



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 February 2003

at the request of the Danish Financial Supervisory Authority
on a draft law replacing the Financial Business Act and a draft law on the Mortgage Loans and
Mortgage Bonds Act
(CON/2003/2)

1. On 24 January 2003 the European Central Bank (ECB) received a request via Danmarks Nationalbank from the *Finanstilsynet* (Danish Financial Supervisory Authority) on behalf of the *Økonomi- og Erhvervsministeriet* (Ministry of Economics and Business Affairs) for an opinion on a draft law replacing the *Lov om finansiel virksomhed* (Financial Business Act) and a draft law on the *Lov om realkredit og realkreditobligationer m.v.* (Mortgage Loans and Mortgage Bonds Act).
2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and Article 2(1), fifth and sixth indents concerning payment systems and the stability of financial institutions and markets, 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 legislative proposals, amongst other things, contain provisions concerning (i) electronic money institutions, (ii) license to run financial businesses, (iii) best practice, (iv) management and speculative transactions, (v) divulging confidential information, (vi) solvency (vii) investment of funds and liquidity and (viii) interest-only loans for a period of up to 10 years to private real estate and weekend cottages owners. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.
3. In December 2000 and February 2002 the ECB was consulted on two draft laws relating to the *Lov om finansiel virksomhed* (CON/00/32) and (CON/2002/10). The intention behind these drafts was to ensure the simplification and increased consistency of Danish financial business legislation. In both instances the ECB welcomed the fact that a further review of the financial business legislation would be carried out at a later stage. This objective is now one of the aims of the current draft laws. The ECB welcomes the fact that the current drafts contribute to legal reform by further harmonising, codifying and restructuring legislation. The current draft laws contribute to harmonisation by proposing, amongst other things, a considerable reduction in the number of financial laws and

¹ OJ L 189, 3.7.1998, p. 42.

provisions. Thus, the *Lov om banker og sparekasser* (The Commercial Banks and Savings Banks, etc. Consolidated Act), the *Lov om fondsmæglerselskaber* (Stockbroker Companies Act), the *Lov om realkredit* (Mortgage Credit Act), the *Lov om forsikringsvirksomhed* (Insurance Companies Act), the *Lov om udstedere af elektroniske penge* (Electronic Money Institutions Act) and the *Lov om sparevirksomheder* (Savings Banks Act) would all be repealed.

4. The bulk of the provisions in the draft Financial Business Act, which replaces the current Financial Business Act, constitute the provisions contained in the latter together with the provisions of the six abovementioned repealed Acts. As a consequence, the majority of its provisions do not actually change the present state of the law. It should be noted that a number of the provisions taken over from existing legislation have not yet been reviewed in the Danish legislative process. Consideration should be given to the further harmonisation and streamlining of these provisions. The draft laws propose substantial amendments on certain matters of relevance to the ECB and these are addressed below. The draft Mortgage Loans and Mortgage Bonds Act is also part of the financial law reform. The bulk of its provisions are taken over from the Mortgage Credit Act, which is repealed by the draft law. The most substantial change is the proposal to allow mortgage bond institutions to offer owners of private real estate and weekend cottages interest-only mortgages for a period of up to 10 years (as is already the case for professional borrowers).
5. To the extent that the draft laws implement directives such as Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investments firms and credit institutions² and Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field³, the Danish authorities are not obliged to consult the ECB, in accordance with Article 1(2) of Council Decision 98/415/EC.
6. The existing provisions of the *Lov om udstedere af elektroniske penge* (Electronic Money Institutions Act), which implements Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions⁴, are transferred to chapter 19 of the draft Financial Business Act, c.f. Section 1(8) of the draft law. The ECB considers, however, that Section 1(8) should also refer to chapter 2 (“Definitions”), since this would avoid any interpretative doubts as to whether electronic money institutions are covered by the definition of credit institutions contained in Section 5 of the draft Financial Business Act in accordance with Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions⁵, as amended by Directive 2000/28/EC of the European Parliament and of the Council of 18 September 2000⁶. According to the definition contained in Article 1(1)b a credit institution shall, apart from the traditional credit institutions governed by Article 1(1)a, mean ‘an

2 OJ L 141, 11.6.1993, p. 1.

3 OJ L 141, 11.6.1993, p. 27.

4 OJ L 275, 27.10.2000, p. 39.

5 OJ L 126, 26.05.2000, p. 1.

6 OJ L 275, 27.10.2000, p. 37.

electronic money institution within the meaning of Directive 2000/46/EC ...’. Both in the interests of the smooth functioning of payments systems and for monetary policy reasons in general the ECB aims to achieve a consistent definition of credit institutions throughout the European Communities.

7. The substantial content of the provisions on “best practices” (chapter 6 of the draft Financial Business Act) is taken over from the existing rules on which the ECB commented positively in connection with (CON/00/32) and (CON/2002/10). The changes currently proposed further simplify the rules on best practices by stating that detailed provisions for specific types of financial entities shall be established in the future in executive orders.

The provisions on management and speculative transactions (chapter 8 of the draft Financial Business Act) uphold the existing rules laying down certain qualifications and integrity requirements for the members of the boards of financial institutions. In this connection the ECB takes note of Section 350 of the draft Financial Business Act, according to which the Financial Supervisory Authority is competent to oblige a financial entity to remove a member of its board if the board member is no longer able to fulfil his/her duties. The ECB welcomes the increased powers vested in the Financial Supervisory Authority in this area which bring it into line with international supervisory standards and has positive implications for the maintenance of financial stability and for crisis management. Furthermore, the ECB welcomes the way in which the provisions relating to the persons and financial activities covered by the prohibition against speculative transactions are amended, in particular by Section 76 of the draft Financial Business Act. The ECB understands that the existing prohibition applies only to persons fulfilling certain types of job category whilst the proposed scope is directed at the actual tasks that company employees perform. The prohibition is thus more precisely targeted at the type of risks that the rules are intended to counter. The fact is also welcomed that, due to the long-standing Danish policy of a fixed exchange rate between the Danish kroner and the euro, the existing restriction on euro positions is abolished and no longer covered by the prohibition against speculative transactions. The provisions on adjustment or termination of business (chapter 14 of the draft Financial Business Act) are largely unchanged and remain in accordance with secondary Community legislation. The ECB notes that Section 203 now specifically mentions that merger with or acquisition by foreign institutions also requires the authorisation of the Danish Financial Supervisory Authority and welcomes the legal clarity created by this provision.

8. The most important innovation proposed by the draft Mortgage Loans and Mortgage Bonds Act (Section 4) is the liberalisation that allows mortgage bond institutions to offer owners of private real estate and weekend cottages the option of paying only the interest and no principal (interest-only loan) for a period of up to 10 years (as it is already the case for professional borrowers). To date these owners have not been allowed to amortise their mortgages more slowly i.e. to pay less principal than according to a 30-year annuity. It is noted, however, that;
 - the proposal only provides for a slower repayment profile, with a greater part of the repayment on the final maturity date, and does not allow for an extension of the maximum maturity of a

mortgage, which remains unchanged at 30 years (35 years if special guarantees are available); and

- the unchanged maximum limit for the size of the mortgage relative to the value of the underlying real estate needs to be respected throughout the duration of the mortgage; and finally
- the so-called “balancing”-principle ensures that the mortgage bond institutions will need to hedge any interest rate risk that may result from granting any such loans with a slower repayment profile.

Accordingly it is understood that the proposal, which offers Danish owners of real estate certain financing opportunities that are already available in other EU countries, does not substantially change the risk profile of mortgage bond institutions and the bonds they are issuing. The ECB therefore assumes that the proposal would have no impact as regards the compliance of Danish mortgage bonds with Article 22(4) of Council Directive 85/611/EEC⁷. Compliance with the UCITS Directive means that from a risk profile viewpoint the proposal does not impact upon the eligibility of these bonds as underlying collateral for Eurosystem credit. However, new aspects of Danish Mortgage Bonds would obviously also need to comply with the other criteria listed in the ‘General documentation on ESCB monetary policy instruments and procedures’ annexed to the Guideline of the European Central Bank of 7 March 2002 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem (ECB/2002/2)⁸ in order to qualify as collateral for Eurosystem credit.

9. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB’s website six months after the date of its adoption.

Done at Frankfurt am Main on 28 February 2003.

The President of the ECB

[signed]

Willem F. DUISENBERG

⁷ Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, Regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 375, 31.12.1985, p. 3.

⁸ OJ L 185, 15.7.2002, p. 1.