EUROPEAN CENTRAL BANK

EUROSYSTEM

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 13 January 2010**

**on the consolidation of deposit banks**

**(CON/2010/9)**

## Introduction and legal basis

On 9 December 2009, the European Central Bank (ECB) received a request from the Finnish Ministry of Finance for an opinion on a proposal for a law on the consolidation of deposit banks (hereinafter the 'draft law') and certain related laws.

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the sixth 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[1], as the draft law relates to 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 draft law concerns the consolidation of deposit banks, in particular the rules applicable to central bodies and affiliated credit institutions as referred to in Article 3 of the Banking Directive[2]. The main purpose of the draft law is to allow such group structures to apply to all deposit banks irrespective of their company form, thus widening the scope of the present legislation which only applies to cooperative banks in this respect. According to the explanatory memorandum, the draft law further aims, *inter alia*, to clarify the rules concerning the supervision of the solvency of the affiliated institutions, to strengthen the supervisory powers of the central body and to strengthen the system of mutual liability of the affiliated institutions.

The draft law provides for general requirements for the formation of a consortium, namely that: (1) the central body supervises and monitors its affiliated credit institutions; (2) the combined minimum amount of assets and liquidity of the companies belonging to the consortium are monitored in a consolidated manner at the consortium level; (3) the central body is liable for the debts of affiliated credit institutions, which are obliged to take part in support measures to prevent the liquidation of an individual institution

1 OJ L 189, 3.7.1998, p. 42.

2 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.

and to contribute towards payments by the central body to settle the debt of an individual institution; and (4) the majority of affiliated credit institutions are deposit banks.

The draft law requires a central body to apply for a licence from the Financial Supervisory Authority and imposes certain restrictions with regard to the business activities of a central body. In order to strengthen the binding effect of the rules laid down by a central body, the draft law provides that an affiliated institution can lose its affiliate status in the event of significant non-compliance with such rules.

In addition, proposed amendments to the Law on the Government guarantee fund would allow financial support to also be granted to a central body which distributes the support to affiliated institutions.

## 2. Specific observations

According to Section 8 of the draft law, an affiliated credit institution can withdraw or be dismissed from the central body under certain conditions. In the case of a voluntary withdrawal, the combined amount of assets of each company belonging to the consortium must remain as required under Section 19 of the draft law. Grounds for dismissal are, *inter alia*, a failure of the affiliated credit institution to comply with the guidelines issued or general operational principles verified by the central body.

The ECB understands that, according to Section 29 of the draft law, in the event of a withdrawal or dismissal, the provisions concerning a member credit institution's liability to pay its share to the central body are applicable for up to five years from the end of the calendar year during which the withdrawal or dismissal took place. In the case of voluntary withdrawal it is understood from Section 8 that the solvency of the credit institution shall be confirmed by calculations verified by the auditors of the central body. The ECB notes however, that the draft law does not include provisions as to how the solvency and liquidity of the disconnected credit institution shall be ensured in case of dismissal due to non-compliance. For reasons of clarity and to safeguard the interests of depositors and creditors as well as the stability of the financial system, the ECB would recommend clarifying this aspect in the draft law.

The ECB understands that the withdrawal or dismissal of an affiliated credit institution from a central body would be without prejudice to the minimum reserve holding obligations of the credit institution in question, in the event that its minimum reserves have been held, until its withdrawal or dismissal, through that central body, in its capacity as intermediary, pursuant to Article 10 of Regulation ECB/2003/9[3] on the application of minimum reserves.

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

Done at Frankfurt am Main, 13 January 2010.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

3 OJ L 250, 2.10.2003, p. 10.