EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 March 2010

on amendments to the legal framework on the enhancement of liquidity of the economy in response to the impact of the international financial crisis

(CON/2010/21)

Introduction and legal basis

On 8 February 2010 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on two sets of draft legislative provisions in relation to the Law on the enhancement of liquidity of the economy in response to the impact of the international financial crisis (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 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 a national central bank 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

1.1 The purpose of the first set of draft provisions is to extend to the fiscal year 2009 the restriction imposed by Article 28 of Law 3756/2009[2] in relation to dividend distribution by banks participating in the liquidity enhancement scheme (hereinafter the 'scheme') under Article 1 of Law 3723/2008[3]. More specifically, under Article 1(3) of Law 3723/2008, the distribution of dividends to shareholders during the period of participation in the scheme may not exceed 35%, which is the minimum percentage provided for in Article 3(1) of Law 148/1967[4]. Article 28 of Law 3756/2009 further stipulates that the distribution of dividends under Article 1(3) of Law 3723/2008 for the fiscal year 2008 is to be restricted to shares only; this restriction is now being extended to dividend distribution for the fiscal year 2009.

1 OJ L 189, 3.7.1998, p. 42.

2 Law on the Dematerialised Securities System, the capital market, tax issues and other matters, FEK A53/31.3.2009.

3 Law on the enhancement of liquidity of the economy in response to the impact of the international financial crisis, FEK A 250/9.12.2008.

4 Law on measures to enhance the capital market, FEK A 173.

1.2 The second set of draft provisions aims at introducing arrangements in relation to the repurchase of preference shares acquired by the Greek State under the same Article 1 of Law 3723/2008, in order for the banks participating in the scheme to exit, when the market and financial circumstances so allow, the recapitalisation part of the scheme. In particular, according to the second set of draft provisions, which replaces Article 1(1) second subparagraph of Law 3723/2008[5], the preference shares are to be repurchased by the bank at the issue price, five years after their acquisition or earlier, following approval by the Bank of Greece. After the expiry of the five-year period, if the General Assembly of the bank has not decided to repurchase the shares, a cumulative increase in the price of 2% per year will be imposed in addition to the annual fixed rate of return that is due to the Greek State under Article 1(3) of Law 3723/2008[6], by a decision of the Minister of Finance, following a recommendation of the Bank of Greece.

2. General observations

In its Opinion CON/2008/79[7] the ECB expressed its views on the arrangements introduced by Law 3723/2008 to address the impact of the international financial crisis. The ECB's observations made on that occasion also apply, where relevant, to the changes proposed by the draft provisions. The ECB notes that both sets of draft provisions are broadly in line with the conclusions adopted at the Ecofin Council meeting of 7 October 2008, which highlighted common principles to guide the action of Member States[8], and with the 'Declaration on a concerted European action plan of the euro area countries' issued on 12 October 2008 by the Heads of State of the euro area[9], confirming their commitment to act together in a decisive and comprehensive way to restore confidence in and the proper functioning of the financial system, with the aim of restoring appropriate and efficient financing conditions for the economy.

3. Specific observations

The ECB understands, as stated above, that the first set of draft provisions extends the restriction imposed by Article 28 of Law 3756/2009 to dividend distribution for the fiscal year 2009. Moreover, it understands that the second set of draft provisions removes the current obligation for banks participating in the scheme to repurchase the preference shares within five years of their acquisition. At the same time, the second set of draft provisions introduces an incentive for banks to exit the recapitalisation scheme after the expiry of the five-year period by imposing the cumulative

5 According to the current text, such preference shares must be repurchased by the bank at the issue price after five years or, optionally, earlier and in any case after 1 July 2009, following approval by the Bank of Greece.

6 Under Article 1(3), the preference shares carry the right to a fixed rate of return of 10% upon the contributed capital.

7 Opinion of the European Central Bank of 27 November 2008 at the request of the Greek Ministry of Economy and Finance on a draft law on enhancing liquidity of the economy to address the impact of the international financial crisis and on a draft decision on its implementation. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

8 See the press release of the 2894th Ecofin Council meeting (13784/08), available on the Council's website at www.consilium.europa.eu.

9 The Declaration is available on the former French Presidency's website at www.ue2008.fr.

increase described above. In this regard the ECB notes that the second set of draft provisions is in line with the recommendations of the Governing Council of the European Central Bank on the pricing of recapitalisations according to which terms should be set for the redemption of the instruments used for recapitalisations, either on the basis of a period of time or evolution of market conditions, so as to retain the temporary nature of the State's involvement and discourage financial institutions from maintaining such involvement for an extensive period of time[10].

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

Done at Frankfurt am Main, 8 March 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

10 The recommendations were adopted in 2008 and are available on the ECB's website at www.ecb.europa.eu.