EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

at the request of the Bank of Greece under Article 105 (4), second indent, of the Treaty establishing the European Community ("the Treaty") and Article 4 (a), second indent, of the Statute of the European System of Central Banks and of the European Central Bank ("the ESCB/ECB Statute") on draft amendments to the Statute of the Bank of Greece

[**CON/00/07**]

1. On 24 March 2000 the European Central Bank (ECB) received a request from the Bank of Greece for an ECB Opinion on a consultation regarding draft amendments to the Statute of the Bank of Greece ("the Draft Statute").

2. The ECB's competence to deliver an opinion is based on Article 2, paragraph 1, third indent, of Council Decision (98/415/EC) of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions, as the legislative proposal contains provisions concerning central banks, in the present case the Bank of Greece. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the ECB, this ECB Opinion has been adopted by the Governing Council of the ECB.

3. The Draft Statute aims at amending the present Statute of the Bank of Greece in order to ensure the full legal integration of the Bank of Greece into the Eurosystem. Furthermore, the Draft Statute addresses a number of other issues of importance to the Bank of Greece, related to its future integration into the Eurosystem. The Bank of Greece expects that the proposed amendments to its Statute will be adopted at its General Meeting of Shareholders on 25 April 2000. It is also expected that the Statute will be ratified immediately afterwards through law by Parliament and published well in advance of 31 December 2000 in the Government Gazette in order to take effect on 1 January 2001. In view of these procedures and in view of the report which the ECB is required to deliver under Article 122 (2) of the Treaty, the Bank of Greece has adapted its Draft Statute in the light of remarks made during the present consultation procedure.

This was confirmed in a letter from the Bank of Greece dated 12 April 2000, to which this Opinion will refer where appropriate.

4. The Statute of the Bank of Greece was amended to meet the requirements of the Treaty and the ESCB/ECB Statute for Stage Three of EMU, which were introduced with Law 2548 dated 12 December 1997, published in the Government Gazette on 19 December 1997. Law 2548/1997 was then, subsequently, incorporated in the Statute of the Bank of Greece through a decision of the Extraordinary Meeting of Shareholders of the Bank of Greece held on 22 December 1997. In accordance with Article 7 of the Bank's Statute, this decision was later ratified by Parliament through Law 2609/1998, which was published in the Government Gazette on 11 May 1998. The European Monetary Institute (EMI) concluded in its March 1998 Convergence Report that, with the adoption and entry into force of Law 2548/1997, there were no remaining incompatibilities with Treaty and Statute requirements on central bank independence in the Statute of the Bank of Greece. The law addressed both the period during which the Bank of Greece is not an integral part of the Eurosystem as well as the situation in which Greece will have adopted the euro. The EMI also concluded, however, that there were still two imperfections in the Statute of the Bank of Greece (as meanwhile contained in Law 2609/1998; see above), which required adaptation before Greece adopts the euro. Some of the provisions of the law will become obsolete upon the adoption by Greece of the euro. This applies to the following provisions:

   - Article 2.4 on the Bank's participation in international monetary and economic organisations does not refer to the ECB's power of approval;
   - Article 7.4 on the imposition of minimum reserves and penalties in case of non-compliance does not recognise the ECB's powers in this field.

   Following the findings of the 1998 EMI Convergence Report, the Draft Statute of the Bank of Greece is aimed at removing the two above imperfections as well as at a further fine-tuning of the Bank of Greece's legal integration in the Eurosystem.

5. The imperfection in Article 2.4 is remedied in Article 2.6, last indent, of the Draft Statute through an explicit recognition of the fact that, in accordance with Article 6.2 of the ESCB/ECB Statute, participation in international monetary institutions is subject to approval of the ECB. The imperfection in Article 7.4 is remedied in Article 55, No. 21 (2), of the Draft Statute which explicitly recognises that, after the adoption of the euro by Greece, the competence to impose minimum reserves and related matters is governed exclusively by the Eurosystem's regulatory framework.

6. The ECB notes that Article 2 (f) of the Draft Statute of the Bank of Greece states that the Bank of Greece has the exclusive right to issue legal tender banknotes within Greece and makes reference to the ECB's right of approval. The ECB is of the opinion that the reference to the ECB's right of approval should be replaced by a general reference to Article 106 of the Treaty. In its letter dated 12 April 2000, the Bank of Greece confirms that this point will be accommodated through Article 2, third paragraph, which will read as follows:

"As from the adoption of the euro as the currency of Greece, the Bank of Greece no longer autonomously performs the tasks under a, b, c and the ESCB-related tasks under e above, but, being an integral part of the European System of Central Banks, contributes to the performance of its tasks according to Article 2 of the ESCB Statute and acts in accordance with the guidelines and instructions of the ECB, as stipulated in Articles 105, paragraph 2 and 3, and 111 of the Treaty establishing the European Community as well as in Articles 3, 12, 14 paragraph 3, 30 and 31 of the ESCB Statute. As from the same date, the Bank of Greece may issue banknotes which have the status of legal tender in accordance with the provisions of Article 106 of the Treaty establishing the European Community and Article 16 of the ESCB Statute. In addition, it performs the tasks set forth in the present Statute and the other applicable provisions".

The ECB welcomes this clarification.

7. The ECB notes that provisions that no longer apply as from the adoption of the euro by Greece such as Articles 40-43 and 60 of the present Statute of the Bank of Greece, will be deleted. Accordingly, related provisions in Article 27 (e) and (g) need to be deleted as well. In its letter dated 12 April 2000, the Bank of Greece confirms that such deletion will take place. For reasons of legal certainty, the ECB welcomes the abolition of any provisions that will become obsolete after the adoption of the euro.

8. The ECB notes that with a view to ensuring the integration of the Bank of Greece in the Eurosystem, Articles 2 and 44 of the Draft Statute aim to make the Bank of Greece an integral part of the Eurosystem by recognising that certain tasks are performed without prejudice to the provisions of the ESCB/ECB Statute. The ECB welcomes this basic assumption.

9. The power of the Bank of Greece to impose administrative sanctions in the performance of its supervisory tasks is dealt with in a very comprehensive way. In addition, Article 55A of the Statute

of the Bank of Greece deals with the power of the Bank to impose sanctions by virtue of its supervisory role. The ECB has no specific remarks on this Article.

10. The ECB notes that Article 55, second indent, of the Draft Statute relating to the Bank's tasks contains language that unambiguously reflects the integration of the Bank of Greece into the Eurosystem. The ECB welcomes such a general wording to clarify that the application of the Eurosystem's legal framework is not prejudiced. Furthermore, the ECB welcomes Article 55.10 of the Draft Statute because it contains an explicit provision to clarify that, upon the adoption of the euro, the competence of the Monetary Policy Council of the Bank of Greece will change and that it may subsequently execute the terms and conditions of monetary policy as laid down in the monetary policy legal framework of the Eurosystem.

11. The ECB understands that certain provisions contained in the Draft Statute are inherent to the legal personality of the Bank of Greece as a stock corporation. Accordingly, Article 55.19 addresses the power of the Bank of Greece to issue corporate bonds in its capacity as a stock corporation. The ECB does not have any specific remarks on this provision. Incidentally, the ECB notes in this context that any non-ESCB related tasks which may be attributed to the Bank of Greece are subject to Article 14.4 of the ESCB/ECB Statute.

12. Furthermore, Article 55C of the Draft Statute concerning the imposition of sanctions in the area of statistics will become superfluous after the adoption of the euro, since Council Regulations and related legal acts of the ECB in the area of statistics apply directly in participating Member States without the need for any reference to them in national legislation. Nevertheless, the ECB welcomes the fact that Article 55C of the Draft Statute explicitly recognises the exclusive competence of the ECB in the field of those statistics that are related to the ESCB tasks.

