



OPINION OF THE EUROPEAN CENTRAL BANK

of 13 April 2011

on the legal framework for the Loan and Consignment Fund and on amendments to the enhancement scheme for the Greek economy's liquidity following the international financial crisis (CON/2011/34)

Introduction and legal basis

On 23 March 2011, 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: (a) the Loan and Consignment Fund (LCF) (hereinafter the 'first set of draft provisions'); and (b) the enhancement of the economy's liquidity following the international financial crisis (hereinafter the 'second set of draft provisions'). Both sets of draft provisions are included in the draft law entitled 'Reform of the operational framework of the Loan and Consignment Fund, the Public Debt Management Agency, public enterprises and bodies, establishment of a secretariat general for public property and other provisions' (hereinafter the 'draft law').

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 provisions¹, as the draft provisions relate to the Bank of Greece (BoG) 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 first set of draft provisions reform the LCF's operational framework². In line with Union law, they introduce a prohibition on cross-subsidisation within the LCF, in particular subsidisation of the services provided by the LCF in the open market, e.g. the granting of loans to private individuals, deposit-taking etc., by activities related to the LCF's reserved operations established under public law, such as consignment deposits, compulsory deposits etc.³. This is to be achieved

¹ OJ L 189, 3.7.1998, p. 42.

² The LCF, established by Law 1608/1919, is a legal entity governed by public law and supervised by the Ministry of Finance.

³ See Article 2 of the draft law, which also sets out terms and conditions for loans to local authorities and enables the LCF to enter into agreements with credit institutions in order for them to take delivery of consignment deposits to be further rendered to the LCF.

by: (a) an operational division of the LCF's reserved sector from its commercial activities sector; and (b) the establishment of a separate branch for the latter, subject to separate accounting monitoring in line with the International Financial Reporting Standards⁴. Furthermore, while the LCF's single legal personality is preserved, the first set of draft provisions provides for the possibility, where necessary⁵, for the commercial activities branch to be spun-off into an existing LCF subsidiary or a new LCF subsidiary to be established for that purpose⁶. Finally, the Minister for Finance is authorised to adopt the LCF's operational rules to ensure the LCF's functioning and activities comply with Union law⁷.

- 1.2 The purpose of the second set of draft provisions, contained in Article 19 of the draft law, is to provide further financial support in the context of the guarantee scheme adopted under Article 2 of Law 3723/2008⁸ through an additional amount of EUR 30 billion. This is subject to the requirement set out in Article 19(2) of the draft law, which provides that each credit institution will prepare and implement a plan for medium-term financing needs to be approved by the BoG and the ECB, in cooperation with the European Commission and the International Monetary Fund (IMF). Furthermore, Article 19(3) of the draft law extends the competences of the representative of the Greek State originally provided for in Law 3723/2008, with a view to ensuring the efficient monitoring of the implementation of the measures for enhancing the relevant credit institutions' liquidity. Finally, Article 19(4) of the draft law extends to the fiscal year 2011 the restriction imposed by Article 1(3) of Law 3723/2008 on dividend distribution by credit institutions participating in the liquidity enhancement scheme. Distribution of dividends in this case is restricted to shares only.

2. Specific observations

The ECB understands that both sets of draft provisions aim to reflect the contents of the updated Economic Adjustment Programme for Greece⁹, in particular the Memorandum of Understanding on Specific Economic Policy Conditionality¹⁰ and the Memorandum of Economic and Financial Policies (MEFP)¹¹). Under the Programme mentioned above, these sets of provisions are subject to a specific timeframe for their implementation.

4 See Article 1 of the draft law.

5 See explanatory note to the draft law.

6 See Article 3 of the draft law. The terms, the conditions and the procedure for the spin-off, as well as any other related detail, will be set out by decision of the Minister for Finance.

7 See Article 4 of the draft law.

8 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.

9 Third Review - winter 2011. Available on the European Commission's website at: <http://ec.europa.eu>.

10 See Section 1 (iii) thereof, under 'Financial Sector Regulation and Supervision', which provides for the unbundling of the LCF's core consignment activity from deposit-taking and loan distribution as part of the actions to be completed by the end of Q1 2011.

11 See paragraph 15 thereof, which states that 'Initiatives underway should help preserve sufficient system liquidity. As a temporary measure, the government will put forward for legislative adoption a new tranche of government guarantees for uncovered bank bonds (proposed as a structural benchmark for end-March). The tranche will be in an amount of €30 billion, and the guarantee scheme will be subject to approval by decision of the European Commission. This additional

- 2.1 In relation to the first set of draft provisions, the ECB welcomes in principle the operational segregation of the LCF's reserved sector from its commercial activities sector. Such segregation of the core consignment activity from deposit-taking and loan distribution activities should address the lack of a level playing field that could arise from cross-subsidisation of the LCF's commercial activities by resources from its reserved sector. In this respect, however, the ECB notes that the first set of draft provisions only provides for the spin-off of the commercial activities branch as an option¹². The ECB takes the view that a segregation could best serve its purpose if followed, in the short-term, by an actual spin-off, as a second step completing the procedure. This would, *inter alia*, enhance legal certainty in terms of the structure, governance and operation of the entity that is to take up the commercial branch of the LCF's activities, including its compliance with the regulatory and supervisory requirements applicable under national and Union legislation to credit institutions.
- 2.2 In relation to the second set of draft provisions, Article 19(2) of the draft law provides that access by domestic credit institutions to the liquidity enhancement provided for in draft Article 19(1) is to be conditional on the submission, by each domestic credit institution, of a medium-term funding plan, for the approval of the BoG and the ECB, in cooperation with the European Commission and the IMF. Article 19(2) might be seen to establish an automatic outcome between the submission of funding plans and the transformation into Eurosystem collateral of the additional guarantees provided for in Article 19(1); however, this does not reflect the need for the Eurosystem to assess, on a case-by-case basis, the actual liquidity needs of individual banks. In fact, regardless of the funding plans submitted for approval, such assessment is needed to ascertain the extent to which the submission of new collateral in the form of State-guaranteed uncovered bank bonds is warranted.
- 2.3 Finally, the ECB considers that the wording of Article 19(2) of the draft law, in particular the reference to 'plan for medium-term financial needs', should be further clarified. The February 2011 update of the MEFP introduced the concept of 'medium-term funding plans'. These plans will aim at reducing excesses in banks' recourse to Eurosystem borrowing and will in particular show how banks will adjust their balance sheets to achieve that goal. The current wording in the draft law could be misleading as to the real nature of the envisaged plans.

liquidity should provide an adequate buffer to address liquidity issue potentially arising from continued market volatility. The tranche will be made available on a bank-by-bank basis, conditioned on the adoption and implementation of medium term funding plans by banks.'

¹² Under Article 3 of the draft law, by virtue of a resolution of the LCF's Board of Directors, the latter's commercial branch may be separated and transferred to an existing or newly incorporated company.

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

Done at Frankfurt am Main, 13 April 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET