



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 10 February 2012**  
**on the system for monitoring transactions in book-entry securities**  
**(CON/2012/8)**

**Introduction and legal basis**

On 27 January 2012, the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on a set of draft legislative provisions (hereinafter the ‘draft provisions’) amending Law 2198/1994<sup>1</sup> in relation to the entry of financial instruments and interests therein in the system for monitoring transactions in book-entry securities.

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 the third and fifth 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<sup>2</sup>, as the draft law relates to the Bank of Greece and to 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 provisions**

- 1.1 The draft provisions aim at enhancing the legal framework governing the operation of the system for monitoring transactions in book-entry securities (hereinafter the ‘System’) established by Law 2198/1994 to monitor transactions in book-entry securities, in particular as regards the possibility for financial instruments other than Greek government bonds to be entered in the System. The Bank of Greece manages the System. The proposed measures introduce new categories of financial instruments that may be entered into the System (hereinafter the ‘financial instruments’)<sup>3</sup> and provide four main possibilities for such instruments and interests therein to be entered into the System.
- 1.2 Draft Article 11(1) provides the possibility for financial instruments to be issued for the first time in the System by Greek or foreign issuers. Draft Article 11(2) provides the possibility for financial instruments already issued by Greek or foreign issuers outside the System, and for interests therein,

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<sup>1</sup> FEK A 43, 22.3.1994.

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.

<sup>3</sup> These are the transferable securities provided for in Article 2(13) of Law 3607/2007, with the exception of shares in companies, and money market instruments provided for in Article 2(14). Law 3606/2007 (FEK 175A, 17.8.2007) transposes into Greek law Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

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to be issued in book entry form also in the System as book-entry securities representing the rights in the underlying instruments. In this latter case, according to draft Article 11(3)(a) and (b), the issuer of the financial instruments or interests therein in the System may be (a) the issuer of the underlying instruments; (b) a System participant or (c) any other entity specified in draft Article 11(3)(a)(ii). Draft Article 11(3) to (9) regulates in detail the claims deriving from such securities and the rights and obligations of the parties involved. Draft Article 11(10a) provides to the Bank of Greece the possibility to hold in securities accounts outside the System financial instruments already issued by Greek or foreign issuers outside the System and interests therein, and to issue book-entry securities for these instruments and interests in the System. Draft Article 11(10b) provides the possibility for financial instruments already issued by Greek or foreign issuers outside the System to be held with the System, by means of the Bank of Greece holding such securities through a securities account with another, i.e. foreign, central securities registry or depository, hereby acting as a custodian for its System participants.

### **2. General observations**

- 2.1 The ECB welcomes the general objective of the draft provisions, which the ECB understands is to enhance the System's capabilities for the entry into it of financial instruments issued in another central securities registry or depository and interests therein, in line with current practice across the European Union. For the sake of legal certainty, those capabilities could be set out in a more straightforward manner in the draft provisions, in order to enhance clarity as to their scope and purposes.
- 2.2 In the same vein, the legitimate purpose of updating the legal framework governing the System could be served more efficiently if the sequence under which the various new capabilities feature in the draft provisions corresponded to the extent of their use in European securities markets. In particular, the ECB understands that Article 11(10b) aims at reflecting in Greek legislation prevailing practice in the Union, i.e. the possibility for instruments already issued in other systems to be held with the System through accounts provided by the Bank of Greece as a custodian via a link. Despite the frequency of its use, this particular capability only appears at the end of the draft provisions, which emphasise other less extensively used capabilities.

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

Done at Frankfurt am Main, 10 February 2012.

[signed]

*The President of the ECB*

Mario DRAGHI