13. Article 57A of the Draft Statute codifies provisions stipulating prerogatives in the creation and perfection of collateral taken by the Bank of Greece. This Article provides for a legal pledge on book-entry securities held in the participant's securities account which is automatically created in favour of the Bank without any separate contract with a counterparty, thus deviating from the provisions for the creation of a pledge set out in the Greek Civil Code. Under the envisaged pledge structure of Article 57A of the Draft Statute, the Bank of Greece automatically has a right of pledge up to the amount of the claim with the applicable margin of the Bank of Greece vis-à-vis a counterparty. This provision addresses any concerns that might have arisen as a result of the "specification principle" that applies to the creation of pledge under Greek law and requires that collateral is precisely itemised by parties. This Article applies also in cases where the Bank of

Greece acts on behalf of other national central banks (NCBs) or of the ECB. The practical effect of such a provision will be apparent primarily within the framework of the Multilateral Agreement between the ECB and NCBs on the Correspondent Central Banking Model (CCBM).

14. Moreover, Article 57A of the Draft Statute contains provisions on the effects of bankruptcy of a participant in a payment system, which may not be antedated prior to the publication of a court's bankruptcy order. The objective of this Article is to secure claims of the Bank of Greece as well as of the NCBs and/or the ECB against any system participants. This provision ensures the validity of the realisation of the collateral by the Bank of Greece acting on its own behalf or on behalf of NCBs or the ECB. Such a provision is in line with the provisions of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, which has already been implemented in a separate Law 2789/2000 published in the Government Gazette on 11 February 2000.

15. Article 55.5 of the Draft Statute provides explicitly for the Bank of Greece to oversee and manage any payment and settlement systems. This provision is welcomed since the Bank of Greece already manages a settlement system and it gives the Bank authority to oversee a very important part of the financial system.

16. In the Draft Statute the expression "the euro as the national currency of Greece" is used, which may be perceived as ambiguous, since this does not clearly reflect the wording of Council Decision (EC) No. 974/98 of 3 May 1998 on the introduction of the euro, which defines the euro as "the currency of the participating Member States". Although the ECB appreciates that the above expression is mainly used to indicate the replacement of the Greek drachma by the euro, the ECB recommends deletion of the word "national". In its letter dated 12 April 2000, the Bank of Greece confirms that such deletion will take place.

17. As regards the explanatory note to the Draft Statute, the ECB notes the following. In Article 2, second paragraph, "Treaty of the European Union" should be replaced by "Treaty establishing the European Community". In its letter dated 12 April 2000, the Bank of Greece confirms that this replacement will take place. In Article 55.17 of the explanatory note, it is stated that the ability of the Bank of Greece to carry out transactions with foreign central banks and financial institutions, as well as with international organisations "is without prejudice to the powers of the institutions of the European Union in this field". The ECB recommends clarification, as the ECB is, strictly speaking, not an institution of the European Union. This could be accomplished through the

addition of the words “and bodies” after the word “institutions”. In its letter dated 12 April 2000, the Bank of Greece confirms that such an addition will be made.

18. The ECB notes that Law 2548/1997 became obsolete after the adoption of Law 2609/1998 with regard to provisions which are incompatible with the amended Statute as presently contained in Law 2609/1998. While, in accordance with the principle “lex posteriori derogat priori” and under Article 28 of the Greek Constitution, Law 2609/1998 (as amended in the future) would prevail over Law 2548/1997, the ECB notes that Article 109 of the Treaty nevertheless requires, for reasons of legal clarity and certainty, the removal of obsolete provisions. The ECB has been informed by the Bank of Greece that the Greek legislative authorities intend to do so in the law ratifying the present amendments to the Statute of the Bank of Greece, on which the ECB will also have to be consulted under Article 105 (4), second indent, of the Treaty as repeated in Article 4(a), second indent, of the ESCB/ECB Statute. In this connection, the ECB notes that, in its view, the legislative procedures to repeal the relevant provisions of Law 2548/1997 need to be accomplished as a matter of urgency.

19. As regards the present Statute of the Bank of Greece, the ECB acknowledges that the following observations under paragraphs 20 to 24 have not been raised in the EMI’s 1998 Convergence Report. However, the ECB is at the same time of the opinion that these points merit further consideration for reasons of legal certainty and clarity.

