EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 March 2002

at the request of the Danish Financial Supervisory Authority on a draft act amending the Securities Trading Act

(CON/2002/8)

1. On 18 February 2002 the European Central Bank (ECB) received a request via Danmarks Nationalbank from the Danish Financial Supervisory Authority on behalf of the Ministry of Economics and Business Affairs for an opinion on a draft act amending the Securities Trading Act (hereinafter referred to as the 'draft act').

2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the fifth 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 provisions[1], as the draft act, amongst other things, contains provisions extending an existing right to take a pledge from a pool of securities, clarifies the various competencies of the different Danish authorities with regard to stock exchanges, establishes a register of employees with insider information and broadens the scope of the prohibition against insider trading. The draft act may have an influence on the stability of financial institutions and markets and the efficiency of payment and settlement systems. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, this opinion has been adopted by the Governing Council of the ECB.

3. The draft act concerns an extension of an existing right to take a pledge from a pool of securities in connection with the clearing and settlement of payments. It ensures that a pool of securities can be used as collateral for a loan even before the exact amount of the loan and, thus, the amount of security required is known. Furthermore, the draft act clarifies the competencies of various bodies within the area of stock exchanges, in particular the right to approve prospectuses for securities to be traded on a stock exchange. In addition, the draft act contains provisions concerning the protection of consumers' rights', but these will not be analysed further here. Moreover, the draft act establishes a register containing information on

1 OJ L 189, 3.7.1998, p. 42.

(i) employees of companies the stocks of which are traded on a stock exchange who have access to inside information of relevance to the value of the stocks; and (ii) their private trading in the shares in the company. Finally, it is suggested that the prohibition on insider trading be extended to cover trade with UCITS investment certificates which are not listed on a stock exchange.

4. The ECB welcomes the proposal to extend the existing right to take a pledge from a pool of securities in connection with the clearing and settlement of payments, insofar as rights of the European System of Central Banks are not prejudiced. The aim here is to minimise risk and ensure efficient and sound clearing and payment systems. These changes, contained in Article 1(18) and (19), are two-fold. First, the draft act provides that the pool can also be used for the settlement of non-trading related payments by a clearing institution. Secondly, and more importantly, it provides that the pool of securities can be used as collateral for payment of a loan before the exact amount of the loan and, thus, the amount of security required is known. As the registration of the pledge is done in the Central Securities Depository ('Værdipapircentralen'), and the settlement of the payment is done in a payment system (i.e. in two different entities), the establishment of the loan and the registration of the pledge need to take place before settlement can take place. However, in some systems the borrower only knows the exact size of the loan after the settlement has begun, for which reason there is a need to establish the pledge on the basis of an anticipated amount. The establishment of the pledge in advance of the settlement is understood primarily to originate from the preparations for the Continuous Linked Settlement project.

5. The ECB understands that under current legislation there is a certain overlap of competencies between the relevant Danish authorities. The draft act clarifies in Article 1(1)-(12) the competencies within the area of stock exchanges. Amongst other things, the existing right of the Danish Securities Council ('Fondsrådet') to issue rules of 'best practice' within the field of securities trading is made mandatory. In addition, it is noted that in view of the internationalisation and privatisation of stock exchanges it is no longer appropriate for stock exchanges to approve prospectuses for securities to be traded on a stock exchange. Therefore, the competence is transferred to the Danish Securities Council, which is a public authority, in order to avoid, amongst others things, that a prospectus on shares issued by a stock exchange is approved by the stock exchange itself. The draft act enables the Danish Securities Council to delegate its powers of approval, except that it cannot delegate them to a stock exchange in relation to its own shares.

6. Moreover, the draft act draws, in Article 1(14) and (15), on international experience by establishing a register containing information on employees of companies the stocks of which are traded on a stock exchange, and who have access to inside information of relevance to the value of the stocks. The register contains information on these employees' private trading in shares of the company and on the amount of shares that they hold. The ECB welcomes this

initiative, which further enhances the transparency of the securities market and should have a preventive effect against insider trading. The register will be established in addition to existing rules concerning disclosure of possession of shares or voting rights above certain thresholds.

7. Finally, the ECB welcomes the suggestion that the prohibition on insider trading be extended under Article 1(13) of the draft act, in order to cover trade with UCITS investment certificates not listed on a stock exchange. Such certificates are in certain respects similar to shares listed on a stock exchange, and to avoid unnecessary legal risk these certificates are covered by the prohibition.

8. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion.

Done at Frankfurt am Main on 8 March 2002.

The President of the ECB

[signed]

Willem F. DUISENBERG