



OPINION OF THE EUROPEAN CENTRAL BANK

of 18 July 2008

**at the request of the Austrian Federal Ministry of Finance on the provisions introducing
investment-oriented life assurance
(CON/2008/30)**

Introduction and legal basis

On 9 June 2008 the European Central Bank (ECB) received a request from the Austrian Federal Ministry of Finance for an opinion on a draft law implementing Directive 2007/44/EC¹ amending the Law on banking, the Law on securities supervision, the Law on the stock exchange, the Law on savings banks, the Law on federal finance, the Law on insurance supervision, the Law on company pensions and the Law on financial conglomerates (hereinafter the 'draft law'), and at the same time introducing a new investment instrument, namely investment-oriented life assurance.

The ECB's competence to deliver an opinion is based on 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 provisions², 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 and scope of the opinion

- 1.1 According to the explanatory memorandum to the draft law, the proposed investment-oriented life assurance would allow proceeds from the premiums paid out under a specific life assurance contract to be invested in line with the pre-defined investment strategy specified in the contract. Proceeds gained from such specified investments will be attributed to the individual contract, whereas in unit-linked life assurance or index-linked life assurance, the investment is attached to an external fund or index. This differs also from classic life assurance, where all interest yields are equally distributed to the respective contracts. According to the explanatory memorandum, the

¹ Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1).

² OJ L 189, 3.7.1998, p. 42.

insurance company will hence be in a position to provide insurance products tailored to the client's individual risk preferences with a guaranteed interest rate³.

- 1.2 Under the draft law, insurance companies will also have to comply with conduct of business rules for transactions in unit-linked life assurance, and in investment-oriented life assurance without guarantee. It also empowers the Financial Market Authority, which supervises insurance companies, to exercise regulatory powers in that respect.
- 1.3 This opinion does not consider the measures intended to transpose Directive 2007/44/EC and only focuses on the above summarised provisions introducing investment-oriented life assurance and conduct of business rules for insurance companies.

2. The central bank's financial stability role and exchange of information

- 2.1 In previous opinions, the ECB has recognised 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 conglomerates⁴.
- 2.2 Further, in keeping with the position taken by the ECB in previous opinions on draft national legislation, including its opinions on the 2001 reform of the Austrian financial supervision framework⁵ and the reform of the banking supervision framework in Austria⁶, the ECB considers that central banks are in general best placed to take on responsibility for financial stability, given their insight into money and financial market developments and their involvement in payment systems and monetary policy operations. This applies both to the normal conduct of business and in crisis situations.
- 2.3 Given the hybrid nature of the proposed investment-oriented life assurance, the Oesterreichische National Bank (OeNB) must have adequate access to information and data in relation to this product. The ECB understands that Article 44b(1) of the Law on the OeNB⁷ provides an adequate legal basis in this respect⁸.

³ The product may be linked, at a higher premium, to the guaranteed minimum rate of return.

⁴ See, e.g. paragraph 2.1 of ECB Opinion CON/2008/16 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.

⁵ See ECB Opinion CON/2001/10 of 25 of May 2001 at the request of the Austrian Ministry of Finance on the Law establishing and organising the financial market supervisory authority and amending several laws.

⁶ See ECB Opinion CON/2007/33 of 5 November 2007 at the request of the Austrian Federal Ministry of Finance on a draft law amending the Law on banking, the Law on savings banks, the Law on the Financial Market Supervisory Authority and the Law on the Oesterreichische Nationalbank.

⁷ The Law on the Oesterreichische Nationalbank.

⁸ See paragraph 2.4 of ECB Opinion CON/2007/33.

3. Specific issues

- 3.1 The ECB welcomes the introduction of conduct of business rules in relation to the abovementioned assurance products as they will enhance consumer protection.

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

Done at Frankfurt am Main, 18 July 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET