



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 18 March 2002

**at the request of the Danish Financial Supervisory Authority on a draft act
amending the Financial Services Act and other financial Acts**

(CON/2002/10)

1. On 22 February 2002 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 act amending the *Lov om finansiel virksomhed* (Financial Services Act) and other financial Acts (hereinafter referred to as 'the draft act').
2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and sixth indents concerning national central banks and the stability of financial institutions and markets of Article 2(1) of the 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 act, amongst others, contains provisions concerning the supervision of company pension funds, demarcation of the powers to issue rules on best practices for securities traders, and the legal position of creditors of bonds and currency swaps issued and entered into by Danish Ship Finance (*Danmarks Skibskreditfond*) in case of the latter's insolvency. Some of the provisions of the draft act will also apply to Danmarks Nationalbank. 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 the ECB was consulted on the draft *Lov om finansiel virksomhed* (Financial Services Act) (CON/00/32). The intention of the draft was to ensure simplification and increased consistency of the financial services legislation. On that occasion the ECB welcomed the intention to further review at a later stage the financial services legislation which is now one of the intentions of the draft act. Likewise, the ECB also on this occasion welcomes the

¹ OJ L 189, 3.7.1998, p. 42.

intention to continue the legal reform work with further harmonisation and codification, as well as restructuring of legislation.

4. The draft act ensures that the rules on best practices for securities traders are further harmonised and intends to remove overlapping of the powers of the relevant Danish authorities in this field. As regards the calculation of solvency ratios, the draft act amends the definition of capital in line with international agreements reached within the Basel Committee. The draft act also ensures that bonds issued by Danish Ship Finance obtain the same preferential position in case of insolvency as that currently enjoyed by bonds issued by mortgage credit institutions. Finally, the draft act contains several amendments to other financial laws of minor importance for the ECB. To the extent that the draft act implements directives such as Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field², as last amended by Directive 2000/64/EC of the European Parliament and the Council³, and 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 institutions⁴, as last amended by Directive 2000/28/EC⁵, the Danish authorities are not obliged to consult the ECB, in accordance with Article 1(2) of Council Decision 98/415/EC.
5. The draft act ensures in Section 1(9)-(10) demarcation of the competence to issue rules on best practices for securities traders. *Det Finansielle Virksomhedsråd* (Financial Services Council), which is empowered to take decisions regarding supervisory matters of general public importance and provides advice to the Danish Financial Supervisory Authority on issuing regulations, will have the exclusive power to issue rules on best practices applying in general to financial services equivalent to the power to issue rules on best practices specifically in the field of securities trading held by the *Fondbørserådet* (Securities Council), which operates to ensure the smooth functioning of the Danish securities market and compliance with the *lov om værdipapirhandel* (Securities Trading Act). As a consequence, the *Forbrugerombudsmanden* (Consumer Ombudsman) will no longer be empowered to issue such rules, but will be able to attend without the right to vote the meetings of the Financial Services Council when cases concerning best practices are discussed. The ECB welcomes these efforts for a clear demarcation of authority and thus greater legal certainty.
6. In Opinion CON/00/32 the ECB mentioned that in adopting the rules on best practices, particular attention might be paid to their convergence with respective rules of other countries so as to ensure high standards in business practices. In addition, close cooperation with the respective rule-making authorities of other Member States was encouraged by the ECB in order to achieve a high degree of convergence of practices throughout the Community. In this respect

2 OJ L 141, 11.6.1993, p. 27.

3 OJ L 290, 17.11.2000, p. 27.

4 OJ L 126, 26.5.2000, p. 1.

5 OJ L 275, 27.10.2000, p. 37.

it is noted that the provisions on best practice in the draft act are based on the principles on best practices issued by the International Organisation of Securities Commissions (IOSCO).

7. It is noted that although Danmarks Nationalbank is not a securities trader, the provisions governing such traders apply to it, however, with the exemptions required due to the special nature of the central bank.
8. The ECB welcomes the amendments to the definition of own funds when calculating the solvency ratio, which are intended, first, to simplify the regulations and, secondly, to increase access by institutions to funding sources. On the former, the rules on capital adequacy will be simplified by the repeal of the existing but unused provision according to which subordinate capital with a short maturity is part of the solvency statement. On the latter, the possibility is introduced of raising capital in a foreign currency, which receives supervisory recognition in calculating the solvency ratio. Improved market access will tend to improve the solvency of banks and thus will, with due regard to the quality of the funds, contribute to the stability of the financial system. The ECB notes, however, that the general remarks in the draft act refer to guidance from the Basel Committee. Given the focus and scope of application of the Financial Services Act, a reference to the relevant EU directive appears desirable.
9. It is noted that Section 4(12) of the draft act repeals the *lov om tilsyn med firmapensionskasser* (Act on Supervision of Company Pension Funds) but that equivalent provisions are inserted in the Financial Services Act and *lov om forsikringsvirksomhed* (Insurance Services Act) as a further step towards harmonisation of regulation of the financial markets.
10. Section 16(1)-(2) of the draft act is intended to ensure that bonds issued by Danish Ship Finance can continue to be considered as being financially sound. The objective of Danish Ship Finance is to finance ships. Most loans are granted in US dollars and funded through bond issues. These bonds will obtain the same preferential treatment in case of insolvency as bonds issued by mortgage credit institutions, which is better than would be the case according to the general applicable provision under the *konkursloven* (Insolvency Act). The ECB has no objections to the proposed amendment. It is noted that such bonds, denominated in Danish kroner, are eligible as collateral for ECB intraday credit to Danmarks Nationalbank and also to three national central banks of the Eurosystem.

11. 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 18 March 2002.

The President of the ECB

[signed]

Willem F. DUISENBERG