the Bank of Greece of its public tasks.

3.3 *Governance arrangements*

The ECB notes that the proposed amendments enhance the Executive Committee's role, making it a regular body of the Bank of Greece entrusted with the prudential supervision of entities supervised by the Bank of Greece. Although not explicitly mentioned in the proposed provisions, the ECB understands that the tasks related to the exercise of prudential supervision by the Executive Committee include, *inter alia,* the exercise of the resolution powers of the Bank of Greece. The ECB considers that the Executive Committee's proposed composition and decision-making process allow for the establishment of a collegial decision-making process in the Bank of Greece in areas critical for the stability of financial institutions and markets, such as the resolution of supervised entities. The ECB notes that the work of the Executive Committee will be monitored by three non-executive members of the Governing Council; the ECB understands that the oversight conducted by the Governing Council will in no way impede the Executive Committee's decision making powers.

3.4 *Exercise of the macro-prudential authority*

The draft provisions provide that the Bank of Greece exercises, *inter alia*, the macro-prudential authority in the context of prudential supervision. The ECB understands that these amendments are aimed at reflecting Recommendation ESRB/2011/3[4], which provides that Member States should designate a national authority entrusted with the conduct of macro-prudential policy.

3.5 *Miscellaneous*

It would be advantageous to reflect the changes to the organisational structure of the Bank of Greece, with regard to the separation of prudential supervision from resolution, in the draft provisions.

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

Done at Frankfurt am Main, 16 April 2012.

[signed]

The President of the ECB

Mario DRAGHI

4 Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 1).