



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 April 2002

at the request of the Spanish Secretary of State for the Economy, Energy and Small and Medium-Sized Enterprises on a draft Royal Decree on the arrangements for the payment of the Banco de España's profits to the Treasury

(CON/2002/14)

1. On 26 March 2002 the European Central Bank (ECB) received a request from the Spanish Secretary of State for the Economy, Energy and Small and Medium-Sized Enterprises for an opinion on a draft Royal Decree on the arrangements for the payment of the Banco de España's profits to the Treasury.
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 provisions¹. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.
3. The draft Royal Decree is based on the power granted by the second final provision of Law 12/1998 of 28 April amending the Act of Autonomy of the Banco de España to determine, by way of governmental regulation, the regime for the payment of the Banco de España's profits to the Treasury.
4. The draft Royal Decree would replace Royal Decree 1746/1999 of 19 November, which applied until the financial year 2001. The provisional nature of Royal Decree 1746/1999 was a precaution, and until such a time as the ECB would adopt a new decision on the allocation of monetary income under Article 32 of the Statute of the ESCB and of the ECB (hereinafter referred to as the 'Statute') after the end of the application of Decision ECB/2000/19 of 3 November 1998 as amended by Decision of 14 December 2000 on the allocation of monetary income of the national central banks of participating Member States and losses of the ECB for the financial years 1999 to 2001².

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 336, 30.12.2000, p. 119.

Royal Decree 1746/1999 was subject to consultation with the ECB. The ECB formulated its opinion on 28 October 1999³. Royal Decree 1746/1999 laid down the following schedule for payment to the Treasury of profits generated and accounted for by the Banco de España:

- in November each year, 70% of the profits accrued and recorded until 30 September of the same financial year,
 - in February each year, 90% of the profits accrued and recorded until 31 December of the preceding financial year, discounting the instalment paid in November,
 - the remaining profits, following the approval of the accounts of the Banco de España for the financial year by the Government.
5. The draft Royal Decree would extend the application of the rules to the next three financial years (2002, 2003, and 2004) on the basis of experience that is believed to demonstrate the advisability of maintaining the quoted percentages and schedule.
 6. The ECB already had an opportunity to comment on the above-mentioned rules in the context of ECB Opinion CON/99/16. In that instance, the ECB found that such rules protect the financial independence of the Banco de España, since they regulate in detail the schedule and amount of the advance payments, without affording any ad hoc discretion to the political authorities. This assessment also applies to the draft Royal Decree extending the application of the rules already examined by the ECB.
 7. While the draft Royal Decree would extend the rules already in place by virtue of Royal Decree 1746/1999, these rules need now to be examined in the light of the new regime for the allocation of monetary income of national central banks (NCBs) under Article 32 of the Statute. Decision ECB/2001/16 of 6 December 2001 governs the allocation of monetary income of the national central banks of participating Member States from the financial year 2002⁴. This Decision must be read in conjunction with Decision ECB/2001/15 of 6 December 2001 on the issue of euro banknotes⁵. Under Article 2 of Decision ECB/2001/15, the ECB and the NCBs shall issue euro banknotes.
 8. The remuneration of intra-Eurosystem balances on euro banknotes in circulation resulting from the application of Decision ECB/2001/15 is settled on a quarterly basis, except in 2002 when it will be settled at the end of the year. The allocation of each NCB's monetary income takes place at the end of the financial year. Under the draft Royal Decree, the Banco de España would pay to the Treasury 70% of the profits accrued and recorded until 30 September of that year; that is, until the end of the third quarter. On the first working day of the following February, the Banco de España would pay to the Treasury 90% of the profits accrued and

3 CON/99/16.

4 OJ L 337, 20.12.2001, p. 55.

5 OJ L 337, 20.12.2001, p. 52.

recorded until 31 December of the previous year; that is, at the end of the financial year. Therefore, the proposed measures would not conflict with the current ECB regime for the issue of euro banknotes and the allocation of monetary income of NCBs of the participating Member States.

9. The ECB notes that the proposed period of three financial years for the application of the draft Royal Decree is considered to be necessary in order to evaluate the application of Decisions ECB/2001/15 and ECB/2001/16.
10. 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 25 April 2002.

The President of the ECB

[signed]

Willem F. DUISENBERG