EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK
of 10 February 2000

at the request of the Austrian Ministry of Finance on a draft Federal Act to amend the Banking Act
(CON/00/01)

1. On 3 January 2000 the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an ECB Opinion on a draft Federal Act to amend the Banking Act.

2. The ECB's competence to deliver an opinion is based on Article 105 (4) of the Treaty establishing the European Community (hereinafter referred to as the "Treaty") and on Article 2 (1), in particular the sixth indent, of Council Decision (EC) No. 98/415 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, as the draft laws contains rules applicable to financial institutions that could materially influence the stability of financial institutions and markets. As the request for an opinion of the ECB was not restricted to this part of the draft law, the present opinion covers the whole draft legislative proposal. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, this ECB Opinion has been adopted by the Governing Council of the ECB. This ECB Opinion is based on an unofficial English translation of the official Austrian proposal.

3. The ECB notes that the draft law aims at implementing individual provisions of Directive 98/31/EC (CAD II) of the European Parliament and of the Council of 22 June 1998 amending Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions (CAD), and of Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit In addition, other provisions of the draft law arise from the need to implement Article 4 (1) 2nd subparagraph of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes and Article 7 (1) 2nd subparagraph of Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes. Lastly, the

draft law addresses the need for improved co-operation with the banking supervisory authorities of third countries.

4. The ECB welcomes the implementation of the above mentioned provisions of Community law in Austria and has, apart from the statements below, no further comments on the draft law.

5. The ECB welcomes the new provisions of the draft law (Articles 42 and 46 to 50) regarding co-operation and exchange of information between the Ministry of Finance, as Austria's banking supervisory authority, and the competent supervisory authorities of third countries. In particular, the ECB notes that the main aim is to ensure an effective consolidated supervision of banking groups based in Austria and operating in third countries. In this sense, the ECB should like to note that the new provisions allow the supervisory authority to have an autonomous and proactive stance towards co-operation, both as a provider and requestor of assistance and information. This is appropriately subject to principles of mutual assistance, confidentiality and professional secrecy. Moreover, the ECB welcomes that the objectives underlying the provisions of Community law concerning co-operation and exchange of information between supervisors are pursued in relation to the competent authorities of third countries. Lastly, in relation to Article 50 of the draft law and the new §77a of the Austrian Banking Act, the ECB believes that a formal agreement between the competent supervisory authorities is an appropriate instrument to establish co-operation and information sharing arrangements. In this regard, such type of agreements may include the possibility of cross-sector co-operation for the benefit of the purposes of consolidated supervision. Furthermore, such agreements have the potential to contribute to the world-wide implementation of high standards in the conduct of supervision. Thus, their geographical scope could be extended to all jurisdictions to which there are significant links. All in all, the new provisions should be seen as a step forward towards reinforcing the current framework for cross-border supervision in accordance with the international standards and recommendations.

6. The ECB confirms that it has no objection to this ECB Opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 10 February 2000.

The President of the ECB

[signed]

Willem F. Duisenberg