



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

**of 26 February 2008**

**at the request of the Portuguese Ministry of Finance and Public Administration  
on two draft decree-laws transposing Directive 2006/43/EC of the European Parliament and of the  
Council of 17 May 2006 on statutory audits of annual and consolidated accounts, concerning the  
supervision of auditors  
(CON/2008/11)**

### **Introduction and legal basis**

On 16 November 2007 the European Central Bank (ECB) received a request from the Portuguese Ministry of Finance and Public Administration for an opinion on two draft decree-laws transposing Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual and consolidated accounts (hereinafter the ‘draft decree-laws’).

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 one of the draft decree-laws 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 decree-laws**

The draft legislation is intended to transpose into Portuguese law Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (hereinafter the ‘Directive’)<sup>2</sup>. The Directive imposes harmonised rules on statutory auditors and audit firms and requires Member States to organise an effective system of public oversight of such entities based on the principles of adequacy, effectiveness and independence. It further recommends that the competent authorities of the Member States cooperate with each other for the purpose of carrying out said duties.

With this aim, the first draft decree-law establishes the National Audit Supervisory Council (*Conselho Nacional de Supervisão de Auditoria*, hereinafter the ‘CNSA’), charged with organising a system for the

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

<sup>2</sup> OJ L 157, 9.6.2006, p. 87.

public oversight of statutory auditors and audit firms in accordance with the Directive. The Statute of the CNSA (hereinafter the ‘CNSA Statute’) is published as an annex to the first draft decree-law and is an integral part of it.

The second draft decree-law amends the Statute of the Association of Statutory Auditors (*Ordem dos Revisores Oficiais de Contas*) and has no connection with the Banco de Portugal. In view of the above, the present opinion deals only with the first draft decree-law.

## **2. General observations**

- 2.1 Article 1 of the draft decree-law establishes the CNSA. According to its Statute, the CNSA is an independent body with no legal personality and subject to oversight by the Minister for Finance (Article 2). The tasks entrusted to the new body by the draft decree-law include, *inter alia*, supervising the approval and registration of statutory auditors and audit firms and of the adoption of standards of professional ethics, internal quality assurance rules for audit firms and audit procedures (Article 3(1)(a)). The CNSA will also issue regulations on matters falling within the scope of its responsibilities, coordinate the different national entities with powers in the field of auditing and assist and cooperate with other international bodies with powers to approve, register, assure the quality of, inspect and discipline statutory auditors and audit firms (Article 3(1)(b),(c) and (d)). The powers conferred on the CNSA include issuing binding prior opinions on quality assurance system rules, ethical standards and auditing standards foreseen in Article 11(1)(c).
- 2.2 In accordance with the draft decree-law, (Article 5), participation in the CNSA will become part of the Banco de Portugal’s statutory tasks. Such participation consists of one of the members of its Board of Directors being a permanent member of the CNSA (Article 9(1)(a) of the CNSA Statute). This new function is not related to the European System of Central Banks (ESCB) and, therefore, pursuant to the last sentence of Article 14.4 of the ESCB Statute, such new function would have to be performed on the Banco de Portugal’s responsibility and liability. However, as previously pointed out<sup>3</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 ESCB or with the responsibilities of the Banco de Portugal as an integral part of the ESCB. In this context, the ECB notes that the CNSA will be an independent body (Article 2(1) of the CNSA Statute) and that the tasks of the CNSA will be without prejudice to the tasks and powers conferred by law to the Banco de Portugal (Article 3(2) of the CNSA Statute).

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<sup>3</sup> See ECB Opinions CON/2007/29 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/2007/8 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, 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

- 3.1 As regards responsibility, the ECB notes that the CNSA has no legal personality but enjoys the capacity to be party to judicial proceedings (Article 2(1)(3) of the CNSA Statute). The ECB considers that the implications of the lack of legal personality for the regime of non-contractual liability, which could rest on the CNSA's members, may require adequate consideration.
- 3.2 On the other hand, the lack of legal personality requires proper consideration of the CNSA's financing regime, as this would imply the allocation of human, technical and material resources by the entities comprising the CNSA (Articles 14(1) and 27(1) of the CNSA Statute). This allocation has to be subject to previous annual budgeting, so that those entities could mobilise the necessary resources. 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>. The ECB therefore expects that, when granting these additional functions to the Banco de Portugal, care will be taken to ensure that the Banco de Portugal's operational capacity to carry out ESCB-related tasks will not be affected.

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

Done at Frankfurt am Main, 26 February 2008.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<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.