



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

**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  
(CON/2007/8)**

### **Introduction and legal basis**

On 23 February 2007 the European Central Bank (ECB) received a request from the Czech Ministry of Industry and Trade for an opinion on certain provisions of the draft law amending Law No 634/1992 Coll. on consumer protection, Law No 40/1995 Coll. on the regulation of advertising and on the amendment of Law No 468/1991 Coll. on radio and television broadcasting, and Law No 513/1991 Coll., the Commercial Code (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 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 transpose the Unfair Commercial Practices Directive<sup>2</sup> (hereinafter the ‘Directive’) into Czech law. Since the scope of the Directive includes financial services, the draft law assigns responsibility to Česká národní banka (ČNB) to supervise compliance by the entities which are subject to ČNB’s supervision<sup>3</sup> with certain obligations set out in the draft law. Specifically, under the draft law, ČNB will supervise compliance with: (i) the prohibition of unfair commercial practices; (ii) the prohibition of discrimination against consumers; and (iii) obligations with regard to pricing information.

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

<sup>2</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) (OJ L 149, 11.6.2005, p. 22).

<sup>3</sup> 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.

## **2. General observations**

- 2.1 The new consumer protection-related tasks entrusted to ČNB under the draft law 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, as already pointed out on previous occasions<sup>4</sup>, 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). It should also be noted that pursuant to the last sentence of 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 The ECB understands that the underlying reason for allocating the above tasks to ČNB is linked to ČNB's overall responsibility for supervision of the financial market. In this context, the ECB considers that the new tasks may complement ČNB's existing supervisory powers and thus contribute to the soundness of the financial market and the preservation of confidence in the marketplace. However, it is important to ensure that both prudential supervision and consumer protection functions have adequate and equal emphasis and that appropriate organisational requirements are in place to ensure it.

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<sup>4</sup> See ECB Opinions 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 and 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.

### 3. Specific observations

The ECB notes that ČNB will be required to commit additional resources, both human and financial, to carry out the new tasks referred to in the draft law. In this regard, the ECB would like to reiterate that ‘Member States may not put their NCBs in a position where they have insufficient financial resources to carry out their ESCB- or Eurosystem-related tasks, as applicable’<sup>5</sup>. Therefore, the Czech authorities 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, 21 March 2007.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<sup>5</sup> See the ECB’s Convergence Report of December 2006, p. 27.