



EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 27 August 2003

at the request of the Austrian Federal Ministry of Finance

on a draft Federal law

**on the mortgage bond division of the Austrian regional public banks and amending the Savings Bank Act as well as the Law on funding debentures**

(CON/2003/17)

1. On 23 July 2003 the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on a draft Federal law on the mortgage bond division of the Austrian regional public banks and amending the Savings Bank Act as well as the Law on funding debentures (*Bundesgesetz über die Pfandbriefstelle der österreichischen Landes-Hypothekenbanken und über die Änderung des Sparkassengesetzes und des Gesetzes betreffend fundierte Bankschuldverschreibungen*) (the ‘draft law’).
2. The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty, the first indent of Article 4(a) of the Protocol on the Statute of the European System of Central Banks and of the ECB and the sixth indent of Article 2(1) of Council Decision No 415/98/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions<sup>1</sup>, since the draft law contains provisions that could materially influence the stability of financial institutions and markets, notably concerning the abolition of public guarantees provided by the Austrian *Länder* (states) and the *Gemeinden* (local authorities) in relation to debts of the Austrian regional public banks and local authority savings banks respectively. The ECB does not consider that it is competent to deliver an opinion on those provisions contained in the draft law, which revise the legislation applying to the mortgage bond division of the Austrian regional public banks (*Kundmachung* (Official announcement) GBlÖ Nr. 492/1939) and update the *Gesetz vom 27. März 1905 über fundierte Bankschuldverschreibungen* (Law of 27 March 1905 on funding debentures) (RGBl Nr. 213/1905), since these provisions are not covered by Article 2(1) of Decision No 415/98/EC. 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. The ECB notes that the part of the draft law relevant to the present opinion abolishes the joint and several liability of the Austrian states and the public guarantees provided by the local authorities in

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

relation to debts of the mortgage bond division of the Austrian regional public banks and local authority savings banks in the event of default. The scope of these public guarantees is somewhat limited, given that they only apply in the event of insolvency or liquidation and where the credit institutions concerned have insufficient assets to satisfy their creditors. Moreover, the regional public banks benefiting from the guarantees pay a premium for them. The relevant provisions of the draft law have been proposed in order to comply with Treaty requirements regarding the prohibition of State aid and with an agreement of 1 April 2003 concluded in this context between the Republic of Austria and the European Commission, which requires the abolition of the Austrian states' and local authorities' liability.

4. The ECB welcomes the provisions implementing the agreement reached between the Republic of Austria and the Commission, which laid down a framework for phasing out public guarantees (*'Ausfallshaftung'*) in favour of the Austrian regional public banks and local authority savings banks. This important development is consistent with the abolition of public guarantees in favour of financial institutions in other Member States, namely in Germany (*'Anstaltslast'* and *'Gewährträgerhaftung'*) and in France (guarantees by the *Caisse des Dépôts et Consignations* in favour of its commercial subsidiary, designated as CDC IXIS). From the ECB's perspective, these recent developments, which treat public guarantees as incompatible with the requirements of the single market, also foster the integration of EU financial markets. An efficient and well-integrated single financial market has to function in strict accordance with the principles of open competition and transparency as well as having appropriate safeguards in place regarding effective supervision and financial stability. Moreover, several recent studies show that while the integration of wholesale markets has been advanced by the introduction of the euro, retail markets for financial services remain segmented in national, if not regional, components. In this respect, the abolition of public guarantees in Austria should not only improve domestic competition, thus benefiting consumers, but also reduce possible barriers to entry into the Austrian market and therefore contribute to a level playing field in EU markets. As a result, the regional diversification of banks' portfolios might increase, with a potentially positive impact on credit institutions' resilience.
5. The ECB would expect that the phasing-out of public guarantees would not have such a material impact on the viability of institutions currently covered by such guarantees as to affect their financial stability. The ECB notes however that the phasing-out of public guarantees will certainly create challenges for some of the credit institutions previously covered by such guarantees, since the guarantees give them a certain competitive advantage over other institutions operating in the market. These institutions will in the future be assessed on the basis of their credit risk and their external rating will not reflect any more the presence of public guarantees. This will have an impact on their funding costs, while the (potential or actual) entry of new competitors into the local retail market will also put pressure on profitability. They will therefore have to adapt their operational framework to a more demanding and competitive market environment. The ECB welcomes the fact that a progressive transitional period has been agreed with the Commission, which should give these institutions an adequate opportunity to adjust to the new competitive environment. The

Austrian authorities may wish to monitor the adaptation process, which is expected to be smooth given the generous transitional period. In this respect, it would seem desirable for the institutions concerned to be proactive in restructuring their activities as necessary at an early stage, both in order to improve their resilience and to reap the benefits of a more competitive and transparent market. The ECB would therefore recommend that, in implementing the Republic of Austria's agreement with the Commission, the institutions affected by the draft law maximise the opportunities for adjustment which the transitional period offers.

6. The ECB confirms that it has no objections 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 27 August 2003.

*The President of the ECB*

[signed]

Willem F. DUISENBERG