



EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 30 July 2004

at the request of the Estonian Ministry of Finance

**on a draft law amending the Credit Institutions Act and the Commercial Code and a draft law on e-money institutions**

(CON/2004/25)

1. On 18 June 2004 the European Central Bank (ECB) received a request from the Estonian Ministry of Finance for an opinion on a draft law amending the Credit Institutions Act and the Commercial Code and a draft law on e-money institutions (hereinafter the ‘draft laws’).
2. The ECB’s competence to deliver an opinion is based on the second, fifth and sixth indents of Article 2(1) of Council Decision 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 laws contain provisions concerning means of payment, payment and settlement systems and rules applicable to financial institutions insofar as they 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, the Governing Council has adopted this opinion.
3. The ECB notes that the draft law amending the Credit Institutions Act and the Commercial Code will transpose the following Community directives into Estonian law: the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts<sup>2</sup>, as far as credit institutions are concerned; Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions<sup>3</sup>; 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 institutions<sup>4</sup>; and Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions<sup>5</sup>. Further, the draft law on e-money institutions will transpose the following Community directives into Estonian law: Directive 2000/28/EC of the European Parliament and of

---

1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC (OJ L 178, 17.7.2003, p. 16).

3 OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 2004/39/EC (OJ L 145, 30.4.2004, p. 1).

4 OJ L 126, 26.5.2000, p. 5. Directive as last amended by Directive 2004/39/EC (OJ L 145, 30.4.2004, p. 1).

5 OJ L 125, 5.5.2001, p. 15.

the Council of 18 September 2000 amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions<sup>6</sup> and 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 institutions<sup>7</sup>.

4. Pursuant to Article 1(2) of Decision 98/415/EC, Member States do not have to consult the ECB on the transposition of Community directives into national law. On this occasion therefore, the Estonian Ministry of Finance was not legally obliged to consult the ECB formally regarding the draft laws. While the ECB notes that the competent authority for verifying the transposition of Community directives into national law is the Commission, the ECB nevertheless welcomes the opportunity to deliver its opinion on the draft laws in as far they fall under one or more of its fields of competence.
5. The ECB supports the transposition of the Community directives listed above into Estonian law, as this will enhance the existing supervisory framework in Estonia. However, the ECB would like to draw attention to the following specific issue in relation to the draft law on e-money institutions. Directive 2000/12/EC defines e-money institutions as 'credit institutions'. In Estonia, credit institutions are, as a rule, regulated by Eesti Pank which issues decrees and adopts regulations, while it is the Estonian Minister of Finance who regulates the rest of the financial sector. Articles 37(8), 39(4), 44(5) and 45(2) of the draft law on e-money institutions, which provide for the Minister of Finance to adopt regulations in relation to e-money institutions, are therefore not coherent with this principle. The existence of separate regulatory authorities creates a risk of applying different regulations on the same subject to credit institutions, which could undermine financial stability and payment systems in Estonia.
6. The ECB would furthermore like to draw attention to the fact that 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, place them in a unique position to identify threats to the stability of the financial system. In this context, given that e-money is a means of payment and that ensuring financial stability is one of the tasks Eesti Pank has to perform under Article 2(4) of the Eesti Pank Act, and taking into account that Article 65 of the Government of the Republic Act does not provide for the Ministry of Finance to have the power to adopt regulations in relation to credit institutions, the power to adopt regulations in relation to e-money institutions should now be entrusted to Eesti Pank alone.

---

<sup>6</sup> OJ L 275, 27.10.2000, p. 37.

<sup>7</sup> OJ L 275, 27.10.2000, p. 39.

7. 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.

Done at Frankfurt am Main, 30 July 2004.

[ signed ]

*The President of the ECB*

Jean-Claude TRICHET