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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 21 April 2009

at the request of the Greek Ministry of Economy and Finance on a draft amendment to the Law on enhancing liquidity of the economy to address the impact of the international financial crisis

(CON/2009/39)

Introduction and legal basis

On 10 April 2009 the European Central Bank (ECB) received a request from the Greek Ministry of Economy and Finance for an opinion on a draft amendment to the Law on enhancing liquidity of the economy to address the impact of the international financial crisis (hereinafter the 'draft amendment').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the sixth 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 amendment relates 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 amendment

The draft amendment clarifies and supplements Article 1 of Law 3723/2008 on enhancing liquidity of the economy to address the impact of the international financial crisis[2] (hereinafter the 'Law'). In particular, the draft amendment specifies that, for the purposes of increasing the share capital of a corporate bank (*société anonyme*) pursuant to Article 1 of the Law in conjunction with Decision 542a/B2884/26-11-2008 of the Minister for Economy and Finance implementing the Law[3] (hereinafter the 'Decision'), the valuation of the bonds contributed by the Greek State for the purpose of taking up the shares issued in the context of the share capital increase must take place before the State takes up the shares. The valuation is to be carried out by a committee composed of two independent certified auditors, which will be appointed by a decision of the Minister for Economy and Finance. The valuation will be based on the features of the bonds contributed, which

1 OJ L 189, 3.7.1998, p. 42.

2 *FEK* 250 A/9.12.2008.

3 *FEK* 2471V/4.12.2008.

will be defined by the competent department of the Ministry of Economy and Finance. Furthermore, in case of a repurchase of preference shares with Greek Government bonds, the same committee will carry out the valuation of the bonds.

As provided for in the draft amendment, a decision of the Minister for Economy and Finance will define the time for the submission of the committee's report to the Ministry of Economy and Finance and to the relevant credit institution, as well as the remuneration of the members of the committee.

Furthermore, the draft amendment introduces a derogation from the provisions of Article 9 of Codified Law 2190/1920 governing the valuation of contributions to corporations (*sociétés anonymes*), *inter alia* in the event of an increase in their share capital.

In addition, the draft amendment provides that the abovementioned valuation report will not be subject to the publicity requirements provided for in Article 7b of Codified Law 2190/1920, and also stipulates that in case of a capital increase for the redemption of preference shares, the relevant decision will be taken pursuant to Article 29 (1) and (2) and Article 31(1) of Codified Law 2190/1920.

Moreover, the draft amendment provides that it prevails over any decisions of the general assemblies of the relevant credit institutions in the event of conflict, and that its provisions apply from 1 January 2009. According to the explanatory memorandum to the draft amendment, as the new provisions clarify and supplement Article 1 of the Law governing share capital increases, it is appropriate that they enter into force prior to the submission of requests for share capital increase by the credit institutions concerned and the grant of the relevant approvals.

2. General observations

In its Opinion CON/2008/79 of 27 November 2008, the ECB has already commented on the Law and on the Decision, both of which are referred to in the draft amendment. To the extent relevant, the observations made in Opinion CON/2008/79 also apply to the changes proposed by the draft amendment.

In particular, the ECB notes that the recapitalisation measures considered in Member States are aimed at strengthening the capital position of fundamentally sound financial institutions in order to improve the functioning and stability of the banking system and to ensure the proper financing of the economy. The ECB notes that the above principles should be taken into consideration in the valuation of the bonds contributed by the Greek State for the purposes of increasing the share capital of corporate banks to ensure a consistent approach to defining the conditions for recapitalisation.

Against this background, the ECB reiterates that in line with the 'Declaration on a concerted European action plan of the euro area countries'[4], the conditions for capital support should aim at protecting the interests of taxpayers and respecting the level playing-field among institutions in the euro area. In addition, the ECB highlights that the pricing conditions for capital support should be risk-based and market-oriented, determined by taking into consideration the specific risk of both the specific instrument chosen for injecting capital and the institution concerned. Specific features of the instruments for capital injections should be appropriately chosen so that, while encouraging an early end to the State's capital support of banks, they should not result in an excessive increase in the cost of capital.

Finally, the ECB understands that the draft amendment aims to ensure the proper implementation of Article 1 of the Law by adjusting the rules applying to the valuation of Government bonds to be carried out for the purposes of increasing the share capital of corporate banks to reflect the specific and temporary nature of this recapitalisation measure.

3. Specific observations

The ECB has no specific observations on the draft amendment.

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

Done at Frankfurt am Main, 21 April 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

4 The Declaration is available on the website of the former French Presidency at www.ue2008.fr.