



OPINION OF THE EUROPEAN CENTRAL BANK

of 15 October 2007

at the request of the German Ministry of Finance

**on a draft law modernising the supervisory structure of the Federal Financial Supervisory
Authority**

(CON/2007/32)

Introduction and legal basis

On 9 July 2007, the European Central Bank (ECB) received a request from the Federal Ministry of Finance for an opinion on the draft law modernising the supervisory structure of the Federal Financial Supervisory Authority (hereinafter the 'draft law'). On 27 September 2007, the Federal Ministry of Finance sent to the ECB a revised text of the draft law (hereinafter the 'revised draft law') with an urgent request for an opinion.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the sixth 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 provisions¹, as the draft law relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 revised draft law

The revised draft law has a limited scope compared to the draft law and is mainly addressing the governance and management structure of the Federal Financial Supervisory Authority (BaFin, *Bundesanstalt für Finanzdienstleistungsaufsicht*). In particular, the revised draft law introduces the principle of collegiality for the Directorate's decision-making by replacing the existing presidential structure². Henceforth, the Directorate will consist of a president and four executive directors. The Directorate's responsibilities will include decision-making with regard to the BaFin's rules of procedure, adoption of its statute, the budget, as well as decisions where there are differences of opinion between Directorate members and the adoption of administrative regulations. Moreover, each executive director

¹ OJ L 189, 3.7.1998, p. 42.

² Article 1(2) of the revised draft law amending § 6 of the Law on financial services supervision.

will be responsible for one of the following four business areas: fundamental issues and internal administration, banking supervision, insurance supervision and securities supervision.

According to Article 1(2) of the revised draft law, the Directorate will unanimously adopt the organisation's statute laying down the Directorate's responsibilities and functions. It will adopt its decisions by simple majority of the submitted votes, even in case of disagreement. The Directorate will also establish rules of procedure for the BaFin. Pursuant to Article 1(3) of the revised draft law, the Directorate has to inform the administrative council of its management.

These changes to the BaFin's governance and management structure make it necessary to also amend the Law on remuneration of the Federal civil service. The increased responsibility of the BaFin's Board of Directors will result in the future salary classification of executive directors in class B 8³.

2. General observations

The ECB welcomes the introduction of collegial decision-making for the Directorate's decision-making in the area of prudential supervision⁴ and, in view of the limited scope of the revised draft law, has no further observations.

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

Done at Frankfurt am Main, 15 October 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET

³ Article 2 of the revised draft law amending Appendix I to the Law on remuneration of the Federal civil service.

⁴ See, e.g. paragraph 3 of ECB Opinion CON/2005/58 of 23 December 2005 at the request of the Italian Ministry of Economy and Finance on an amendment to the draft law on the protection of savings concerning the Banca d'Italia.