EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 December 2011

on securities markets legislation

(CON/2011/101)

Introduction and legal basis

On 28 October 2011, the European Central Bank (ECB) received a request from the Finnish Ministry of Finance for an opinion on the following draft government proposals: (a) the draft law on the book-entry system and clearing and settlement, (b) the draft law on investment services; (c) the draft law on trading in financial instruments; (d) the draft law amending the Law on book-entry accounts[1]; (e) the draft law amending the Law on the financial supervisory authority[2] (hereinafter collectively referred to as the 'draft laws').

The ECB's competence to deliver an opinion is based on Article 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third and fifth 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[3], as the draft law relates to Suomen Pankki 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 laws

1.1 The ECB notes that the draft laws are aimed primarily at improving the technical quality of the legislation without making substantive changes and at implementing Union directives. The draft laws are part of a comprehensive reform of securities markets legislation, the main objectives of which are to improve the clarity and comprehensibility of securities markets legislation, to foster the competitiveness of securities markets legislation, to make custody and settlement operation more effective and more competitive, and to ease the administrative burden of listed companies[4]. The remaining part of the reform, which includes the main substantive legislative changes[5], is expected to be carried out in the near future.

1 Laki arvo-osuustileistä 17.5.1991/827.

2 Laki finanssivalvonnasta 19.12.2008/878.

3 OJ L 189, 3.7.1998, p. 42.

4 Report by the Working Group on Reform of the securities markets legislation, Ministry of Finance Publications 12/2011, p. 63.

5 The remaining part of the reform includes, *inter alia*, a structural reform whereby indirect holding of securities would be made available alongside the direct holding system in Finland and whereby the nominee registration of securities issued in Finland would be permitted also for Finnish investors.

1.2 As regards the draft law on the book-entry system and clearing and settlement, the main substantive amendments relate to the book-entry system and in particular to protection of investors' rights as well as ensuring that authorities have access to information on the ultimate holder of securities. In addition, the draft law on the book-entry system and clearing and settlement introduces amendments aimed at ensuring that the central securities depository (CSD) can act as a custodian. It also specifies under which circumstances a CSD may take a security off the book-entry system and further specifies the framework for the outsourcing of activities significant to CSD operations.

1.3 As regards the draft law on investment services, the main substantive amendments relate to the custody and management of financial instruments, which are defined as an investment service that cannot be provided without prior authorisation. In addition, for investment firms offering custodian services, it introduces a duty of emergency preparedness planning as well as a duty to provide non-professional clients with sufficient information on the custody of client funds and risks associated with such custody.

1.4 The main substantive amendment introduced by the draft law amending the Law on the financial supervisory authority relates to clarifying the system of administrative sanctions available to the Financial Supervisory Authority and making the sanctions significantly more stringent. The maximum amount of administrative sanctions that the Financial Supervisory Authority can impose is being raised to EUR 10 000 000 for legal persons and EUR 100 000 for natural persons. Under the current law, the maximum amounts are EUR 200 000 and EUR 1 000, respectively.

1.5 The draft law on trading in financial instruments introduces a duty for the Ministry of Finance to request a statement from Suomen Pankki before making a decision to grant a license to operate a stock exchange, to revoke such a license or to interrupt the operation of a stock exchange.

1.6 As for the draft law amending the Law on book-entry accounts, the ECB notes that it does not contain relevant amendments beyond editorial changes and implementation of Union directives.

2. General observations

The ECB welcomes the general objectives of the draft laws and notes that the new and substantive amendments do not raise general concerns for the ECB.

3. Specific observations

3.1 *Provision of clearing services by foreign clearing organisations*

Relating to the provision of clearing services by foreign clearing organisations offering services in Finland, the ECB reiterates its comments in paragraph 3 in its Opinion CON/2009/66[6], as these comments have not been taken into account in the law of 15 January 2010 and in the current draft laws.

6 All ECB opinions are published on the ECB's website at: www.ecb.europa.eu.

3.2 *Outsourcing of operational activities*

The ECB recognises that the ability of CSDs to outsource certain operational activities is an important element for the development of an efficient securities settlement infrastructure across CSDs in Europe.

3.3 *Account-holding structures*

The ECB notes that the Finnish securities holding system, which is also a book-entry based system, builds on the principle of direct holding, where the rights pertaining to the book entries are registered directly in each account holder's book-entry account. Book-entry securities owned by a foreign individual, corporation or foundation may be entered in a custodial nominee account administered by a custodial account holder on behalf of a beneficial owner on the basis of an authorisation. The ECB understands that the draft laws are not intended to amend these securities-holding structures and that it is planned that the possibilities to develop the indirect holding model will be examined in phase two of the comprehensive reform of Finnish securities markets legislation, which will follow in 2012.

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

Done at Frankfurt am Main, 7 December 2011.

[signed]

The President of the ECB

Mario DRAGHI