



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 5 October 2007**

**at the request of the Portuguese Ministry of Finance and Public Administration on a draft decree-law amending the legal framework of credit institutions and financial companies**

**(CON/2007/29)**

### **Introduction and legal basis**

On 6 August 2007 the European Central Bank (ECB) received a request from the Portuguese Ministry of Finance and Public Administration for an opinion on a draft decree-law amending the legal framework of credit institutions and financial companies (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 provisions<sup>1</sup>, as the draft law relates to the Banco de Portugal. 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**

- 1.1 The draft law is intended to enhance the consumer protection regime for transactions in financial products and services offered by entities supervised by the Banco de Portugal. More specifically, it will empower the Banco de Portugal to lay down rules on: (i) the conduct of credit institutions in their dealings with customers, namely by issuing instructions concerning codes of conduct to be adopted by the credit institutions and/or industry associations and by establishing guidelines for this purpose; and (ii) the transparency of transactions in financial products and services. The draft law will also give the Banco de Portugal powers to impose sanctions in case of breach of such rules.
- 1.2 Furthermore, the draft law will empower the Banco de Portugal to lay down minimum information requirements which credit institutions will have to comply with when advertising their products and services to the public. The Banco de Portugal will be empowered to lay down mandatory rules

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

on the content of contracts between credit institutions and their customers and to impose penalties for breach, by credit institutions, with the rules on advertising issued by it.

- 1.3 Finally, the draft law will provide for an additional derogation from the current regime for data protection and professional secrecy which applies to supervisory authorities, in order to allow judges in criminal or insolvency proceedings to have access to confidential information held by the Banco de Portugal about credit liabilities and cheque users (payers).

## **2. General observations**

- 2.1 As regards the granting of new consumer protection powers to the Banco de Portugal, the ECB notes that the new tasks described in paragraph 1.1 and 1.2 above are not listed among the functions of national central banks (NCBs) as specified in the Statute of the European System of Central Banks and of the European Central Bank (the ESCB Statute). However, as pointed out on previous occasions<sup>2</sup>, and without prejudice to the Governing Council's powers under Article 14.4 of the ESCB Statute, the ECB does not consider that the abovementioned tasks would interfere with the objectives and tasks of the European System of Central Banks.
- 2.2 Nonetheless, pursuant to the last sentence of Article 14.4 of the ESCB Statute, these new tasks would have to be performed on the responsibility and liability of the Banco de Portugal, and would not be regarded as being part of the ESCB's functions.
- 2.3 The ECB understands that the underlying reason for allocating the above tasks to the Banco de Portugal is linked to its overall responsibility for supervision of the financial market. In this context, the ECB considers that the new tasks may complement the Banco de Portugal's existing supervisory powers and thus contribute to the soundness of the financial market and the preservation of confidence in the marketplace.
- 2.4 The ECB welcomes the allocation of new powers to the Banco de Portugal with the aim of ensuring the transparency of transactions for financial services and products offered by entities subject to its supervision, as this could improve the clarity and efficiency of the national regulatory framework while ensuring adequate consumer protection and a level playing field. The imposition of specific transparency requirements for financial transactions, accompanied by effective monitoring of compliance with those requirements, should allow consumers to compare more easily the different products and services on offer and could therefore enhance competition.

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<sup>2</sup> See ECB Opinion CON/2006/47 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, 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, and ECB Opinion CON/2007/8 of 21 March 2007 at the request of the Czech Ministry of Industry and Trade on certain provisions of a draft law amending the Law on consumer protection relating to Česká národní banka.

2.5 As previously stated by the ECB with regard to granting similar powers to other NCBs<sup>3</sup>, it is important to ensure that both prudential supervision and investor/consumer protection have adequate and equal emphasis and that appropriate resources are available to ensure the performance of such functions.

### **3. Specific observations**

3.1 It is noted that, without prejudice to the rules applicable to complaints made to credit institutions, the customers of these institutions may submit complaints directly to the Banco de Portugal if there is breach of legislative or regulatory provisions governing their activities, as long as the complaint is not related to a dispute of a purely contractual nature between the customer and the credit institution. Disputes between credit institutions and their customers stemming from unregulated commercial practices, and complaints on any matter which has already been brought before a court of law or an arbitration tribunal will fall outside the scope of the Banco de Portugal's intervention.

3.2 However, the ECB suggests that the negative competence clause in Article 77-A(4) may not be sufficient to avoid a potentially large volume of complaints, even though it specifically aims to tackle this risk. These new tasks and procedures broadly described under Article 77-A of the draft law are likely to require the Banco de Portugal to commit considerable resources, both human and financial. The ECB has consistently held the view that 'Member States may not put their NCBs in the position of not having sufficient financial resources to carry out their ESCB or Eurosystem related tasks, as applicable'<sup>4</sup>.

3.3 The ECB therefore expects that, when granting these additional powers to the Banco de Portugal, care will be taken to ensure that the Banco de Portugal's operational capacity to carry out Eurosystem-related tasks will not be affected.

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

Done at Frankfurt am Main, 5 October 2007.

*[signed]*

*The President of the ECB*

Jean-Claude TRICHET

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<sup>3</sup> See ECB Opinion CON/2006/38, ECB Opinion CON/2006/47 and ECB Opinion CON/2007/8.

<sup>4</sup> See e.g. the ECB's Convergence Report 2004, p. 28, and similarly in the ECB's Convergence Report December 2006, p. 27.