20. The ECB notes that originally no amendments to Article 2 (a) and (b) of the present Statute of the Bank of Greece were envisaged. These provisions could, after the adoption of the euro by Greece, give the impression that, on the one hand, the drachma would still be a currency in its own right and, on the other, that the Bank of Greece would be responsible for exchange rate policy. The ECB takes the view that the technique proposed in order to avoid giving this impression, i.e. amending the third paragraph of Article 2 by inserting references to the tasks of the ESCB and to the Bank of Greece forming an integral part of the ESCB as from the moment of adoption of the euro, might not be sufficiently clear. The ECB recommends therefore that the provisions concerned be adapted. In its letter dated 12 April 2000, the Bank of Greece confirms that this point will be accommodated through Article 2, third paragraph, which has already been cited above in paragraph 6 of this Opinion and to which may be referred here for reasons of brevity. The ECB welcomes this clarification.

21. The ECB notes that the second paragraph of Article 5B comprises the obligation of the Governor of the Bank of Greece to appear, when so requested, before the competent parliamentary

committee in order to report on matters relating to the Bank's field of competence. The ECB notes that such an obligation can prejudice neither the fact that the accountability for ESCB-related tasks has been transferred to the Community level nor the ESCB's confidentiality regime to which a governor of an NCB is subject. This implies that the provision of information by the Bank's Governor to a parliamentary committee is subject to constraints as far as the execution of ESCB-related tasks is concerned.

22. The ECB notes that Article 27 in conjunction with Articles 35A and 55 of the Draft Statute could be interpreted in such a way that the General Council of the Bank of Greece will, after the adoption of the euro, retain decision-making power in at least some ESCB-related areas (see, for instance, Article 27(b) which refers to the broad range of operations listed in Article 55, unless otherwise stated in such Article or elsewhere). Whilst the ECB appreciates that, in the context of the division of responsibilities between the Monetary Policy Council (Article 35A) and the Bank's Governor (Article 31, second paragraph), on the one hand, and the General Council (Article 27), on the other, it is not the intention to attribute any ESCB-related tasks to the General Council, this should, in the ECB's view, be made clearer. This is also important in view of the fact that the General Council together with the Councillors and Government Commissioner do not fulfil requirements of central bank independence derived from the Treaty and the ESCB/ECB Statute for the execution of ESCB-related tasks. A method to achieve such clarity would be to list in Article 27(b) which paragraphs of Article 55 do not fall within the competencies of the General Council because they represent ESCB-related tasks. In its letter dated 12 April 2000, the Bank of Greece confirms that this point will be accommodated through Article 27(b) which will read as follows: "general conditions and extent of the business conducted outside the scope of ESCB-related tasks". The ECB welcomes this clarification.

23. Article 27 (l) of the present Statute of the Bank of Greece vests the General Council with the power to decide "in questions concerning the design, text, material, denomination and supply of banknotes, their withdrawal and cancellation." The ECB notes that this can, of course, only apply to banknotes denominated in Greek drachma and not to euro banknotes, which implies that this provision will have to be repealed as being obsolete after the introduction of euro banknotes, except for the withdrawal and cancellation of banknotes denominated in Greek drachma. This applies equally to Articles 66, 67 and 68 of the present Statute of the Bank of Greece. In its letter dated 12 April 2000, the Bank of Greece confirms that this point will be accommodated through an explicit limitation of the scope of Articles 27 (1), 66, 67 and 68 to "banknotes denominated in drachmae". The ECB welcomes this clarification.

24. In summary, the ECB welcomes the Draft Statute of the Bank of Greece. The ECB notes that, assuming that the draft amendments to the Statute of the Bank of Greece will be adopted by its General Assembly of Shareholders on 25 April 2000, that they will be ratified by Parliament and that they will enter into force on time, as they were presented to the ECB in the present consultation procedure, and assuming that Law 2548/1997 will be adapted accordingly, there will be no remaining imperfections in the Statute of the Bank of Greece relating to the requirements of the Treaty and the ESCB/ECB Statute for the full legal integration of the Bank of Greece in the Eurosystem.

25. The ECB confirms that it has no objection to this ECB Opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 17 April 2000.

The President of the ECB

[signed]

Willem F. Duisenberg