



OPINION OF THE EUROPEAN CENTRAL BANK

of 21 May 2008

**at the request of Česká národní banka
on a draft law on Česká národní banka
(CON/2008/21)**

Introduction and legal basis

On 6 March 2008 the European Central Bank (ECB) received a request from Česká národní banka (ČNB) for an opinion on a draft law on Česká národní banka (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 first, second, third, fourth and fifth 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 draft law relates to currency matters, means of payment, Česká národní banka, the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payment statistics, and payment and settlement systems. 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 main purpose of the draft law, which is to take effect on the date of the adoption of the euro in the Czech Republic, is to bring national legislation on ČNB's status, competences and activities in line with the Treaty, the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute') and other relevant Community legislation, in particular with regard to the legal integration of ČNB into the Eurosystem. Given the scope and number of changes required in this regard, the Czech authorities have decided that the proposed legislation should take the form of a new law on ČNB. In the meantime, the currently applicable law, i.e. Law No 6/1993 Coll., on Česká národní banka, which was amended several times in recent years (hereinafter the 'current law on ČNB'), will remain in force until the date of the adoption of the euro in the Czech Republic.

2. General observations

2.1 The ECB welcomes the Czech authorities' efforts to achieve the required level of legal convergence. The draft law addresses several of the issues raised by the ECB in its December 2006

¹ OJ L 189, 3.7.1998, p. 42.

Convergence Report². However, it is important to reiterate that, pursuant to Article 109 of the Treaty, ‘each Member State shall ensure, at the latest at the date of the establishment of the ESCB, that its national legislation including the statutes of its national central bank is compatible with this Treaty and the Statute of the ESCB’. Thus, the Czech Republic was already obliged to ensure the compatibility of its national legislation as of the date of its entry into the European Union, i.e. on 1 May 2004. In the past, the ECB has identified inconsistencies between Czech national legislation in the areas of central bank independence, confidentiality and the prohibition on monetary financing and privileged access, on the one hand, and the relevant provisions of the Treaty and the ESCB Statute, on the other hand; so far these inconsistencies have not been removed, nor will they be removed altogether should the draft law be adopted. A different deadline applies, however, to the statutory requirements relating to the full legal integration of ČNB into the Eurosystem, which only need to enter into force at the moment that full integration becomes effective, i.e. the date on which the Czech Republic adopts the euro³.

- 2.2 In the light of the above, adopting a new central banking law, which will only become wholly effective on the date of the adoption of the euro in the Czech Republic, raises certain concerns. First, since the current law on ČNB will remain in force until the date of the Czech Republic’s adoption of the euro, the existing incompatibilities identified in the ECB’s Convergence Reports, other than those related to its legal integration into the Eurosystem, will remain unresolved. This will constitute an ongoing breach of the Treaty obligation referred to in the preceding paragraph. Given that it is yet not known when the Czech Republic will adopt the euro, this situation could persist for some time⁴. Therefore, the provisions of the draft law addressing known incompatibilities of the current law on ČNB that do not refer to the integration of ČNB into the Eurosystem should become effective immediately on adoption of the draft law.
- 2.3 Second, the fact that there could be a long interval between the adoption of the draft law and its coming into effect may present a number of practical difficulties. For instance, the draft law currently contains numerous references to various Community legal acts of relevance to its scope of application. By the time the draft law becomes effective, some of these references may be outdated as the legal acts in question may have been amended or replaced, thereby necessitating amendments to the adopted law before it comes into effect.
- 2.4 Finally, some of the provisions of the draft law repeat directly applicable Community law provisions. In the ECB’s view, this is unnecessary since, as stated on previous occasions, directly applicable Community law provisions do not need to be ‘transposed’ into domestic law⁵.

² See the ECB’s Convergence Report of December 2006, p. 210-212.

³ See the ECB’s Convergence Report of May 2007, p. 24.

⁴ So far, the Czech Government has not set an official target date for the adoption of the euro.

⁵ See, for example, ECB Opinion CON/2007/43 of 19 December 2007 at the request of the Slovak Ministry of Finance on a draft law on the introduction of the euro in Slovakia and on amendments to certain laws.

3. Specific observations

3.1 Provisions concerning ESCB-related activities

Coin issuance

3.1.1 Article 4(2)(b) of the draft law recognises ČNB's power to issue euro coins within the Czech Republic⁶. While this provision contains a footnote reference to Article 106(2) of the Treaty, ČNB may consider inserting in Article 4(2)(b) an explicit reference to the powers of the Council and the ECB in relation to the issuance of euro coins and the approval of the volume thereof, respectively, following the example of Article 4(2)(a) of the draft law, which refers explicitly to the ECB's powers over the issuance of euro banknotes.

Minimum reserves

3.1.2 Article 30(1) of the draft law provides for ČNB's contribution to the application of the ESCB's minimum reserve system, while Article 30(2) of the draft law refers to the exercise of the ECB's right to collect and verify information relating to minimum reserves. The ECB notes that, while the wording of Article 30(1) is unobjectionable (subject, nevertheless, to the insertion of a proviso specifying that, in the pursuit of its minimum reserve-related activities, ČNB must act in accordance with the relevant ECB regulations and guidelines), Article 30(2) is unduly restrictive and not strictly necessary in view of Article 30(1). Therefore, ČNB may consider deleting Article 30(2) of the draft law.

