



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

at the request of Danmarks Nationalbank under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI on a draft legislative proposal concerning margin collateral in connection with clearing and settlement of securities transactions

CON/98/20

1. The EMI has received a request from Danmarks Nationalbank dated 2 April 1998 for an opinion on a draft legislation concerning margin collateral in connection with clearing and settlement of securities transactions (the “legislative proposal”). In addition to a brief summary of the legislative proposal in the English language (the “summary”), the EMI has received extracts of the bill (the “Bill”) amending the Danish Securities Trading Act (the “Act”) and extracts of the explanatory notes to the Bill amending the Act.
2. In accordance with Article 109l (2) of the Treaty, the ECB has taken over the advisory functions of the EMI which has gone into liquidation upon the establishment of the ECB on 1 June 1998. The ECB’s competence to deliver an opinion is based on Article 1.1, fourth and fifth indents, of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions, as the legislative proposal contains provisions concerning multilateral netting in connection to clearing and settlement of securities transactions involving financial institutions which may influence the stability of financial institutions and markets.
3. The summary refers to the present Danish legislation on multilateral netting in connection to clearing and settlement of securities transactions which ensures that multilateral netting can take place irrespective of any compulsory winding-up procedure of a participant of a securities settlement system under the Danish Act on Bankruptcy (the “Bankruptcy Act”), whereby registered transactions can be completed even when a participant becomes insolvent. In this connection, the ECB recalls an earlier consultation in 1995 on a Danish draft legal proposal concerning the securities market legislation (Bill No. L 250, Folketinget 1994-1995; CON/95/9).

4. The present legislative proposal addresses the possibility under the current legislation that margin collateral in connection with clearing and settlement and securities transactions might be challenged during the suspect period according to the Bankruptcy Act. The objective of the legislative proposal according to the summary is to exclude the possibility to successfully challenge such margin collateral under the Bankruptcy Act during the suspect period. The ECB welcomes this objective and agrees that such a legislative amendment should facilitate the participation of Danish credit institutions in internationally operating clearing and settlement systems located in other countries, and thereby the cross-border use of securities.
5. The risk control measures proposed for the ESCB monetary policy framework have been prepared taking into consideration differences in euro area legal systems. It might be necessary to consider again the consequences of the legislative proposal as it relates to the provision of margin collateral to ascertain its consistency with these ESCB risk control measures, should Denmark decide to participate in EMU.
6. The ECB has no objection to this opinion being made public.

22 June 1998