EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 December 2005

at the request of the Estonian Parliament on a draft law amending the Eesti Pank Act

(CON/2005/59)

1. On 7 November 2005 the European Central Bank (ECB) received a request from Riigikogu (the Estonian Parliament) for an opinion on a draft law amending the Eesti Pank Act (hereinafter the 'draft law').

2. The ECB's competence to deliver an opinion is based on the third 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 contains provisions concerning the national central bank. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the European Central Bank has adopted this opinion.

3. The ECB understands that the main objective of the draft law,which will enter into force at the date established by a decision of the Council of the European Union on the abrogation of the derogation of the Republic of Estonia pursuant to the procedure provided by Article 122(2) of the Treaty, is to bring the Eesti Pank Act into line with the Treaty establishing the European Community and the Statute of the European System of Central Banks and of the European Central Bank. In the Convergence Report 2004[2], the ECB noted that Estonian law, and in particular the Eesti Pank Act, does not anticipate Eesti Pank's legal integration into the Eurosystem and therefore there is a need to adapt the law to comply with the requirements under Article 109 of the Treaty. In its Convergence Report the ECB also strongly recommended that, for reasons of legal certainty, a change should be made to Article 111 of the Estonian Constitution.

4. The ECB generally welcomes the draft law and, in particular the adaptions which are made with a view to the future inclusion of Eesti Pank in the Eurosystem. However, the ECB would like to point out some provisions which still require some further refinements. In this context it should be noted that Article 109 of the Treaty requires Member States to ensure that national legislation is compatible with the Treaty and the Statute; any incompatibilities must therefore be removed. The Treaty and the Statute do not prescribe the manner in which national legislation must be adapted. Legislation may be adapted by making references to the Treaty and the Statute, by incorporating

1 OJ L 189, 3.7.1998, p. 42.

2 Convergence Report 2004, p. 36.

provisions thereof while referring to them, by deleting incompatibilities or by a combination of these methods.

5. The ECB notes that Article 1 of the draft law states that Eesti Pank is a member of the European System of Central Banks (ESCB). The ECB understands that Eesti Pank, in performing the tasks of the ESCB, shall act in accordance with the guidelines and instructions of the ECB. Therefore the ECB would welcome it if the reference to the legislation of the ECB in the draft Article 1(3) of the Eesti Pank Act were to be placed immediately after the reference to the Statute, in order to reflect the hierarchy of legal acts.

6. The ECB welcomes Article 2 of the draft law which states that Eesti Pank's primary objective is to maintain price stability. The ECB notes that Eesti Pank's other objectives have been amended so as to bring them into line with Community law. In this context, however, although the draft law already contains a general reference to the Treaty, the ECB would welcome a specific reference to Article 105(1) of the Treaty. This would reinforce the ECB's understanding that compliance with the objectives under the draft Article 2(1) of the Eesti Pank Act takes priority over compliance with the objectives under the draft Article 4(4) of the Eesti Pank Act, which implies that support of the general economic policies of the Community takes priority over support of the economic policy of the Estonian Government. It is also noted that the list of Eesti Pank's tasks still contains some imperfections: first, the wording of the draft Article 2(2)(2) does not follow the wording of Article 105(2) of the Treaty and the third indent of Article 3(1) of the Statute; and second, in the light of the NCB's functional independence, it is recommended that the draft Article 2(2)(8) of the Eesti Pank Act should also refer to Article 2(2) of the Eesti Pank Act.

7. The ECB notes the improved wording of Article 3 of the draft law and welcomes the clear reference to the principle of central bank independence. The ECB also welcomes the introduction of Article 16 of the draft law, which stipulates that the holding and management of foreign exchange reserves shall be organised pursuant to law, the Statute of Eesti Pank, and the guidelines of the Governing Council of the ECB. Similarly, Article 17 of the draft law on the preparation of the annual report brings the Eesti Pank Act into line with Article 26.4 of the Statute.

8. The ECB notes that according to Article 10(4) of the Eesti Pank Act, a Deputy Governor may deputise for the Governor in his absence. In this context, the ECB welcomes that the draft law now also provides for the independence of the Deputy Governors by establishing a term of office of five years and by extending the scope of Article 10(3) of the Eesti Pank Act to also include the Deputy Governors. The draft law does not make it clear whether Deputy Governors can be reappointed, and the ECB would welcome clarification of this point. The ECB would also welcome clarification of whether, under Article 10(4) of the Eesti Pank Act, the Supervisory Council may designate a substitute for the Governor only from among the Deputy Governors.

9. Article 19 of the draft law states that the Deputy Governors who are in office on the date of entry into force of the draft law will each be deemed to have been appointed for a term of five years from

that date. This regime raises some concerns with regard to the stability of the governance system, as their terms of office will all expire at the same time. Under Article 50 of the Statute, the members of the ECB's Executive Board were initially appointed for less than a full term, as a transitional measure. A similar provision concerning the Deputy Governors would be welcome.

10. The ECB notes that the draft law does not change Article 11(1) of the Eesti Pank Act. Under the first indent of Article 11(1) of the Eesti Pank Act, the Governor of Eesti Pank is exclusively responsible for, among other things, shaping monetary and banking policies. This provision does not recognise the responsibilities of the ECB's decision-making bodies. It is therefore recommended that the words 'monetary and' should be deleted from the first indent of Article 11(1) of the Eesti Pank Act.

11. The ECB notes that Article 12 of the draft law amends Article 14 of the Eesti Pank Act and sets out the rights of Eesti Pank in order to achieve the objectives stipulated in Article 2 of the Act. Although the list of rights largely complies with the Statute, the article would clearly benefit from references to the Statute, as the current wording fails to refer to the ECB's competencies with regard to open market and credit operations, minimum reserves, clearing and payment systems, etc. Also, it would be preferable for the list of rights in Article 12 of the draft law to provide for implementing measures for the other instruments of monetary control referred to in Article 20 of the Statute.

12. The ECB welcomes Article 13 of the draft law which brings the Eesti Pank Act into line with Article 106 of the Treaty and Article 16 of the Statute. For the sake of clarity, it would be preferable to refer to banknotes and coins as 'euro banknotes and coins' throughout the draft law.

13. The ECB notes that Article 14 of the draft law repeals Article 15(5) of the Eesti Pank Act. The ECB understands that there will be no need to quote the exchange rate of the Estonian kroon against foreign currencies, once the euro has been introduced as the legal tender in Estonia.

14. Article 18 of the draft law aims to bring the Eesti Pank Act into line with the Official Statistics Act. Against this background, the ECB notes that certain obligations of NCBs relating to the collection of statistical information arise from Article 5.2 of the Statute, which is not referred to in the draft law. Therefore, the draft law should be amended so as to refer to the Statute.

15. There is one issue which was highlighted in the ECB's Convergence Report 2004[3] which the draft law does not address. Namely, the seventh indent of Article 9(2) in conjunction with Article 31(1) of the Eesti Pank Act, which provides that the Supervisory Board is to appoint independent auditors for Eesti Pank's accounts, does not recognise the Community's and ECB's competence in this field under Article 27.1 of the Statute. Furthermore, the last sentence of Article 31(1) of the Eesti Pank Act does not recognise the powers of Eesti Pank's Supervisory Board nor the Community's and ECB's competence.

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3 Convergence Report 2004, p. 221.

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

Done at Frankfurt am Main, 30 December 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET