EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 20 February 2013

on the profit distribution of the Bank of Greece

(CON/2013/15)

Introduction and legal basis

On 31 January 2013, the European Central Bank (ECB) received a request from the Bank of Greece for an opinion on draft legislative provisions amending 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 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[1], as the draft provisions relate to 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 has adopted this opinion.

1. Purpose of the draft provisions

The draft provisions amend Article 71(3) of the Statute of the Bank of Greece on the appropriation of its profits[2]. In particular, the proposed amendment expressly enables the Bank of Greece to transfer to the Greek State its income accruing from its Securities Market Programme (SMP) portfolio.

2. General observations

The ECB notes that the proposed amendment to the Statute of the Bank of Greece has to be seen in the context of the Eurogroup statement on Greece of 27 November 2012[3]. According to this statement, the euro area Member States would be prepared to consider initiatives, including a 'commitment by Member

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1 OJ L 189, 3.7.1998, p. 42.

2 Article 71 of the Statute of the Bank of Greece was last amended by Article 165(7)(i) of Law 4099/2012 (FEK 250/20.12.2012) ratifying the decision of the 79th Annual General Meeting of Shareholders of the Bank of Greece of 24 April 2012. A new paragraph 3 was added to Article 71, expressly enabling the Bank of Greece to transfer to the Greek State for the financial years 2012-2020 its income from bonds it held in its investment portfolio on 31 December 2011. The ECB issued Opinion CON/2012/31 on the relevant draft provisions. All ECB Opinions are published on the ECB's website at www.ecb.europa.eu.

3 Available on the Council's website at www.consilium.europa.eu.

States to pass on to Greece's segregated account, an amount equivalent to the income on the SMP portfolio accruing to their national central bank as from budget year 2013'.

3. Transfer of Bank of Greece's SMP income to the Greek State

3.1 Article 71(3) of the Statute of the Bank of Greece currently provides that exceptionally for the fiscal years 2012 to 2020, and following a decision of its General Council implementing an international agreement, the Bank of Greece's income resulting from Greek government bonds held in its investment portfolio on 31 December 2011 may be transferred to the Greek State. It further specifies that the transfer of such income will take place after the payment of the 12% dividend on the capital, provided that the regular reserve fund has been funded up to the amount of the capital of the Bank of Greece and that the income transferred does not exceed the remaining amount of net profits. While the draft provisions are intended to supplement Article 71(3), the ECB notes that their interaction with the other provisions of Article 71 on the appropriation of the Bank of Greece's profits must ensure a robust framework for the profit distribution by the Bank of Greece, as outlined below.

3.2 The transfer of the Bank of Greece's investment portfolio income currently provided for in Article 71(3), as well as of the SMP income under 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 a national central bank (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 Bank of Greece's income from Greek government bonds as well as from the SMP portfolio 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[4]. The draft provisions may create the impression that it is not the 'profits' but 'income' stemming from these bonds that is the subject of the transfer. An amendment to the draft provisions would thus be warranted, to reflect the above profit distribution principle. This would ensure clarity and be consistent with the scope of application of Article 71, which is the sole Article of Section XIII entitled 'Appropriation of profits'.

3.3 In addition, the distribution of profits must comply with the principle of financial independence[5]. Profits may be distributed to the State budget only after any accumulated losses from previous years have been covered and financial provisions deemed necessary to safeguard the real value of the NCB's capital and assets have been created[6]. The ECB understands that the financial provisions specified in the first sentence of Article 71(1) will always be constituted prior to the distribution of

4 See also paragraph 3.1.1 of Opinion CON/2012/31.

5 See also paragraph 3.1.2 of Opinion CON/2012/31.

6 See also page 27 of ECB's Convergence Report 2012.

any profits, including where the exceptional distribution rules of Article 71(3) apply. In relation to accumulated losses from previous years, the ECB notes that currently Article 71(1) does not explicitly provide that such losses may be covered prior to the profit distribution. The ECB understands that the relevant principles on profit distribution enshrined in Greek company law apply in this respect and that, according to such principles, accumulated losses from previous years are covered before profit distribution[7]. However, in line with the requirements for financial independence, as described above, and considering that other deductible items are explicitly referred to in Article 71(1), the consulting authority could consider amending the profit distribution rules specified in the Statute of the Bank of Greece in order to explicitly provide that profits may be distributed to the State budget not only after the above financial provisions have been created but also after any such accumulated losses from previous years have been covered.

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

Done at Frankfurt am Main, 20 February 2013.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

7 See codified Law 2190/1920 on sociétés anonymes in particular Articles 44a et seq. According to Article 72 of the Statute of the Bank of Greece, the provisions of the laws on sociétés anonymes and banks apply to the Bank of Greece, unless they conflict with its Statute.