Management of foreign reserve assets

3.1.3 Article 31(2) of the draft law authorises ČNB to decide on the amount of its own foreign reserve assets and determine the investment rules. The ECB would like to draw attention to Article 31.2 of the ESCB Statute on foreign reserve assets held by national central banks (NCBs), providing that all operations in foreign reserve assets remaining with the NCBs after the transfer of foreign reserve assets to the ECB in accordance with Article 30 of the ESCB Statute must, above a certain limit to be established within the framework of Article 31.3 of the ESCB Statute, be subject to the ECB's approval to ensure consistency with the exchange rate and monetary policies of the Community. To this end, an explicit reference to Article 31 of the ESCB Statute and to the legal framework adopted on the basis thereof would be warranted⁷.

Banknote and coin reproduction rules

3.1.4 Article 36(b) of the draft law authorises ČNB to stipulate, by means of a decree, the terms and conditions under which banknotes and coins may be reproduced and under which objects imitating them may be produced. In this regard, ČNB is invited to consider including a reference to the ECB's reproduction rules for euro banknotes, as laid down in Decision ECB/2003/4 of

⁶ See also Article 35(1)(a) of the draft law.

⁷ See also ECB Opinion CON/2006/17 of 13 March 2006 at the request of the Slovenian Ministry of Finance on a draft law amending the Law on Banka Slovenije.

20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes⁸.

Provisions concerning the powers of ČNB in the field of statistics

- 3.1.5 Article 38(1) of the draft law refers to ČNB's contribution to the compilation and production by the ECB and Eurostat, of Community statistics, stating that ČNB 'shall transmit statistical information and individual data to the European Central Bank and Eurostat'. To the extent that this provision suggests that ČNB is under a legal obligation to transmit statistical information to Eurostat (other than balance of payments and international investment position statistics, in connection with which ČNB is the competent national authority in the Czech Republic), despite the fact that it is not a member of the European Statistical System, ČNB may wish to reconsider the drafting of this provision.
- 3.1.6 Article 45(2) of the draft law, referring to the treatment of confidential statistical data, provides that where statistical information is created by aggregating individual data for less than three reporting agents, ČNB may provide such information only as confidential data intended exclusively for statistical purposes and these data may only be published with such reporting agents' consent. The ECB notes that Article 8 of Council Regulation (EC) No 2533/98⁹ on the confidentiality regime for ECB statistics, which takes precedence over Article 45(2) of the draft law, contains no such explicit restriction and would invite ČNB to consider the relationship between Article 45(2) and Article 8 of Regulation (EC) No 2533/98 to the extent, at least, that the former would also apply to ECB statistics.

3.2 Other issues

Bank Board member eligibility criteria and termination of office

- 3.2.1 The wording of Article 16(1) of the draft law, listing the reasons for which a Bank Board member's office terminates¹⁰, is not fully aligned with that of Article 14.2 of the ESCB Statute and should be modified accordingly.

In addition, the wording of Article 16(2) which contains the grounds for dismissal of a Bank Board member should also be aligned with Article 14.2 of the Statute. In particular, the wording 'if the Governor no longer fulfils the conditions required for the performance of his office stipulated by law' should be replaced by 'if the Governor no longer fulfils the conditions required for the performance of his duties as foreseen in Article 14.2 of the Statute'.

⁸ OJ L 78, 25.3.2003, p. 16.

⁹ Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank, OJ L 318, 27.11.1998, p. 8.

¹⁰ In particular, a Bank Board member's office terminates on: (i) the expiration of the term of office; (ii) resignation; (iii) taking up an incompatible office (see Article 15(1) of the draft law); (iv) the expiration of two months from the day on which written notice of relief from office is delivered unless the Bank Board member (or the Governing Council in case of the Governor) relieved from office seeks judicial review within this period; (v) entry into force of a judgment depriving the Bank Board member of competence to perform legal acts or limiting their competence to perform legal acts; and (vi) entry into force of a judgment convicting the Bank Board member of a wilful criminal offence.

Legislative powers

3.2.2 Article 52(1) of the draft law¹¹ provides for the joint competence of ČNB and the Czech Ministry of Finance to prepare and submit to the Government draft legislation on currency, money circulation, the money market and the status, competence, organisation and activities of ČNB as the central bank of the Czech Republic. Under Article 52(2) of the draft law, ČNB assists the Ministry of Finance in preparing draft legislation on the financial market, payments, the regulation of electronic money and foreign exchange management and the law on the introduction of the single currency in the Czech Republic. The ECB considers that Article 52 of the draft law should be amended to provide that the respective legislative powers of ČNB and the Ministry of Finance are without prejudice to the powers of relevant EU authorities in this field.

Auditing

3.2.3 Pursuant to Article 60(2) of the draft law, the accounts of ČNB ‘shall be audited by an independent auditor in accordance with the Statute’. Article 27(1) of the ESCB Statute requires that the accounts of the Eurosystem NCBs be audited by auditors that are independent *and* external. In order to comply with the ESCB Statute, Article 60(2) should therefore be amended to state that the auditor appointed to audit ČNB’s accounts should also be an ‘external’ auditor, in line with Article 27(1) of the ESCB Statute¹².

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

Done at Frankfurt am Main, 21 May 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

¹¹ Article 52 of the draft law largely mirrors the wording of the proposed amendment of Article 37 of the current law on ČNB, which was the subject of a recent consultation with the ECB – see ECB Opinion CON/2008/2 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. The ECB understands that the proposed amendment is currently being discussed in the Government and that the wording of Article 52 of the draft law will be adjusted to reflect the final wording of the draft amendment.

¹² See, for example, ECB Opinion CON/2006/4 of 27 January 2006 at the request of the Central Bank of Cyprus on a draft law amending the Central Bank of Cyprus Laws of 2002 and 2003.