



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 3 October 2001

**at the request of the Finnish Ministry of Finance
on a draft proposal concerning legislation on the supervision of financial conglomerates**

(CON/2001/30)

1. On 28 June 2001 the European Central Bank (ECB) received a request from the Finnish Ministry of Finance for an opinion on a draft Government proposal concerning legislation on the supervision of financial conglomerates (hereinafter referred to as the “proposal”). The proposal intends to introduce in Finland a new law on the supervision of financial conglomerates (hereinafter referred to as the “draft Law”). In addition, the proposal intends to introduce certain other revisions to existing related laws. The proposal intends to clarify the powers of the Finnish supervisory authorities in respect of financial conglomerates in order to ensure that the financial conglomerates do not give rise to risks which might distort the stability of financial market or payment and settlement systems and thus endanger the position of depositors and investors and the interests of the insured.
2. The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the “Treaty”) and the fifth and sixth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions¹, as the proposal contains provisions concerning payment and settlement systems as well as rules applicable to financial institutions which could 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, this opinion has been adopted by the Governing Council of the ECB.
3. According to Finnish legislation, the Finnish Financial Supervision Authority (FSA), which is functionally independent but operates in connection with Suomen Pankki, supervises the financial markets and entities operating therein. The powers and tasks of the FSA are governed by the Act on the Financial Supervision Authority (*rahoitustarkastuslaki* 503/1993).

¹ OJ L 189, 3.7.1998, p. 42.

Separate legislation applies to the supervision of insurance and pension institutions that are supervised by the Finnish Insurance Supervisory Authority. The Insurance Supervisory Authority operates under the control of the Ministry of Social Affairs and Health and the rules on its administration are governed by the Act on Insurance Supervisory Authority (*laki Vakuutusvalvontavirastosta 78/1999*). However, the powers of this Authority are governed by various specific laws concerning different types of insurance institutions.

4. A financial conglomerate characteristically consists of entities active in different sectors; it includes at least one credit institution and one insurance undertaking. Therefore, from the system outlined above, it follows that in Finland two separate authorities will supervise the entities belonging to a financial conglomerate. Such divided supervision does not necessarily cover the conglomerate as a whole, in particular because the scope of application of the sectoral supervision provisions is focused only on the entities which are subject to authorisation for their activities. Although the provisions on the consolidation of banking groups and on the supplementary supervision of insurance undertakings in insurance groups, both based on the respective Community directives, provide rules for additional group supervision, this does not cover a financial conglomerate as such. In other words, insurance undertakings belonging to a financial conglomerate are not fully taken into account by the provisions on the consolidation of banking groups, and vice versa the rules on the supplementary supervision of insurance undertakings in insurance groups concentrate on supervision only in this sector.
5. Since the first financial conglomerate engaged both in banking and insurance business commenced operations in Finland, the two Finnish supervisory authorities have agreed by way of a memorandum of understanding on key principles to facilitate their coordinated supervision of such financial conglomerates. However, according to the proposal, urgent legislative measures are needed in order to establish a firm legal basis for supervision of the conglomerates. Therefore, the proposal introduces a new law on the supervision of financial conglomerates. This draft Law would be based to the extent possible on the existing powers and distribution of tasks of the two respective supervisory authorities. The ECB takes note of the fact that the draft Law would thus not establish a single authority responsible for the overall supervision of financial conglomerates. The rights and obligations of the two supervisory authorities in their respective sectors would not be restricted or modified. The draft Law intends only to enhance and strengthen the gathering of information concerning a financial conglomerate as a whole in order to avoid loopholes and opportunities for regulatory arbitrage.
6. The ECB takes note that the draft Law regulates the matter of supplementary supervision of financial conglomerates on which the Commission has presented a proposal for a Community directive on the supplementary supervision of credit institutions, insurance undertakings and

investment firms in a financial conglomerate² (hereinafter referred to as the “draft Directive”). According to the proposal, the adoption of the draft Law is urgent and therefore the proposal does not intend to fully comply with the draft Directive. As a consequence, once the draft Directive has been adopted, Finnish legislation would have to be amended in order to be brought in line with the provisions of the future Directive.

7. The draft Law would provide rules concerning: (i) the definition of a financial conglomerate; and (ii) the identification of one of the two supervisory authorities to act as a coordinating supervisor; and (iii) the tasks and rights of this coordinating supervisor; and (iv) the rules on the cooperation and exchange of information between the two supervisory authorities.
8. The ECB observes that the definition of a financial conglomerate in the draft Law differs from the definition of a financial conglomerate in the draft Directive. The ECB notes that the draft Directive considers the definition of a group as a core concept, which in turn is based on the concept of “close links” as introduced by the so-called post-BCCI Directive³. In contrast, the definition in the draft Law is mainly based on the concept of dominant influence as defined in the Accounting Act (*kirjanpitolaki* 1336/1997). This may eventually cause confusion regarding the conformity of the draft Law with the draft Directive. In this respect, the proposal states that revision of the definition of a financial conglomerate is foreseen once the draft Directive has been adopted. Therefore, the ECB submits that the draft Law should be brought in line with the future Directive as soon as an agreement in the EU Council has been reached on the contents of the draft Directive.

The ECB further notes that the proposal complies with the draft Directive in respect of the thresholds for determining a financial conglomerate i.e. whether the activities of a group consist mainly in providing financial services and whether its cross-sectoral activities are significant within the meaning of the Directive.

