



EUROPEAN CENTRAL BANK

9 March 2000

OPINION OF THE EUROPEAN CENTRAL BANK

of 09 March 2000

**at the request of the Danish authorities on a draft Act amending
the Depositors' and Investors' Guarantee Fund Act**

(CON/00/06)

1. On 9 February 2000 the European Central Bank (ECB) received a request from Danmarks Nationalbank, on behalf of the Ministry of Economic Affairs, for an ECB Opinion on a draft Act amending the Depositors' and Investors' Guarantee Fund Act (hereinafter referred to as the "Draft Law").
2. The ECB's competence to deliver an Opinion is based on Article 105 (4), second indent, of the Treaty establishing the European Community (hereinafter referred to as the "Treaty") and Article 2 (1), sixth indent, of Council Decision No. 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, as the Draft Law contains rules applicable to financial institutions which could have a material influence on the stability of financial institutions and markets. In accordance with Article 17 (5), first sentence, of the Rules of Procedure of the European Central Bank, this Opinion has been adopted by the Governing Council of the ECB. This Opinion is based on an unofficial English translation of the relevant provisions of the Draft Law.
3. The ECB understands that the main purpose of the Draft Law is to increase the freedom of choice of the Depositors' and Investors' Guarantee Fund (hereinafter referred to as the "Guarantee Fund") with regard to its methods for dealing with crisis management, on the one hand, and to provide for new rules for decision-making by the board of the Guarantee Fund, on the other. These draft amendments are understood to be necessary in order to avoid uncertainties with the European Community rules concerning state aid. In this sense, the amendments are intended to facilitate a swift and simple administrative procedure for the intervention of the

Guarantee Fund, as a private and independent entity, in the reorganisation of credit institutions or investment firms, with full respect of competition rules.

4. The ECB welcomes the Draft Law and in particular the underlying aim of reinforcing a market-based mechanism for handling situations of crisis relating to credit institutions and investment firms in Denmark. The new rules being introduced in the Depositors' and Investors' Guarantee Fund Act, while enhancing the scope of the functions of the Guarantee Fund, will ensure the observance of certain principles of fair competition, such as transparency of procedures, equal treatment and non-discrimination between credit institutions or investment firms. At the same time, it should be noted that the intervention of the Guarantee Fund will not involve public money, even though it will certainly contribute to the stability of the financial system as a public good. This should strengthen awareness that the safeguards provided by the industry itself, and not the access to public resources, are expected to contain the effects of a crisis. In this manner, it should also have a positive influence on the management and control of risks by market participants.
5. The ECB notes that, according to Article 1 (1), Sections 3 and 4, together with Article 1 (2) of the Draft Law, the Guarantee Fund must reimburse depositors and investors of a given credit institution or investment firm in the event of a suspension of payments or bankruptcy. In cases where the suspension of payments or bankruptcy has not occurred, but where such institution or firm no longer fulfils the conditions necessary for commercial activity, the Guarantee Fund has the option of contributing to the liquidation of such institution or firm by providing non-subordinate creditors with financial assistance or guarantees. This latter option may only be selected if it is viable and is estimated to incur a lower cost for the Guarantee Fund. Therefore, according to the ECB's understanding, the Draft Law indicates that the Guarantee Fund should take a decision on the basis of the Fund's own best interests. Against this background, the ECB understands that the Guarantee Fund, when selecting the appropriate option, has to take into consideration the circumstances of the specific case in question. In this sense, the ECB suggests that the supervisory authority shall provide adequate information to the Guarantee Fund on the specific case in order for it to be able to assess which solution will involve the lowest cost for the Fund. The involvement of this public authority should not, however, imply any sort of instructions to the Fund, which in all cases shall remain independent and assume final responsibility for its decisions.
6. Accordingly, the ECB notes that Article 1 (2), Section 4, of the Draft Law stipulates that the Minister of Economic Affairs shall determine the rules governing co-operation between the Danish Financial Supervisory Authority (*Finanstilsynet*) and the Guarantee Fund, as well as the

rules governing the conditions for takeover bids. The ECB therefore notes that the Guarantee Fund will, in certain situations, play a prominent role in the crisis management of credit institutions and investment firms in Denmark. Thus the ECB welcomes in this regard the fact that there are rules in place regarding co-operation between the Danish Financial Supervisory Authority and the Guarantee Fund, and also that a public authority such as the Ministry of Economic Affairs will be laying down the rules for this co-operation as well as for takeover bids. Clarification of the roles of the competent authorities and of the co-ordination of such roles vis-à-vis the market-based intervention of the Guarantee Fund can only contribute to the framework in place for the stability of the financial system.

7. The ECB notes that Article 1 (2) of the Draft Law provides the Guarantee Fund with the discretion to contribute to the liquidation of a credit institution or an investment firm by providing the non-subordinate creditors of such institution or firm with financial assistance or guarantees. The suitability of these measures for obtaining takeover bids, based on the market price for such institution or firm, should be taken into consideration by the Guarantee Fund. Moreover, such measures can be implemented in connection with others. The ECB notes that these measures may give the Guarantee Fund a considerable influence over the running of the institution or firm in question. The Guarantee Fund is, however, according to the Draft Law, prohibited from becoming the owner of such institution or firm, even for a short period.
8. The ECB notes that, according to Article 1 (4) of the Draft Law, a board member may veto the participation of the Guarantee Fund in the reorganisation of a credit institution or investment firm, if the member in question represents the same category of such institution or firm as the one which has failed. The majority of the board members of the Guarantee Fund represent the different categories of credit institutions and investment firms, which are covered by the deposit and investor guarantee arrangement. Consequently, the Guarantee Fund cannot contribute to the reorganisation of a credit institution or investment firm without the agreement of the representative of the sector in question.
9. The ECB confirms that it has no objection to this Opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 9 March 2000.

The President of the ECB

[signed]

Willem F. Duisenberg