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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 23 March 2011

on legislation related to covered bonds

(CON/2011/27)

Introduction and legal basis

On 2 February 2011, the European Central Bank (ECB) received a request from the Cypriot Ministry of Finance for an opinion on certain draft laws (hereinafter the 'draft laws') related to the Law on the issue of covered bonds from approved institutions and the business of covered bonds by institutions with covered bonds obligations (hereinafter the 'Law on covered bonds')[1].

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 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 provisions[2], as the draft laws relate 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 laws

The draft laws supplement the Law on covered bonds on which the ECB was consulted earlier[3]. Specifically, they amend: (i) the Law on banking[4]; (ii) the Law on the transfer of banking activities[5]; (iii) the Law on Department of Lands and Surveys (fees and charges)[6]; (iv) the Law on immovable property (transfer and mortgage)[7]; (v) the Law on companies[8]; and (vi) the Law on cooperative societies[9] (hereinafter collectively referred to as the 'basic laws'). The purpose of the proposed amendments is to

1 Law 130(I)/2010, *Episimi Efimerida tis Dimokratias,* Annex I(I), No 4266, 23.12.2010.
2 OJ L 189, 3.7.1998, p. 42.
3 See Opinion CON/2010/73; all ECB Opinions are published on the ECB's website at www.ecb.europa.eu.
4 Law 66(I)/1997, *Episimi Efimerida tis Dimokratias,* Annex I(I), No 3168, 18.7.1997.
5 Law 64(I)/1997, *Episimi Efimerida tis Dimokratias,* Annex I(I), No 3168, 18.7.1997.
6 Cap 219.
7 Law 9(I)/1965, *Episimi Efimerida tis Dimokratias,* Annex I(I), No 393, 15.3.1965.
8 Cap 113.
9 Law 22(I)/1985, *Episimi Efimerida tis Dimokratias,* Annex I(I), No 2043, 29.3.1985.

bring the basic laws into line with the provisions of the Law on covered bonds, so as to facilitate the application of its provisions.

2. General remarks

In Opinion CON/2010/73, the ECB had expressly drawn the consulting authority's attention to the need for the competent Cypriot authorities to consult the ECB on the draft laws as a prerequisite for a thorough assessment of the parameters relevant to the application of the Law on covered bonds, as well as for a comprehensive evaluation by the ECB of its interplay with other relevant Cypriot legislation that may have an impact on the rights of bondholders, in particular vis-à-vis of the issuers of Cypriot law-governed covered bonds[10]. The ECB understands that the draft laws cover the amendments to be made to all relevant Cypriot legislation having a bearing on the issuance of covered bonds in Cyprus. It also notes that it was consulted, at an earlier stage, on a Directive of the Central Bank of Cyprus intended to complement the Law on covered bonds, and which has since been adopted[11]. The ECB welcomes the present consultation request, which follows up on the advice conveyed in its earlier opinion. The ECB is satisfied that, subject to its specific comments, the draft laws supplement the Law on covered bonds in a manner consistent with the protection of the interests of bond holders and the protection of financial stability.

3. Specific remarks

3.1 Article 48 of the Law on cooperative societies and the new Article 33N of the Law on banking are to be amended and introduced, respectively, so that cooperative credit societies and banks with covered bond liabilities cannot be dissolved, despite the fact that their business has been fully wound up, before the cooperative credit societies' Commissioner or the Central Bank of Cyprus have 'terminated' ('τερματίσει') the appointment of the covered bonds administrator, in accordance with Article 67 of the Law on covered bonds. The ECB understands that the reference in the draft law to the 'termination' of the appointment of the covered bonds administrator is intended as a reference to the completion of the process leading up to the termination of the administrator's appointment, rather than to the 'termination' of the administrator's mandate. The consulting authority may wish to consider a less equivocal formulation for both provisions.

3.2 A new Article 298A is to be introduced into the Law on companies, to the effect that claims based on covered bonds cannot be filed by their holders individually, in their capacity as the issuer's creditors, but rather by the covered bonds administrator, who shall file such claims collectively with the liquidator. The ECB understands that the purpose of this new provision is to facilitate, procedurally, the verification of claims where an institution with covered bonds obligations is

10 See Opinion CON/2010/73, paragraph 2.3.

11 Central Bank of Cyprus Directive on the Issuance of Covered Bonds of 2010, *Episimi Efimerida tis Dimokratias,* Annex III(I), No 4468, of 23.12.2010.

wound-up. The ECB also understands that the proposed restriction of individual claims is not intended to restrict the assertion, by bondholders, of their claims against the bonds' issuer, where the latter is in the process of being wound-up, but rather to contribute to the orderly exercise of such claims.

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

Done at Frankfurt am Main, 23 March 2011.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO