



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 October 2005

at the request of Česká národní banka

**on a comprehensive proposal to amend the draft law on the amendment of laws
in connection with the integration of financial market supervision**

(CON/2005/39)

1. On 21 September 2005, the European Central Bank (ECB) received a request from Česká národní banka (ČNB) for an opinion on a comprehensive proposal to amend the draft law on the amendment of laws in connection with the integration of financial market supervision (hereinafter the 'revised draft law').
2. The ECB's competence to deliver an opinion is based on 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 provisions¹, as the revised draft law contains provisions concerning a national central bank (NCB) and rules applicable to financial institutions that 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.

Integration of financial market supervision

3. The purpose of the revised draft law is to establish the legal framework for integrated supervision of the Czech financial markets by ČNB. At present, ČNB is one of four financial market supervisors in the Czech Republic and is responsible for the supervision of credit institutions other than cooperative banks. The other financial market supervisors are the Securities Commission (SEC), the Office for the Supervision of Insurance and Pension Funds (OSIPF), which forms part of the Ministry of Finance, and the Office for Supervision of Cooperative Banks (OSCB) (hereinafter referred to collectively as the 'other supervisors'). The revised draft law amends an earlier legislative proposal, which was also submitted to the ECB for consultation². That proposal only provided for the integration of the OSCB into ČNB as the first step in a broader reorganisation of financial market supervision whereby the number of supervisors would be reduced to two, with

¹ OJ L 189, 3.7.1998, p. 42.

² ECB Opinion CON/2005/24 of 15 July 2005.

ČNB as the banking supervisor and the SEC as the non-banking sector supervisor. Under the revised draft law, however, which enters into force on 1 April 2006 (hereinafter the ‘effective date’), all three of the other supervisors will be dissolved and their responsibilities and staff will be transferred to ČNB.

4. The ECB understands that the revised draft law has been agreed by ČNB and the Czech Ministry of Finance and that the Czech Government also supports the proposals set out in the revised draft law³. The ECB welcomes the proposal to integrate all the other supervisors within ČNB. The ECB considers that in a Member State with a relatively small financial market, such as the Czech Republic, there are strong arguments for concentrating supervisory responsibilities in the hands of a single authority⁴.
5. The ECB considers that the proposed extension of ČNB’s supervisory tasks to non-banking supervision is compatible with its tasks in relation to the European System of Central Banks. In particular, the ECB welcomes the fact that the task of performing prudential supervision of all financial market intermediaries will be transferred to ČNB. Faced with the increasing blurring of traditional borders between the banking, securities and insurance sectors and the resulting new challenges to prudential supervision and the stability of the financial system, an NCB with overall responsibility for the financial markets is likely to cope better than several supervisors whose supervisory competences are limited to a particular financial sector.

Financial stability

6. The ECB takes note that the revised draft law specifies that in performing capital market supervision ČNB will contribute to investor protection and strengthen confidence in the capital markets⁵. The revised draft law also adds to ČNB’s tasks the task of ‘taking care of the safe functioning and development of the financial market’⁶. Whilst these definitions of ČNB’s supervisory role and objectives are welcome, the ECB considers that the revised draft law should clearly recognise ČNB’s wider role of: (i) safeguarding the security and soundness of financial institutions, and (ii) safeguarding the stability of the financial system as a whole. The focus of NCBs on systemic stability in performing their tasks means that they can better assess not only the likelihood and the potential impact of macro-economic shocks or disturbances in domestic and international capital markets, but also the operation of common factors affecting the stability of

³ See the explanatory memorandum to the revised draft law.

⁴ Slovakia has also recently concentrated responsibility for financial supervision within its NCB (see ECB Opinion CON/2004/31 of 22 September 2004 at the request of Národná banka Slovenska on a draft law on supervision of the financial market and on amendments to certain laws).

⁵ Article 2 of the draft amendment to the Act on the Securities Commission (to be renamed Act on supervision of the capital markets) which forms part of the revised draft law.

⁶ See Article 2(2)(d) of the Act No 6/1993 Coll., on Česká národní banka (hereinafter the ‘ČNB Act’), as amended by the revised draft law. Article 44(2) of the ČNB Act, as amended by the revised draft law, also defines ČNB supervision by listing the various tasks that the fulfilment of this function involves.

groups of financial intermediaries. For these reasons, the ECB would welcome it if the revised draft law expressly recognised, as is the case in the statutes of other Member States' NCBs, that ČNB has the wider task of contributing to the stability of the financial system as a whole⁷. A clear distinction could also be made in the supervisory framework between the objective of financial stability and that of investor protection, particularly as these two objectives may not always be mutually supportive and may occasionally even conflict⁸.

The Committee for the financial market

7. The ECB notes that the revised draft law⁹ establishes a 'Committee for the financial market' (CFM). The CFM will act as an expert consultative body to ČNB's Bank Board (hereinafter the 'Bank Board') on the situation and development of the financial market and on the strategy and longer term perspective for financial market supervision. The CFM comprises seven expert members, three of whom (including the Chairman and Vice-Chairman) will be elected by the budgetary committee of the lower house of Parliament on a proposal from professional and interested organisations, while another two members will be drawn from the Ministry of Finance and appointed and recalled by the Minister of Finance. The two remaining members will comprise one member of the Bank Board and the financial arbiter¹⁰. CFM members are required to exercise their functions independently and they are not remunerated. The ECB understands that the CFM will be a purely consultative body whose main tasks will be to issue opinions and recommendations to the Bank Board in its fields of its competence. In no circumstances will the CFM be able to directly or indirectly determine the Bank Board's decision making. On that basis, the ECB broadly welcomes the establishment of the CFM, which should provide wide-ranging expertise to the Bank Board which will be useful in exercising its new responsibility for supervising the financial market.

ČNB's succession to the rights and obligations of the other supervisors

8. The ECB notes that under the revised draft law, the transfer of competences from each of the other supervisors to ČNB is regulated by separate transitional provisions relating to that particular supervisor¹¹. These provisions expressly provide that on the effective date the other supervisor in question will be dissolved, with all its statutory competences passing to ČNB, and that its employees will become ČNB employees¹². These provisions also lay down that on the effective

⁷ Clauses to that effect might be added to Article 2 of the draft amendment to the ČNB Act and also to Article 2 of the draft law on supervision of the capital market.

⁸ ČNB's task of contributing to the stability of the financial system may be understood as an overarching goal of the supervision it performs, whereas investor protection, however important, is only one further objective of that supervision.

⁹ Article 45a of the ČNB Act, as amended by the revised draft law.

¹⁰ See the Act No. 229/2002 Coll., on the financial arbiter, as amended.

¹¹ The ECB notes, however, that in each case the term of the transitional period is not specified.

¹² The ECB notes, however, that in the case of the draft amendment to the Act No 87/1995 Coll., on savings and credit cooperatives, as amended, there is no specific mention of employees being transferred from the OSCB to ČNB. The

date any right to manage State-owned property (apart from real property) previously held by the other supervisor and which is necessary to carry out its supervisory functions will cease and that the property (and obligations relating to that property) will pass to ČNB¹³. The details of these property transfers will be determined by an agreement between ČNB and the Ministry of Finance. The provisions also state that, from the effective date, ČNB will be substituted for the other supervisor in any proceedings to which it was a party and which commenced prior to the effective date. Moreover, the revised draft law expressly provides that the State will meet any financial obligations incurred by ČNB as a result of ČNB being substituted for one of the other supervisors either in any proceedings to which the latter was a party¹⁴ on the effective date or in any proceedings which commenced after the effective date but which relate to the activities of the other supervisor under the then existing legal regulations.

9. The ECB welcomes the transitional provisions of the revised draft law. They appear, when assessed in conjunction with the State Liability Act¹⁵, to effectively insulate ČNB from financial obligations resulting from the activities of the other supervisors. These provisions do not therefore require assessment from the perspective of ČNB's financial independence and its compliance with the prohibition on monetary financing under the Treaty.
10. Finally, the ECB would appreciate being provided, for information purposes, with the following: (i) a detailed description of the proposed organisational scheme and division of supervisory powers within ČNB from 1 April 2006; and (ii) a copy of any agreement concluded between the Ministry of Finance and ČNB as regards the transfer of property and connected obligations from any of the other supervisors to ČNB under the transitional provisions of the revised draft law.
11. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 28 October 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

transitional provisions to that draft amendment state that 'rights and obligations ... from property and other legal relations shall be transferred upon the effective date from the OSCB to ČNB'. The ECB understands that only a small number of employees (approximately 10) presently work at the OSCB and will therefore be affected by the transfer.

13 In addition, in the case of the SEC, any other property and connected obligations of that supervisor shall be settled by the Ministry of Finance.

14 Or in which the other supervisor was representing the State.

15 Act No 82/1998 Coll., on State liability for damages caused in the course of the exercise of public authority by decisions or improper administrative action, as amended; especially Articles 3(a) and 13 thereof.