



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 February 2004

at the request of the Austrian Federal Ministry of Finance

on a draft Federal law

adopting a Federal Law on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending the Insurance Supervision Act, the Banking Act, the Securities Supervision Act and the Financial Markets Supervisory Authorities Act

(CON/2004/5)

1. On 6 January 2004 the European Central Bank (ECB) received a request from the Austrian Federal Ministry of Finance for an opinion on a draft *Bundesgesetz mit dem ein Bundesgesetz über die zusätzliche Beaufsichtigung der Kreditinstitute, Versicherungsunternehmen und Wertpapierfirmen eines Finanzkonglomerats (Finanzkonglomeratengesetz – FKG) erlassen wird sowie das Versicherungsaufsichtsgesetz, das Bankwesengesetz, das Wertpapieraufsichtsgesetz und das Finanzmarktaufsichtsbehördengesetz geändert werden* (Federal law adopting a Federal Law on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (Financial Conglomerates Law) and amending the Insurance Supervision Act, the Banking Act, the Securities Supervision Act and the Financial Markets Supervisory Authorities Act) (hereinafter the ‘draft law’). The draft law implements Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council¹.
2. As the purpose of the draft law is to implement Directive 2002/87/EC in Austria, the Austrian authorities were not legally obliged to consult the ECB under Article 1(2) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions². However, it should be noted that at the request of the Council of the European Union, the ECB delivered its opinion on a draft of Directive 2002/87/EC on 13 September 2001 (CON/2001/25)³ and the ECB has a continuing interest in the

1 OJ L 35, 11.2.2003, p. 1.

2 OJ L 189, 3.7.1998, p. 42.

3 OJ C 271, 26.9.2001, p. 10.

harmonised implementation of Directive 2002/87/EC in all Member States. In the light of the previous consultation, the ECB now strongly welcomes the opportunity to give its opinion on the draft law, which contains, *inter alia*, provisions concerning the prudential supervision of financial institutions and fosters the stability of financial institutions and markets.

3. The explanatory notes to the draft law refer to the Commission's Financial Services Action Plan and state that the transposition of Directive 2002/87/EC is a further step towards the completion of the Internal Market by filling certain gaps in current legislation relating to the supervision of financial conglomerates.
4. In a general context, the ECB notes that increasing links between financial markets calls for careful consideration of cross-sector group structures to supervise and contain institutional and systemic risk. In particular, the combined operations of groups that comprise insurance undertakings, credit institutions and investment firms (referred to as 'financial conglomerates') may also create new prudential risks or exacerbate existing ones. The introduction of the euro has prompted changes in financial markets that call for a substantial enhancement of cooperation procedures between national authorities and the ECB and the national central banks within the Eurosystem. Capital adequacy requirements must therefore be sufficient and proportionate so as to counter the risks undertaken in groups that straddle traditional sectoral boundaries. The purpose of Directive 2002/87/EC is to ensure the stability of European financial markets, to establish common standards for the prudential supervision of financial conglomerates throughout Europe and to ensure a level playing field and legal certainty between financial institutions. Key elements of Directive 2002/87/EC are to ensure that there is adequate cooperation between the competent authorities and that due consideration is given to general requirements for transparent and clear arrangements for the supervision of conglomerates and the appropriate distribution of tasks and supervisory competencies. The ECB supports the transposition of Directive 2002/87/EC into Austrian law as it will supplement the existing supervisory framework in Austria, which is currently organised on a sectoral basis. This reflects the need to provide increasingly integrated European financial markets with an adequate framework to achieve and maintain financial stability.
5. The ECB welcomes the comprehensive provisions of the draft law on supervisory cooperation and the exchange of information. The explanatory memorandum to the draft law recalls explicitly the excellent cooperation between the Oesterreichische Nationalbank (OeNB) and the *Finanzmarktaufsicht* (FMA) (Austrian Financial Markets Authority) and mandates the OeNB to use its expertise and resources for on-site supervision of market and credit risk in credit institutions and, where appropriate, in investment firms within a financial conglomerate. Moreover, the ECB welcomes Paragraph 12(4) of the draft law which explicitly includes the European System of Central Banks and the ECB in such exchange of information on supervised entities, i.e. conglomerates, where this is necessary for the fulfilment of their respective tasks. Such entities are likely to be systemically important and their operations may affect financial stability, the stability

of payment systems and also be relevant to the conduct of monetary policy in the European Union (EU).

6. The ECB further notes that defining a conglomerate according to harmonised criteria represents the first crucial step towards consistent supervision of such financial groups throughout the EU. Paragraph 4(1) of the draft law imposes an obligation on the financial institutions concerned to review initially whether they satisfy the definition of a financial conglomerate. The final responsibility however remains with the FMA, which may, under Paragraph 3(5) of the draft law, substitute or add to the criteria defining a financial conglomerate. In particular, the FMA may take a group's earning structure and off-balance sheet items into account. Furthermore, the ECB notes Paragraph 5(4) of the draft law, which states that in limited circumstances the Federal Minister of Finance may deviate in part from the provisions of Directive 2002/87/EC when appointing a coordinating authority to carry out supplementary supervision. The ECB recalls the need to achieve an EU-wide harmonisation of the regulatory framework and advocates a high degree of caution when deviating from Directive 2002/87/EC in order to define a conglomerate or identify the coordinating authority. The ECB regards the main benefit of harmonised and objective criteria as a contribution to the transparency, clarity and legal certainty facilitating a harmonised implementation of Community law throughout the EU.
7. 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 13 February 2004.

[signed]

The President of the ECB

Jean-Claude TRICHET