9. According to the draft Law, a holding company of a financial conglomerate is under an obligation to notify the FSA or the Insurance Supervisory Authority immediately upon creation of a financial conglomerate. The ECB welcomes this provision. However, the ECB does not see why the obligation to notify cannot be extended to cover also the entities comprising such a conglomerate, and therefore submits that such an obligation should be included in the draft Law.
10. According to the draft Law, a financial conglomerate would always have one coordinating supervisor. The draft Law provides the criteria according to which the coordinating supervisor is identified: the coordinating supervisor would be the supervisory authority which is responsible for the supervision of the parent undertaking of a financial conglomerate; in other words the FSA would be the coordinating supervisor, if the parent undertaking of a conglomerate is a

² Proposal for a directive of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending other relevant Directives (COM/2001/0213 final).

³ Directive 95/26/EC of the European Parliament and of the Council of 29 June 1995, OJ L 168, 18.7.1995, p. 7.

credit institution or an investment company and the Insurance Supervision Authority would in turn act as the coordinating supervisor, if the parent company is an insurance company.

In a case where the parent company is a holding company supervised by *neither* the FSA *nor* the Insurance Supervision Authority, the coordinating supervisor would be defined and identified on the basis of the principal sector of business (banking or insurance sector) of the conglomerate. The proportional share of each sector in a financial conglomerate would be calculated and the coordinating supervisor identified on the basis of this calculation.

The draft Law also contains an exception to the above-mentioned quantitative criteria for identifying the coordinating supervisor. The identified coordinating supervisor would be able to waive its tasks as a coordinating supervisor if the other supervisor has agreed to take responsibility for these tasks, for example in cases where a certain degree of continuity is needed.

The ECB welcomes the fact that the above-mentioned objective criteria prevails over the discretion of the competent authorities to reach an ad hoc agreement on the coordinator, since the latter remains as an alternative solution. This is justified on the basis that objective criteria for the appointment of the coordinator better serve the requirements of transparency, clarity and legal certainty regarding the supplementary supervision of financial conglomerates.

11. According to the draft Law, the holding company of a financial conglomerate would have to report regularly to the coordinating supervisor on the structure of the conglomerate, the consolidated accounts, risk exposure and relevant intra-group transactions. In addition, the coordinating supervisor would have the right to inspect and obtain information on the entities outside the sectoral supervision but which belong to a conglomerate, such as holding companies which are not credit institutions, investment service companies or insurance undertakings. The coordinating supervisor would in addition have a right to obtain information from entities which do not belong to the financial conglomerate but which are linked to entities inside the financial conglomerate in a way which is relevant to the aim of supervision. These entities outside the financial conglomerate, such as pension insurance funds, would have an obligation to inform the coordinating supervisor on *inter alia* intra-group transactions. The coordinating supervisor would also have the right to propose supervisory measures to be taken by the other authority, i.e. the one not being assigned as a coordinator, in its respective sector. The ECB notes that in the draft Law, the parent company is also required to have in place its own internal control and risk management systems that are adequate with regard to the operation of the whole financial conglomerate. The ECB welcomes these provisions.
12. In addition, the proposal seeks to harmonise the provisions in the banking and insurance legislation in respect of the exchange of customer information between an insurance company and a bank within the same financial conglomerate. Such exchange of information is not permitted under existing laws, hampering thus the effective risk management within a financial

conglomerate. The ECB welcomes these harmonisation intentions and notes that they are in line with Article 11 of the draft Directive.

13. The ECB notes that the proposal does not address the capital adequacy of a conglomerate, one of the key elements in the draft Directive. According to the proposal, it is not yet appropriate to provide for rules on capital adequacy since the outcome concerning this issue in the draft Directive is uncertain. In other words, limits concerning capital adequacy and other substantive issues requiring the harmonisation of calculation methods in the banking and insurance sector are not provided; instead the proposal provides tools for the gathering of information on the financial position of a conglomerate and its assessment. Therefore the ECB submits also here that the draft law should be brought in line with the future Directive as soon as an agreement in the EU Council has been reached on the contents of the draft Directive.
14. Finally, the ECB notes that the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the “Statute”) entrust the Eurosystem⁴ and Suomen Pankki, as its component member, with, *inter alia*, the task of payment systems oversight in order to promote the smooth operation of payment systems and thus contribute to financial stability. The ECB and national central banks of the Eurosystem may also provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Community and with other countries. Moreover, the Treaty and the Statute provide that the Eurosystem shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of the credit institutions and the stability of the financial system. The establishment, functioning, reorganisation and, in particular, possible failure of a financial conglomerate may have implications for the smooth functioning of payment systems and the stability of the financial market. Therefore, the ECB would welcome provision by the draft law of adequate means and procedures for informing Suomen Pankki of any issue which may have such implications.

The ECB would like to draw attention to Article 9 of the draft Directive according to which the competent authorities may also exchange information with central banks. This reference may serve as an acknowledgment of the contribution by central banks to the prudential supervisory framework for financial conglomerates. The central banks’ traditional focus on systemic risk, together with their knowledge of money and securities markets and market infrastructures and their function in the oversight of payment and settlement systems, places them in a unique position to identify threats to the stability of the financial system. In this context, information-sharing with Suomen Pankki as a component member of the Eurosystem will contribute to the monitoring and pursuit of systemic stability in the Community.

⁴ The Eurosystem comprises the ECB and the national central banks of the Member States that have adopted the euro as their single currency.

15. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion.

Done at Frankfurt am Main on 3 October 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG