



**E U R O P E A N C E N T R A L B A N K**

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 2 February 2001**

**at the request of the Danish Ministry of Economic Affairs on a draft law on financial services**

**(CON/00/32)**

1. On 22 December 2000 the European Central Bank (ECB) received a request via Danmarks Nationalbank from the Ministry for Economic Affairs for an opinion on a draft law on financial services (draft law). Subsequently, the draft law has been revised and on 22 January 2001, the ECB received a request to take the revised draft law into account when drafting the opinion.
2. The ECB's competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') and the sixth indent of Article 2(1) 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<sup>1</sup>, as the draft law contains rules applicable to financial institutions which would have a material influence on the stability of financial institutions and markets. In accordance with the first sentence of Article 17(5) of the Rules of Procedure of the ECB, this opinion has been adopted by the Governing Council of the ECB.
3. The ECB welcomes the draft law as it aims at ensuring uniform treatment of equivalent financial products, and introduces a number of simplifications and modernisation measures, thereby improving transparency and consistency. The draft law combines equivalent supervisory measures and other statutory provisions in the Commercial Banks and Savings Banks Act, the Act on Insurance Companies, the Act on Stockbroking Companies, the Mortgage Credit Act and the Act on Company Pension Funds into one Financial Services Act. It is noted that some of the provisions in question are adjusted in a number of respects (in terms of wording and general harmonisation), whereas other provisions are generally updated. On the other hand, it is proposed to retain, at

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

present, the special characteristics of each financial sector in the sector-specific acts. The ECB welcomes the measures aimed at simplifying and increasing consistency of the financial services legislation. Likewise, the ECB welcomes the intention to review at a later stage the other parts of the financial acts with a view to further developing a unified structure and increased simplification of e.g. the provisions concerning the establishment of financial undertakings, authorisation to take up business as a financial undertaking, solvency and mergers.

4. The draft law contains uniform definitions, which will apply to the individual types of business undertaking, which are subject to supervision, as well as to financial institutions and associated undertakings. Thus, it defines financial undertakings (consisting of stockbroking companies, insurance companies, commercial banks and mortgage credit institutions), credit institutions, financial institutions, parent companies, subsidiary companies and groups together with financial holding companies. It is noted that the definitions of credit institutions, financial institutions and parent and subsidiary companies are in accordance with the relevant Community directives<sup>2</sup>. 'Financial undertakings' is a new concept, but is at the same time not to be regarded as a new category of undertaking but as covering the above mentioned financial entities (which are all still individually defined in existing laws incorporating Community legislation). The scope of application of the draft law's provisions on supervision is extended to include financial holding companies. According to the draft law, the Financial Supervisory Authority (FSA) may thus also collect information from and carry out inspections of these companies. The introduction of all-encompassing definitions in one legal act is seen favourably by the ECB, since this measure is obviously apt to simplify and increase the transparency of this legislation.
  
5. The draft law stipulates that financial undertakings and financial holding companies should be operated in accordance with fair business practice and best practice in the relevant sector, and the scope of undertakings which are already subject to similar provisions, is hence broadened to cover also stockbroking companies and financial holding companies. The provisions in the draft law require that the rules for best business practice be observed within each business area. The concept of fair and best practice is to be understood in accordance with current practice, but the FSA is competent to issue guidelines and executive orders concerning such practice and, thus, has the possibility of developing the concept further. These rules apply to all financial undertakings operating in Denmark, be it as a Danish financial undertaking or as a branch. It is also proposed that they should apply to financial services provided by foreign financial undertakings. The ECB is of the opinion that in adopting the rules, particular attention might be paid to their convergence with respective rules of other countries so as to ensure high standards in business practices. Close

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<sup>2</sup> The ECB draws attention to the fact that it did not evaluate the compatibility of the draft law in this opinion with Community directives that may be applicable.

cooperation with the respective rule-making authorities of other Member States is encouraged by the ECB in order to achieve a high degree of convergence of practices throughout the Community.

6. The draft law contains several provisions amending provisions in the existing financial legislation on professional secrecy. Thus, the existing rule that financial undertakings within a group may transfer normal information on customers is replaced by provisions regulating the transferral of such information for administrative purposes, including outsourcing, as well as for marketing and counselling purposes. The ECB notes that the confidential nature of the information is maintained irrespective of the transferral, and that the receivers of such information are also covered by the scope of the professional secrecy. Furthermore, the safeguard established by the requirement to obtain the consent of the customer for transfers of customer-related information for marketing purposes or, in order to offer customer counselling, should also be noted. The possibility to transfer information, which does not concern strictly private matters, to the parent company of a financial undertaking for use in the group's risk management is maintained, provided that the parent company is a regulated financial undertaking or a financial holding company. The requirement to obtain a consent does not apply where the transfer of 'general data' takes place between undertakings within a group subject to professional secrecy. General data is understood to mean information concerning the name, address and residential status. Furthermore, the general data will have to (i) provide the basis for classification of customers; or (ii) be necessary for the receiving company to pursue justifiable interests. Such interests will only be considered to be justifiable if the transferral is necessary in order to undertake the task, which is the reason for the transferral and where the regard to the customer does not exceed this interest. Information about strictly private matters may under no circumstances be transferred without the consent of the customer. Finally, it is also noted that the formal requirements for customer consent are strengthened. In the future, the consent shall be in a written form, including in digital form, and in order to establish enhanced transparency, the financial undertakings are obliged to annually inform all customers of the scope of the consent obtained. A consent already made may be withdrawn at any point in time.
7. The provisions in the draft law, which govern management related issues, i.e. provisions concerning management obligations as well as the freedom to hold other functions, the prohibition of speculative transactions, provisions concerning loans granted to members of the board of a financial entity covered by the draft law represents a harmonisation of equivalent provisions in existing financial legislation. Certain provisions have extended their scope of application, such as the requirement to use written procedures for all important areas of activities, which then would also apply to insurance companies once the draft law has been adopted by Parliament.
8. It is noted that the provisions in existing legislation governing groups are consolidated by the draft law. A few amendments have been made in relation to the existing rules, to ensure that the consolidated statements are true and fair. Certain subsidiaries of insurance companies will not be

included in the consolidation, and it will exclude capital paid up by companies in the group that are not included in the consolidated group accounts. Furthermore, a general provision is introduced to apply to all groups subject to supervision. The groups must comply with the capital adequacy requirements of legislation on financial supervision on a consolidated basis. In general, the consolidation applies solely to the capital adequacy requirements, although credit institutions and stockbroking companies are subject to additional provisions concerning large exposure, shareholdings, liquidity, etc. to be complied with on a consolidated basis. Finally, the provisions concerning intra-group transactions and intervention by the FSA vis-à-vis group structures have also been consolidated and harmonised. The ECB views the application of the above rules, notably on capital requirements, as a very important element in the supervision of financial services groups. The clarification of the scope of application of the respective rules on a group basis is viewed positively.

9. The ECB notes that the provisions governing accounting-related matters have been amended (compared to the existing provisions) in conjunction with the consolidation, to take into account the latest developments in the accounting area, to the extent that this is in line with Community directives concerning financial services, in addition to the recently adopted Community accounting strategy based on international accounting standards (IAS) issued by the International Accounting Standards Committee (IASC). The provisions in question concerning annual reports, annual accounts and auditing should, according to the general comments made in the draft law, be viewed in conjunction with equivalent new provisions concerning stock-exchange listed companies in general, and against the background of recent international development in the accounting field. Financial undertakings are not subject to the general provisions concerning annual reports and the presentation of accounts. At present, accounting provisions are contained in the respective special financial legislation and executive orders issued by the FSA. The provisions in the draft law replace the accounting provisions with general provisions concerning presentation of accounts and they will be supplemented, as is the case under existing legislation, with detailed accounting provisions for each specific type of undertaking.
10. On a technical level, the draft law represents a change from so-called transaction based accounts in favour of accounts based on the current value of assets and liabilities. Thus, the 'fair value principle' is introduced and the entry into force of the chapter on accounting has been postponed in order to assess the effect of the introduction of the above mentioned principle on the valuation of lending by credit institutions in particular. The ECB understands that further consideration will be given to the question of whether, and if so where, the executive orders could deviate from the general rule (a consideration especially in relation to credit institutions' lending portfolio). Furthermore, the ECB understands that exemptions from the general rule will be applied in such a way that the existing valuation provisions are amended only so as to extend the application of fair

value when Community directives allow for the full application of the principle. The draft law may, at a certain stage, result in significant changes in accounting for financial undertakings, notably in the principles to be applied to loan valuation by credit institutions. While the ECB welcomes steps aiming at a further harmonisation and an increase in the comparability and transparency of the accounting practices in the financial services sector, the ECB would like to encourage a close monitoring and assessment of the impact of changes in this area on the financial situation of financial undertakings, notably credit institutions. The ECB believes that a common strategy by as many Member States as possible would be desirable in this field.

11. It is noted that the draft law allows for confidential information to be given to the Danmarks Nationalbank and foreign central banks where the information is necessary for the central banks in their capacity as monetary policy authorities or in their oversight of payment systems. While the ECB recognises that this provision maintains existing legislation, it suggests, for reasons of legal clarity, to reflect in this provision the establishment of the European System of Central Banks and of the ECB. In particular, a clarification that the ECB is within the scope of the provisions would be welcomed.
12. 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 2 February 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG