



## OPINION OF THE EUROPEAN CENTRAL BANK

of 4 April 2008

at the request of the Finnish Ministry of Finance

on a draft government proposal for a law on the Financial and Insurance Supervisory

Authority and certain related draft laws

(CON/2008/16)

### Introduction and legal basis

On 13 February 2008, the European Central Bank (ECB) received a request from the Finnish Ministry of Finance for an opinion on a draft government proposal including a draft law on the Financial and Insurance Supervision Authority (hereinafter, the 'draft law'), as well as certain other related draft laws<sup>1</sup>.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and sixth indents 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>2</sup>, as the proposal concerns Suomen Pankki and contains provisions on rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 merge the existing Financial Supervision Authority (FSA), which supervises financial markets with the Insurance Supervisory Authority (ISA), which supervises the insurance and pensions industry. The FSA and the ISA will form a new consolidated supervisor under the name 'Financial and Insurance Supervision Authority' (FISA)<sup>3</sup> which will begin to operate on

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<sup>1</sup> The Law on supervision fees of the Financial and Insurance Supervision Authority (a new draft law) and amendments to the following: the Law on credit institutions (121/2007), the Law on commercial banks and other credit institutions in the form of a limited company (1501/2001), the Law on savings banks (1502/2001), the Law on cooperative banks and other credit institutions established as cooperatives (1504/2001), the Law on the operation of a foreign credit institution or financial institution in Finland (1608/1993), the Law on temporary suspension of the operations of a deposit bank (1509/2001), the Law on supervision of financial and insurance conglomerates (699/2004), the Law on investment firms (922/2007), the Law on the right of a foreign investment firm to provide investment services in Finland (580/1996), the Law on mutual funds (48/1999), the Law on the operations of a foreign management company in Finland (225/2004), the Law on securities markets (495/1989), the Law on pawn shops (1353/1992), as well as certain other laws relating to financial markets.

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.

<sup>3</sup> The Finnish name is '*Finanssivalvonta*'. The word 'insurance' is added in the English translation of the name of the new authority, in order to avoid confusion with the present FSA ('*Rahoitustarkastus*').

1 January 2009. The FISA will have a similar organisational structure to the FSA, and its powers will largely be a combination of those currently exercised by the FSA and the ISA.

The new elements of the FISA's structure and powers, in particular, relate to the following:

- (a) *The FISA's objectives and tasks.* The FISA's objective will be 'to promote the stability of the operations of credit, insurance and pension institutions and other supervised entities, thereby contributing to financial stability and to safeguarding of the interests of the insured, while otherwise maintaining confidence in financial market activity'<sup>4</sup>. The draft law also contains some tasks that are new or formulated in a more detailed way than the tasks of the FSA and the ISA<sup>5</sup>. In particular, the draft law will include comprehensive provisions in the area of customer protection, combining existing provisions from a number of separate acts<sup>6</sup>. Further, some entities currently supervised by FSA and the ISA will be removed from the scope of the FISA's supervision<sup>7</sup>.
- (b) *Organisational framework and governance of the FISA.* As is the case for the current FSA, the FISA will be established within the organisational structure of Suomen Pankki. The FISA's governing bodies will be similar to those of the current FSA, namely: (i) the Parliamentary Supervisory Council (which is also one of the governing bodies of Suomen Pankki)<sup>8</sup>; (ii) the FISA's Board, which will have powers to decide on the direction of supervisory activity; and (iii) the FISA's Director General who will exercise most of the direct supervisory powers. The key new elements introduced into the framework are as follows:
- *as regards the FISA's Board:* (i) the composition of the Board will now include three nominees proposed for appointment by the Suomen Pankki, the Ministry of Finance and the Ministry of Social Affairs and Health, respectively, as well as two members appointed directly by the Parliamentary Supervisory Council<sup>9</sup>; (ii) any of the Board members will be eligible to be appointed as Board Chairman or Vice-Chairman<sup>10</sup>; (iii) certain administrative

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4 See Section 1 of the draft law.

5 See the FISA's activities listed in Section 3 of the draft law. Certain further adjustments concern, inter alia, the FISA's supervisory powers specified in Chapter 3 of the draft law.

6 See Chapter 5 of the draft law.

7 I.e. pawn shops and certain boards and committees, such as the Traffic Insurance Board and the Treatment Insurance Board (see Section 4 of the draft law).

8 See Sections 9 and 11 of the Law on Suomen Pankki (214/1998) (hereinafter, the 'Law on Suomen Pankki') provides that Suomen Pankki's governing bodies are the Parliamentary Supervisory Council, supervising the administration and activities of Suomen Pankki, and the Board.

9 See Sections 8 and 9 of the draft law. Currently, the Board of the FSA is composed of six members and three deputy members appointed by the Parliamentary Supervisory Council for a period of three years. Two members and one deputy member are appointed on the basis of a proposal by the Ministry of Finance, one member and a deputy member on the basis of a proposal by the Suomen Pankki and one member and deputy member on the basis of a proposal by the Ministry of Social Affairs and Health. The director generals of the FSA and the ISA are *ex officio* members of the Board. The Board of the ISA is appointed in a similar way, and its composition is in practice the same as that of the current FSA (see Sections 8 and 9 of the Law of 27 June 2003 on the Financial Supervision Authority (587/2003) (hereinafter, the 'current Law on the FSA')).

10 See the third paragraph of Section 9 of the draft law. Currently the Board Chairman and Vice-Chairman are appointed by the Parliamentary Supervisory Council from among Board members nominated by Suomen Pankki and the Ministry of Finance (see Section 8(3) of the current Law on the FSA).

- responsibilities of the Board will be broadened<sup>11</sup>; and (iv) the Parliamentary Supervisory Council will decide on Board members' compensation<sup>12</sup>;
- *as regards the FISA's Director General*: (i) the Director General will be appointed by the Parliamentary Supervisory Council on a proposal of the Board<sup>13</sup>; the Director General will have a fixed term of office of five years<sup>14</sup>; (ii) the Director General will be entitled to participate in the FISA's Board meetings, but not as a voting member as is the case now<sup>15</sup>; and (iii) the provisions regarding submission of decisions falling within the scope of the Director General's competence for consideration by the Board will be made clearer<sup>16</sup>.
- (c) *The FISA's financing*: the draft law proposes a funding mechanism aiming at ensuring that 90% of the FISA's operational costs are funded by fees collected from the supervised entities, while the remaining 10% of such costs will be contributed by Suomen Pankki. According to the explanatory memorandum to the draft law, this Suomen Pankki's contribution to the FISA's financing will ultimately decrease the amounts of profit distributions provided by Suomen Pankki to the State budget<sup>17</sup>.
- (d) *Cooperation with other authorities*: the FISA's obligation to disclose information to Suomen Pankki or to the Government will be broader. In particular, the FISA will be obliged to disclose any information that may have a significant effect on 'financial market developments'<sup>18</sup>. Certain new detailed administrative and cost-sharing rules will also be introduced in the areas where closer cooperation with other European Economic Area supervisory authorities is required under the provisions implementing Capital Requirements Directives<sup>19</sup>.

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11 See Section 10 of the draft law.

12 See Section 8(9) of the draft law. The current law on the FSA is silent on this issue.

13 See Section 8(4) of the draft law. Currently the Director General of the FSA is appointed by the President of the Republic.

14 The Parliamentary Supervisory Council will have the power to issue a warning and suspend the Director General from duty; the Director General may be suspended if they are prosecuted or under investigation for an offence (Sections 8 and 11 of the draft law).

15 See Section 9 of the draft law and Section 9 of the current Law on the FSA.

16 Under Section 13 of the draft law: (1) the matters listed in Subsection 1 (e.g. granting an authorisation to a supervised entity) will be provided by the Director General to the Board 'for information'; (2) any Board member may require that such matter is taken up by the Board 'for consideration'; and (3) the Board is entitled to take a decision on the matter if it may significantly affect the stability of financial markets or otherwise significantly affect their development.

17 See Section 70 of the draft law and Chapter 5.6 'Covering the costs of supervision' of the explanatory memorandum.

18 See the fifth paragraph of Section 71 of the draft law. The fourth paragraph of Section 36 of the current Law on the FSA only specifies the duty to provide information on matters that may jeopardise financial stability or cause major disruptions to the operation of the financial system.

19 See Chapter 6 of the draft law. The 'Capital Requirements Directives' are Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1), as last amended by Directive 2007/64/EC (OJ L 319, 5.12.2007, p. 1), and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJ L 177, 30.6.2006, p. 201). The Capital Requirements Directives have been implemented in Finland by the Law on credit institutions (121/2007) and certain other laws.

## **2. General comment**

- 2.1 The ECB broadly welcomes the general aim of the draft law to strengthen the supervisory structure in Finland, by ensuring that it is appropriately equipped to respond to risks emerging in financial markets, particularly in cross-sectoral domestic activity and in a cross-border context. The ECB has recognised in its previous opinions that the nature and scope of risk in the financial sector is widening, due to closer links between credit institutions, insurance companies, investment firms and pension funds, as demonstrated by the emergence of hybrid financial products, the increased use of risk transfer instruments and the growing role of financial conglomerates<sup>20</sup>.
- 2.2 Moreover, the ECB notes that, like the FSA, FISA will operate in connection with Suomen Pankki. Indeed, central banks have traditionally been closely involved in the prudential supervision of credit institutions due to their pivotal role in the financial system, in particular regarding the implementation of monetary policy and ensuring the proper functioning of payment systems<sup>21</sup>. Moreover, the maintenance of a close involvement of euro area national central banks (NCBs) in prudential supervision is an important condition for allowing the Eurosystem to contribute adequately to monitoring the risks to financial stability in the euro area<sup>22</sup>, in accordance with Article 105(5) of the Treaty, and to safeguarding smooth coordination between the central banking functions exercised at Eurosystem level and the supervisory functions carried out at national level<sup>23</sup>.
- 2.3 In this context, the ECB makes a number of comments relating to specific provisions of the draft law, with a view to ensuring the operational independence of the proposed supervisory authority<sup>24</sup> and the appropriate scope of central bank involvement in supervision and oversight policies.

## **3. Objectives and governance of the supervisory authority**

- 3.1 The ECB broadly welcomes the objectives assigned to the FISA, as well as the clear statement that the FISA will operate in connection with Suomen Pankki<sup>25</sup>. Such cooperation would be particularly important as regards the FISA's contribution to financial stability, which is also a task performed by Suomen Pankki<sup>26</sup>.

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<sup>20</sup> See, e.g. paragraph 5 of ECB Opinion CON/2004/16 of 11 May 2004 at the request of the Italian Ministry of Economic Affairs and Finance on a draft law on the protection of savings.

<sup>21</sup> See paragraph 6 of ECB Opinion CON/2003/23 of 24 October 2003 at the request of the Ministry of Finance of the Netherlands on a draft law on provisions concerning the merger of De Nederlandsche Bank and the Pensions and Insurance Supervisory Authority Foundation.

<sup>22</sup> See paragraph 4 of ECB Opinion CON/2001/10 of 25 May 2001 at the request of the Austrian Ministry of Finance on a draft law establishing and organising the financial market supervisory authority [title shortened].

<sup>23</sup> See paragraph 5 of ECB Opinion CON/2001/35 of 8 November 2001 at the request of the German Ministry of Finance on a draft law establishing an integrated financial services supervision.

<sup>24</sup> See paragraphs 3.1 and 3.2 of ECB Opinion CON/2006/39 of 2 August 2006 at the request of Poland's Sejm Marshall on a draft law amending the Law on Narodowy Bank Polski. See also the Bank for International Settlements (BIS), Core Principles for Effective Banking Supervision, October 2006, Principle 1 (available on the BIS website ([www.bis.org](http://www.bis.org))).

<sup>25</sup> Section 1 of the draft law.

<sup>26</sup> Section 3 second paragraph, subparagraph 3 of the Law on Suomen Pankki.

- 3.2 The ECB notes that the proposals set out in the draft law seek to establish a sound decision-making structure within the FISA. Further to its earlier recommendations<sup>27</sup>, the ECB would like to underline that granting the Director General full membership of the FISA's Board would enhance the quality of the decision-making process. It should also increase the acceptance and credibility of Board decisions in the market place and the FISA's commitment to implementing the decisions.
- 3.3 The ECB welcomes the introduction of a provision providing for a fixed term of office for the FISA's Director General. It understands that certain general safeguards against dismissal before the lapse of the statutory term in office will apply to the Director General on the basis of Finnish law governing Suomen Pankki staff<sup>28</sup>. The ECB considers nevertheless that appropriate express safeguards should be introduced against unfair dismissal before expiry of the statutory term of office, both in relation to the FISA's Director General and its Board members. As a minimum, it is recommended to include in the draft law a list of the possible grounds for dismissal of Board members and of the Director General, as well as a clarification regarding the applicable court review procedure. The draft provisions regarding suspension from office should also be reviewed to take into account the issues raised in this paragraph.

#### **4. FISA's relationship with Suomen Pankki**

##### *4.1 Central bank independence safeguards*

Like the FSA, the FISA will be a body operating in connection with Suomen Pankki. It will form part of Suomen Pankki's organisational structure, as regulated by the Law on Suomen Pankki and other relevant provisions. As a consequence, all FISA's acts or omissions will be attributable to Suomen Pankki as the sole legal person liable for such acts or omissions. However, the practical influence of Suomen Pankki's Board on decisions of the FISA's Board and Director General will be limited to nomination of one FISA Board member. In the above context, the ECB would like to remind the consulting authority of its views expressed in its previous opinions in circumstances where national laws provide for supervisory authorities to share legal personality with an NCB but be governed by a separate decision-making body, independent from the NCB's governing bodies responsible for the conduct of core central bank tasks. The ECB has noted in particular that: (i) such a structure, together with the potential exposure of an NCB to liabilities resulting from the supervisory authority's activity, could be seen as a threat to the NCB's overall institutional and financial independence<sup>29</sup>; and (ii) it is important to ensure that decisions adopted by such supervisory authorities do not endanger the finances of the NCB as a whole<sup>30</sup>. The ECB notes that

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<sup>27</sup> See paragraph 6 of ECB Opinion CON/2002/23, of 18 September 2002, at the request of the Finnish Ministry of Finance on a draft proposal concerning a revision of the Act on the Financial Supervision Authority.

<sup>28</sup> Section 26 of the Law on civil servants of Suomen Pankki (1166/1998) includes a general rule, pursuant to which an employee may be dismissed in cases of serious breach or negligence in their duties.

<sup>29</sup> See paragraph 6 of ECB Opinion CON/2002/16 of 5 June 2002 at the request of the Irish Department of Finance on a draft Central Bank and Financial Authority of Ireland Bill, 2002.

<sup>30</sup> See the ECB Convergence Report, December 2006, 'Introduction and executive summary', Section 2 (Compatibility of national legislation with the Treaty), Subsection 2.3.1 (Central bank independence) under the heading 'Financial independence – Financial liability for supervisory authorities', p. 28.

Suomen Pankki may face risks in relation to the operation of FISA (both as regards its internal management and the adopted supervisory policies and decisions) that will not be limited to its potential financial liability, but may also include, in particular, reputational and operational risks relating to diminished effectiveness of central bank operations, e.g. in the event of disputes arising between the supervised entities and the supervisor.

4.2 Taking the above into account, the institutional framework proposed by the draft law should be reviewed to ensure that Suomen Pankki's institutional and financial independence<sup>31</sup> will be protected under the proposed reform. In this regard, the ECB's comments relate to five separate but inter-related dimensions, which will require further consideration individually and in terms of their inter-relationships, with a view to finding a balanced solution.

(a) *Institutional set-up*

Some Member States with similar supervisory structures as proposed in the draft law have adopted institutional frameworks which adequately protect their NCBs from risks to their institutional and financial independence. Such frameworks rely, inter alia, on: (i) a sufficiently strong representation of the NCB in the supervisory authority's governing body<sup>32</sup>, which may include the NCB governor acting as *ex officio* Chair<sup>33</sup>; or (ii) a duty to obtain the governor's approval on key supervisory decisions relating to the stability of the financial system<sup>34</sup>. Having regard to central bank independence requirements, the ECB recommends that one of these institutional mechanisms is introduced into the Finnish legal framework<sup>35</sup>. One important safeguard in this respect could be statutory recognition of the current practice of appointing the FISA's Board member nominated by Suomen Pankki as Chair.

(b) *Budgetary arrangements*

FISA's revenues and expenses will be included in Suomen Pankki's annual accounts, while the FISA's Board will be obliged to submit the FISA's annual budget to the Board of Suomen Pankki for confirmation<sup>36</sup>. The ECB understands that the FISA's Board is entitled to

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31 See Article 108 of the Treaty.

32 In Estonia, for instance, Eesti Pank's President is an *ex officio* member of the Financial Supervision Authority's supervisory board, while further two members in the six-person board are appointed by Eesti Pank's Board on a proposal by Eesti Pank's President (Section 8 of the Law of 9 May 2001 on the Financial Supervision Authority). Cf. the supervisory structures in Austria, Belgium and Latvia described in footnotes 58, 60 and 61 to ECB Opinion CON/2006/15 of 9 March 2006 at the request of the Polish Minister of Finance on a draft law on the supervision of financial institutions.

33 In France, for example, the Commission Bancaire is chaired by the President of the Banque de France (Articles L. 613-3 and L. 613-7 of the French Financial and Monetary Code). Cf. paragraph 3.1.1 of the ECB Opinion CON/2006/15.

34 The Irish Financial Services Regulatory Authority is required to consult the Governor of the Central Bank and Financial Services Authority of Ireland, and may act only with the agreement of the Governor on any matter relating to the financial stability of the State's financial system, including (but not limited to) the issue, revocation and suspension of a licence or other authority. See Sections 33C(9), (9A) and (9B) of the Central Bank Act 1942, as amended. Some elements of such structure are also present in Denmark and Hungary (see the detailed description in footnotes 64 and 66 to ECB Opinion CON/2006/15).

35 This recommendation is related to the ECB's concerns regarding the reimbursement mechanism, as explained in paragraph 4.2(c) of this opinion.

36 See Section 10 of the draft law.

independently determine, inter alia, the FISA's specific objectives and strategic directions, including their budgetary implications, while Suomen Pankki's powers are limited to returning the FISA's budget to the FISA's Board for reconsideration. The ECB recommends that the Board of Suomen Pankki should be given the explicit power to oppose any budgetary proposals submitted by the FISA's Board and to decide on essential changes to the FISA's budget if this is necessary in view of the budget's implications for Suomen Pankki's independence and its capacity to pursue central banking tasks<sup>37</sup>.

(c) *The reimbursement mechanism and its financial implications*

The ECB notes that the draft law provides for a reimbursement mechanism under which the State would ultimately cover any damages paid by Suomen Pankki as a result of errors or omissions in the performance of the FISA's supervisory tasks, to the extent that such damage exceeds the amount of remaining profit distributable to the State<sup>38</sup>. As stated in the explanatory memorandum to the draft law, the reimbursement mechanism is intended to cater for exceptional situations where Suomen Pankki's exposure to financial liability resulting from the FISA's supervisory liability could jeopardise Suomen Pankki's financial position<sup>39</sup>. The ECB understands from the explanatory memorandum that, under the reimbursement mechanism, Suomen Pankki will in the first place pay the damages to third parties, but ultimately Suomen Pankki will carry the burden of the payment of such damages only up to the amount of profits distributable to the State. If the damages payable by Suomen Pankki exceed the amount of profits distributable to the State, Suomen Pankki (i) will not distribute any profit, as damages have been paid equal to such amount, and (ii) will be reimbursed by the State for the part of the damages paid in excess of the distributable profits 'without undue delay'. The ECB understands that, due to the nature of this scheme, the reimbursement will not occur until Suomen Pankki's accounts for the year have been closed and the distributable profit duly determined. Although the ECB welcomes the intention underlying these provisions preventing supervisory liability from being detrimental to Suomen Pankki's finances as a whole, the ECB remains concerned that the proposed reimbursement mechanism, in the light of the proposed FISA institutional framework<sup>40</sup>, is not sufficient to ensure the NCB's financial independence. The ECB would therefore suggest giving further consideration to the proposed reimbursement mechanism. One solution would be to ensure that compensation for damage suffered by third parties as a result of errors or omissions in the performance of FISA's supervisory tasks is paid directly from the State budget. Another possibility, taking into account the function of the reimbursement

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<sup>37</sup> See paragraph 8 of ECB Opinion CON/2002/16.

<sup>38</sup> According to Section 69 of the draft law, Suomen Pankki is liable for damage arising from an error or omission by the FISA as provided for in the Law on tort liability, but the Government will reimburse Suomen Pankki, without undue delay, for any payment made in compensation of such damage, to the extent the compensation exceeds the amount of profits distributable to the State by Suomen Pankki according to Section 21(2) of the Law on Suomen Pankki.

<sup>39</sup> See chapter 3.2 'Administration – Basic structure of the governance model' of the explanatory memorandum.

<sup>40</sup> See paragraph 4.2(a) of this opinion.

mechanism as a measure intended to ensure Suomen Pankki's financial independence, would be to include express provisions in the draft law specifying that expenses relating to the FISA's supervisory liability will be reimbursed by the State immediately after such expenses have been incurred and presented for repayment by Suomen Pankki.

(d) *Transfer of ISA's liabilities and commitments to Suomen Pankki*

The draft law further provides for a transfer to Suomen Pankki of, inter alia, 'liabilities and commitments' of the current ISA<sup>41</sup>. In line with its previous opinions<sup>42</sup>, the ECB notes that provisions making an NCB a legal successor to the liabilities of a separate supervisory authority raise issues of compliance with the monetary financing prohibition in Article 101 of the Treaty. The ECB notes that the ISA is currently, unlike the FSA, a legal entity distinct from Suomen Pankki, and that Suomen Pankki will take over the existing liabilities and commitments of the current ISA without being insulated from the financial obligations resulting from the prior activities of such a previously independent public body. This arrangement would be incompatible with Article 101 of the Treaty<sup>43</sup>. The ECB therefore recommends specifying in the draft law that the State will meet any financial obligations incurred by Suomen Pankki as a result of it being substituted for the ISA and that the State should not have any recourse to Suomen Pankki in relation to its liability in this respect<sup>44</sup>.

(e) *Auditing and reporting regime*

The draft law is silent with regard to the auditing and reporting regime applicable to FISA. As Suomen Pankki's annual accounts are audited by independent external auditors under Article 27.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute'), the ECB assumes that the auditors' mandate will be extended to the FISA. However, this point should be clarified expressly in the draft law.

#### 4.3 *Central bank role in relation to oversight*

Article 105(5) of the Treaty assigns the ESCB the task of contributing to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. The ECB understands that this task is recognised in Section 3 of the Law on Suomen Pankki, which specifies that Suomen Pankki

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<sup>41</sup> See the first paragraph of Section 76 of the draft law.

<sup>42</sup> See paragraphs 8 to 12 of the ECB Opinion CON/2005/24 of 15 July 2005 at the request of the Ministry of Finance of the Czech Republic on a draft law on the integration of financial market supervisors.

<sup>43</sup> See the ECB Convergence Report, May 2007, Chapter 2 (Framework for analysis), Subsection 2.2.4.1 (Prohibition on monetary financing) under the heading 'Assumption of public sector liabilities', p. 22. National legislation requiring an NCB to take over the liabilities of a previously independent public body as a result of a national reorganisation of certain tasks and duties (for example, in the context of a transfer to the NCB of certain supervisory tasks previously carried out by the State or independent public authorities or bodies) without insulating the NCB from financial obligations resulting from the prior activities of such previously independent public bodies is incompatible with the monetary financing prohibition.

