EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 July 2006

at the request of the Bank of Greece
on a draft provision on the Bank of Greece's powers in the field of consumer protection

(CON/2006/38)

Introduction and legal basis

On 3 July 2006 the European Central Bank (ECB) received a request from the Bank of Greece for an opinion on a draft provision on the Bank of Greece's powers in the field of consumer protection (hereinafter the 'draft provision').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 provision concerns a national central bank (NCB). 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 provision

1.1 The draft provision would establish a comprehensive consumer-protection regime for transactions in financial products and services offered by entities supervised by the Bank of Greece. More specifically, it would give the Bank of Greece powers to lay down rules on the following: (i) the transparency of transactions in financial products and services; and (ii) the protection of consumers entering into transactions with entities supervised by the Bank of Greece. The latter power would more specifically include laying down rules on the calculation of interest rates, issuance of all types of payment instruments, financial intermediaries, credit advertising, a consumer's right to opt out of a financial contract or terminate it early, and a financial institution's duty to provide information to consumers. The draft provision also lays down the Bank of Greece's powers to impose sanctions in case of failure to comply with the abovementioned rules and the procedures for imposing such sanctions.

1 OJ L 189, 3.7.1998, p. 42.

1.2 Furthermore, under paragraph 3 of the draft provision, a consultative body would be established in which both the Ministry of Development and the Bank of Greece would participate with the purpose of applying and developing best practices for effective consumer protection, implementing the relevant Community Directives and promoting training programmes addressed both to consumers and to the staff of financial institutions.

1.3 Finally, the draft provision regulates the civil liability of the Bank of Greece's statutory bodies and staff for their acts or omissions when carrying out duties on the basis of the public authority assigned to the Bank of Greece. In this context, it establishes that a collective body or member of staff would only be liable in the case of their wilful misconduct or gross negligence.

2. General observations

2.1 As regards the granting of new consumer-protection powers to the Bank of Greece, the ECB would draw attention to the fact that the new tasks described under paragraph 1.1 are not listed among the functions of the NCBs as specified in the Statute of the European System of Central Banks and of the European Central Bank. However, without prejudice to the Governing Council's powers to take action under Article 14.4 of the Statute, the ECB does not consider that the abovementioned tasks would interfere with the objectives and tasks of the European System of Central Banks (ESCB).

2.2 Nonetheless, it should be noted that pursuant to the last sentence of Article 14.4 of the Statute, the new tasks described in paragraphs 1.1 and 1.2 would have to be performed on the responsibility and liability of the Bank of Greece, and would not be regarded as being part of the functions of the ESCB.

2.3 In more general terms, the ECB welcomes the allocation of new powers under the draft provision to the Bank of Greece to ensure the transparency of terms and procedures of transactions carried out by entities subject to its supervision (i.e. credit institutions, financial leasing companies, factoring companies, mutual guarantee companies, money-market broker companies, counter-guarantee funds and bureaux de change). The imposition of specific transparency requirements for financial transactions, accompanied by effective monitoring of the compliance with those requirements, should allow consumers to compare more easily different products and services on offer and could therefore enhance competition between intermediaries. Moreover, such powers comply with the objectives of financial supervision as laid down in the Statute of the Bank of Greece. In this context, the ECB would draw attention to Article 55A of the Statute of the Bank of Greece, which states that 'prudential supervision shall also be aimed at ensuring transparency of the procedures and terms of transactions carried out by those subject to supervision'. Indeed, prudential supervision and investor/consumer protection are both intended to safeguard the soundness of the financial market and the preservation of confidence in the marketplace. However, it is important to ensure that both functions have adequate and equal emphasis and that appropriate organisational requirements are in place to ensure it. Therefore, the Bank of Greece's intention to

allocate the functions attributed by the draft provision to a specific department goes in the right direction.

3. Specific observations

3.1 *Exclusive competence of the Bank of Greece*

It is the ECB's understanding that all rule-making described under paragraphs 1.1 and 1.2 would fall under the Bank of Greece's exclusive competence. Such exclusive competence in relation to the protection of consumers of financial services would also correspond with the Bank of Greece's exclusive competence to supervise the entities described in Article 55A of its Statute. The ECB welcomes the fact that the Bank of Greece would have the power to establish rules in relation to the transparency of transactions in financial services and products offered by supervised entities, as this could improve the clarity and efficiency of the regulatory framework in Greece, simultaneously ensuring both adequate consumer protection and a level playing field.

3.2 *Financial independence of the Bank of Greece*

The ECB observes that the new tasks described under paragraphs 1.1 and 1.2 are bound to require the Bank of Greece to commit considerable resources, both human and financial, to tasks other than the functions specified in the Statute. The ECB has consistently held the view[2] that 'Member States may not put their NCBs in the position of not having sufficient financial resources to carry out their ESCB or Eurosystem related tasks, as applicable'. The ECB therefore expects that, in planning the transfer of additional powers to the Bank of Greece, care will be taken to ensure that the Bank's operational capacity to carry out Eurosystem-related tasks will not be affected.

3.3 *Establishment of a joint consultative body*

Paragraph 3 of the draft provision could be enhanced by giving the consultative body to be established between the Bank of Greece and the Ministry of Development the task of organising consultations with consumer associations, evaluating such consultations and putting the results to practical use. This would be in line with envisaged Community best practices in the field of consumer protection[3].

3.4 *Liability regime*

The ECB welcomes paragraph 4 of the draft provision, which adequately reflects the Core Principles for Effective Banking Supervision adopted by the Basel Committee on Banking Supervision[4] by requiring protection from personal and institutional liability for supervisory actions

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2 See e.g. the ECB's Convergence Report 2004, p. 28.

3 See e.g. the Amended proposal for a Decision of the European Parliament and of the Council establishing a programme of Community action in the field of consumer policy (2007-2013), COM(2006) 235 final.

4 Available at: http://www.bis.org/publ/bcbs30a.pdf.

taken by bodies and staff of the Bank of Greece in good faith in the course of performing their supervisory duties.

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

Done at Frankfurt am Main, 25 July 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET