



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK**of 13 September 2006****at the request of the Czech Ministry of Industry and Trade
on an amendment to the Law on Česká národní banka
(CON/2006/47)****Introduction and legal basis**

On 18 August 2006 the European Central Bank (ECB) received a request from the Czech Ministry of Industry and Trade for an opinion on an amendment to the Law on Česká národní banka (hereinafter the ‘draft amendment’), which forms part of the broader draft Government law amending certain laws in connection with Regulation (EC) No 2006/2004 of the European Parliament and of the Council on consumer protection cooperation and the Law on general product safety (hereinafter the ‘draft law’).

The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third indent 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 provisions¹, as the draft law relates to a national central bank (NCB). 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.

1. Purpose of the draft law

The purpose of the draft law is to lay down the conditions necessary to ensure the full application in the Czech Republic of Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)². The consumer protection laws covered by Regulation (EC) No 2006/2004 include Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC³, as transposed into the national legal order of the Member States. In the Czech Republic, however, Directive 2002/65/EC was largely transposed into Czech law through amendments to the provisions on consumer contracts in the

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 364, 9.12.2004, p. 1. Regulation as amended by Directive 2005/29/EC (OJ L 149, 11.6.2005, p. 22).

³ OJ L 271, 9.10.2002, p. 16. Directive as amended by Directive 2005/29/EC.

Civil Code⁴ without explicitly designating an authority responsible for the enforcement of such consumer protection-provisions, as required under Regulation (EC) No 2006/2004.

In order to ensure the application of the Regulation in this area, the draft amendment: (i) expressly entrusts Česká národní banka (ČNB) with the task of supervising compliance with the obligations set forth in the Civil Code concerning distance contracts on financial services⁵ by entities that are subject to ČNB's supervision⁶; (ii) establishes ČNB's competence to act under the Regulation in cases of cross-border cooperation; and (iii) authorises ČNB to prohibit the supervised entities from continuing to commit infringements of collective interests of consumers on the territory of a Member State of the European Communities or in another state forming part of the European Economic Area.

2. General observations

2.1 The new tasks entrusted to ČNB under the draft amendment are not listed among the functions of the NCBs specified in the Statute of the European System of Central Banks and of the European Central Bank. However, without prejudice to the Governing Council's powers under Article 14.4 of the Statute, the ECB does not consider that these new tasks would interfere with the objectives and tasks of the European System of Central Banks (ESCB)⁷. It should also be noted that pursuant to Article 14.4 of the Statute, these new tasks would have to be performed on the responsibility and liability of ČNB, and would not be regarded as being part of the ESCB's functions.

2.2 In general terms, the ECB considers that the allocation of consumer protection-related tasks to ČNB under the draft amendment might helpfully complement ČNB's existing supervisory powers, since following the recent integration of financial market supervision in the Czech Republic, the majority of entities that normally conclude distance contracts on financial services with consumers are already subject to ČNB's prudential supervision. The ECB is therefore of the view that ČNB's new consumer protection-related tasks might contribute to the preservation of confidence in the marketplace.

3. Specific observations

Financial implications for ČNB

The ECB notes that ČNB will be required to commit additional resources, both human and financial, to carrying out the tasks referred to in paragraph 1 above. In this context, the ECB would like to emphasise that 'Member States may not put their NCBs in a position where they do not have sufficient financial

⁴ See Articles 54a – 54d, Section Five of the Law No 40/1964 Coll., Civil Code, as amended.

⁵ These obligations include obligations to provide consumers, well in advance before concluding a distance contract on financial services, with certain specific information on: (i) the supplier; (ii) the financial service provided; (iii) the distance contract on financial services, in particular as regards the possibility of withdrawing from the contract; and (iv) on possible remedies in cases of breach of the obligations under the distance contract on financial services.

⁶ Pursuant to Article 44 of the Law No 6/1993 Coll., on Česká národní banka, as amended, these entities include banks, cooperative banks, electronic money institutions, capital market entities, insurance corporations and pension funds.

⁷ See also ECB Opinion CON/2006/38 of 25 July 2006 at the request of the Bank of Greece on a draft provision on the Bank of Greece's powers in the field of consumer protection.

resources to carry out their ESCB- or Eurosystem-related tasks, as applicable.⁸. Therefore, the Czech Republic will need to ensure that the performance of these additional tasks will not affect ČNB's operational capacity to carry out ESCB-related tasks.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 13 September 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁸ See the ECB's Convergence Report of May 2006, p. 65.