<sup>44</sup> See paragraphs 8 and 10 to 11 of ECB Opinion CON/2005/24.

participates in maintaining the reliability and efficiency of the payment system and overall financial system and participates in their development.

- 4.4 More specifically, an oversight function is inherent in a central bank's task of promoting a sound market infrastructure to safeguard the effectiveness of monetary policy and the overall stability of the financial system. As expressed in its earlier opinions, the ECB understands that Section 3, second paragraph, subparagraph 3 of the Law on Suomen Pankki provides the legal basis for Suomen Pankki's oversight function. The ECB notes that it would be helpful to include an explicit reference in the Law on Suomen Pankki to the oversight function regarding securities clearing and settlement systems and market infrastructure<sup>45</sup>. In the context of the current reform, the ECB recommends that the tasks of Suomen Pankki and the FISA relating to the oversight and supervision of payments and securities clearing and settlement systems and market infrastructure, are specified more explicitly in the legislation, in particular by referring explicitly to Suomen Pankki's responsibility for oversight of all such systems and infrastructures operating in Finland<sup>46</sup>.

#### 4.5 *Exchange of information*

Under Section 71(5) of the draft law, the FISA will be obliged to disclose, without undue delay, to the Ministry of Finance, the Ministry of Social Affairs and Health and Suomen Pankki any information on 'matters that, according to the FISA's judgement, may have significant effect on financial stability or other financial market developments, or cause major disruptions in the operation of the financial system'. The ECB notes that this provision clarifies that the FISA is under a legal obligation to disclose supervisory information to Suomen Pankki. However, extending the disclosure of confidential information to central government administration should not impair the FISA's operational independence and should comply with Community law.

- 4.6 As emphasised in previous ECB opinions<sup>47</sup>, central banks provide valuable input to the supervisory process and their access to supervisory information benefits the conduct of monetary policy operations, the oversight of payment systems and the pursuit of financial stability. Transmission of supervisory information and data, primarily in aggregated form, is necessary for effective monitoring of financial stability and for assessing the prevailing conditions in the financial system as a whole as well as for the efficacy of the response when a financial crisis occurs. The ECB would therefore welcome insertion of an explicit provision in the draft law stipulating that FISA has a duty to exchange information with Suomen Pankki in relation to all ESCB-related tasks.

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<sup>45</sup> See paragraphs 17 and 18 of ECB Opinion CON/2003/22 of 15 October 2003 at the request of the Finnish Ministry of Finance on a draft governmental proposal to amend the Suomen Pankki Act and other related acts; also paragraphs 14 and 15 of ECB Opinion CON/2004/1 of 20 January 2004 at the request of the Economic Committee of the Finnish Parliament on the governmental proposal to amend the Suomen Pankki Act and other related acts.

<sup>46</sup> See paragraph 3.2 of ECB Opinion CON/2006/20 of 25 April 2006 on the Dutch draft law concerning financial sector supervision and paragraph 2.8 of ECB Opinion CON/2006/53 of 16 November 2006 at the request of the Polish Minister for Finance on a draft law amending the Law on trading in financial instruments. See also the BIS Committee on Payment and Settlement Systems, 'Central Bank Oversight of Payment and Settlement Systems', May 2005, p. 1 (available on the BIS website ([www.bis.org](http://www.bis.org))).

<sup>47</sup> See, e.g. paragraph 2.4.1 of ECB Opinion CON/2006/15.

4.7 The ECB recommends that the provisions regarding exchange of information between the FISA and Suomen Pankki and between the FISA and other administrative bodies (domestic or foreign) are combined with express safeguards ensuring the effectiveness of the confidentiality rules applicable to the ESCB, as specified in Article 38 of the ESCB Statute.

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

Done at Frankfurt am Main, 4 April 2008.

[signed]

*The President of the ECB*

Jean-Claude TRICHET