



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

**of 7 January 2008**

**at the request of the Czech Ministry of Finance**

**on a draft law concerning the distribution of powers between the Ministry of Finance and  
Česká národní banka to prepare and submit certain draft laws to the Government**

**(CON/2008/2)**

### **Introduction and legal basis**

On 12 November 2007 the European Central Bank (ECB) received a request from the Czech Ministry of Finance for an opinion on a draft law amending Law No 2/1969 Coll. on the establishment of ministries and other central administrative bodies of the Czech Republic, as amended (hereinafter the 'Law on competences'), and Law No 6/1993 Coll. on Česká národní banka, as amended (hereinafter the 'Law on ČNB') (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 Česká národní banka (ČNB). 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**

Under the draft law, the Law on competences is amended to extend the Ministry of Finance's competence to cover the areas of the single currency of the European Communities and payment systems<sup>2</sup>. The Law on ČNB will be amended so that ČNB will no longer have the exclusive power to prepare and submit to the Government draft laws on currency, circulation of money, the money market, payment systems and on the status, competence, organisation and activities of ČNB. Draft laws in these areas, with the exception of payment systems, will be prepared and submitted by ČNB jointly with the Ministry of

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

<sup>2</sup> Pursuant to Article 4(1) of the Law on competences, the Ministry of Finance is the central administrative body for, inter alia, the financial market and the protection of consumer interests on the financial market, save for financial market supervision to the extent entrusted to ČNB, and also for foreign exchange affairs. In areas falling within its competence, the Ministry of Finance is responsible for preparing draft laws.

Finance<sup>3</sup>. In the areas of the single currency, payment systems, the regulation of electronic money issuance and foreign exchange management, ČNB will assist the Ministry of Finance in preparing draft laws.<sup>4</sup>

## **2. General observations**

The ECB has several concerns in relation to the proposed redistribution of legislative power between the Ministry of Finance and ČNB as provided for under the draft law, which are set out below.

## **3. The Ministry of Finance's competences**

### *3.1 The single currency*

3.1.1 According to the proposed amendment to Article 4 of the Law on competences, the Ministry of Finance is the central administrative body for, inter alia, 'the single currency of the European Communities'. The scope of this provision should be limited to facilitating the preparation and introduction of the euro in the Czech Republic. The wording of the draft law should therefore be revised to make it clear that it only applies to the preparation and introduction of the single currency. This would help to avoid any possible misunderstanding about the interpretation of the provision, which could be considered as conflicting with the Community legal framework. In this regard, the ECB underlines that one of the basic tasks to be carried out through the European System of Central Banks (ESCB) is to define and implement the monetary policy of the Community<sup>5</sup>. According to Article 106 of the Treaty, the ECB has the exclusive right to authorise the issue of banknotes within the Community, and the ECB and the national central banks (NCBs) may issue such notes, whereas Member States may issue coins subject to approval by the ECB of the volume of the issue.

3.1.2 As a more general remark, it should be emphasised that the adoption of the single currency by a Member State with a derogation is subject to Articles 121 and 122 of the Treaty. In this respect, the ECB notes that the ECB's convergence reports, on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of economic and monetary union, are required to include an examination of the compatibility between the national legislation of such Member States and Articles 108 and 109 of the Treaty.

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<sup>3</sup> See Part II, Section II, paragraph 1 of the draft law.

<sup>4</sup> See Part II, Section II, paragraph 3 of the draft law. Such obligatory assistance of ČNB is already required with respect to the preparation of draft laws in the area of the financial market.

<sup>5</sup> See Article 105(2), first indent, of the Treaty establishing the European Community, which is mirrored in Article 3.1, first indent, of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute').

### 3.2 *Payment systems*

According to the proposed amendment to Article 4 of the Law on competences, the Ministry of Finance is the central administrative body for, inter alia, ‘payment systems, without prejudice to the fields of competence of Česká národní banka pursuant to other legislation’. The ECB notes that, upon the future abrogation of the Czech Republic’s derogation, this provision could result in a conflict with the Community legal framework in this area. In particular, one of the basic tasks to be carried out through the ESCB is the promotion of the smooth operation of payment systems<sup>6</sup>. Moreover, the ECB and NCBs may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Community and with other countries<sup>7</sup>.

### 3.3 *Foreign exchange affairs*

3.3.1 Under Article 4 of the Law on competences, the Ministry of Finance is the central administrative body for, inter alia, ‘foreign exchange affairs including the state’s claims and obligations towards foreign entities’. In general, the ECB notes in this context that a ‘Member State with a derogation may retain national legislation which provides that the government is responsible for the exchange rate policy of that Member State, with a consultative and/or executive role being granted to the NCB. However, by the time that Member State adopts the euro, such legislation has to reflect the fact that responsibility for the euro area’s exchange rate policy has been transferred to the Community level in accordance with Article 111 of the Treaty. Article 111 assigns the responsibility for such policy to the EU Council, in close cooperation with the ECB’<sup>8</sup>.

3.3.2 The ECB would also like to point out that Articles 35 and 36 of the Law on ČNB assign a wide range of responsibilities related to foreign exchange management to ČNB. Therefore, an amendment to Article 4 of the Law of competences could be considered in order to better distinguish the responsibilities of the two authorities in this area.

## **4. Legislative powers concerning ČNB as the central bank**

Under the proposed amendment to Article 37(1) of the Law on ČNB, together with the Ministry of Finance ČNB will ‘prepare and submit to the Government draft laws ... concerning the status, fields of competence, organisation and activities of Česká národní banka as the central bank of the Czech Republic’. The ECB notes that the draft law implies that legislation in certain areas in which ČNB does not act as the central bank can be submitted to the Government only by the Ministry of Finance, and not ČNB. The Ministry of Finance can, for example within its powers as the central administrative body in charge of the financial market, independently submit to the Government draft laws concerning the status, fields of competence, organisation and activities of ČNB to the extent this is without prejudice to ČNB’s position as the central bank. Where based on such laws ČNB is entrusted with additional tasks or its tasks

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<sup>6</sup> Article 105(2), fourth indent, of the Treaty, which is mirrored in Article 3.1, fourth indent, of the ESCB Statute.

<sup>7</sup> Article 22 of the ESCB Statute.

<sup>8</sup> See the ECB’s Convergence Report 2007, p. 26, available on the ECB’s website at [www.ecb.int](http://www.ecb.int).

are being changed, the ECB would 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>9</sup>. Therefore, the ECB expects that, when extending or otherwise changing ČNB's tasks, sufficient financial and personnel resources will be available to ČNB, both in terms of quantity and quality to carry out all its tasks, and in particular that its capacity to carry out ESCB-related tasks will not be affected<sup>10</sup>.

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

Done at Frankfurt am Main, 7 January 2008.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<sup>9</sup> See the ECB's Convergence Report 2007, p. 19, available on the ECB's website at [www.ecb.int](http://www.ecb.int).

<sup>10</sup> See for example 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.