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EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 September 2002

at the request of the Belgian Ministry of Finance
on a draft law amending the law of 11 January 1993 on the prevention of the use of the financial system for the purpose of money laundering

(CON/2002/24)

1. On 20 August 2002, the European Central Bank (ECB) received a request from the Belgium Ministry of Finance for an opinion on a draft law amending the law of 11 January 1993 on prevention of the use of the financial system for the purpose of money laundering (the "draft law").

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 the second and fifth indents of Article 2(1) of the Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions[1], as the legislative proposal contains provisions concerning, amongst others, restriction on payments in cash and new obligations for the financial sector that may have an impact on means of payment and payment systems. 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 law transposes Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EC on prevention of the use of the financial system for the purpose of money laundering[2] by: (i) extending the obligations imposed by the law of 11 January 1993 to lawyers, who must, through their self-regulatory body, (i.e. the Head of their Bar Association) inform the relevant authorities of any suspicions they may have; and (ii) eliminating the distinction between "ordinary suspicion" and "serious suspicion" laid down in Articles 12 and 14 of the law of 11 January 1993 (i.e. an obligation to declare to the Financial Information Processing Unit all facts which might be an indication of money laundering, and no longer just those facts which are likely to constitute evidence of laundering).

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1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 344, 28.12.2001, p. 76.

In accordance with Article 1(2) of Decision 98/415/CE, Member States are not obliged to consult the ECB on the transposition of directives, but the present draft law does not only transpose the Directive. In addition, it introduces other improvements to the prevention of money laundering by: (iii) giving a regulatory power to the supervisory authorities to determine the modalities of clients' identification and of internal organisation of the persons they supervise (see paragraph 4 below); and (iv) prohibiting cash payments to traders for amounts of EUR 15 000 or more (see paragraph 5); and (v) some technical improvements which enhance the overall efficiency of the prevention of money laundering (see paragraph 6). The ECB is, in particular, consulted on these new improvements.

4. Firstly, the ECB welcomes the enhanced clarity on the money laundering legislative framework that the draft law introduces. The ECB understands that the Banking and Financial Commission and the Insurance Control Office regulate the obligations for institutions under the law of 1993 by way of circulars. The draft law will strengthen the force of these obligations by conferring this regulatory power on the Banking and Financial Commission, the Insurance Control Office and the market authorities (Article 25 of the draft law). This power will allow these authorities to lay down the detailed arrangements for supervised institutions required by Chapter II of the law of 11 January 1993 (identification of clients and internal organisation). More specifically, the new regulatory power will be used in order to determine a priori the organisational aspects that these institutions should consider when drawing up their internal rules. Proper internal organisation and controls, and transparency of the anti-money laundering rules for all institutions, is an efficient way to prevent the use of the financial system for the purpose of money laundering. The creation of this new regulatory power is welcomed as it will also allow the relevant authorities to adapt to future advances in the standards developed by the relevant international authorities, in particular the implementation of the recommendations of the FATF (Financial Action Task Force) regarding action to combat the financing of terrorism.

5. Secondly, Article 14 of the draft law introduces a prohibition of payments in cash for physical objects of a value of EUR 15 000 or more. This prohibition will ensure indirect control of traders in high-value goods whose lack of legal status and subjection to a supervisory authority would make the application of the measures provided for by the Law of 11 January 1993 inappropriate. According to the FATF experts, cash remains a major, if not primary, form in which illegal funds are generated today[3] and cash proceeds are usually found at the beginning of the laundering process, that is at the placement stage. Accordingly, FATF Recommendation 24 states that 'Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers'. Control or limitation of payments in cash should

3 FATF XII, Report on money laundering typologies 2000-2001, 1 February 2001 (paragraphs 38 to 43).

consequently be an appropriate method to prevent money laundering. The ECB notes that this specific restriction on payments in cash does not affect the status of legal tender of banknotes and is compatible with Community law. This point was already underlined in recital 19 of the Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[4], which expressly states that 'limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available'. Such means are available in Belgium.

6. Lastly, various technical amendments to existing laws are proposed in the draft law in order to improve the efficiency of anti-money laundering efforts. More specifically, the new rules extend the powers currently attributed to the Financial Information Processing Unit, the administrative authority in charge of processing and transmitting the relevant information concerning money laundering, including the possibility of asking for information from the judicial authorities, receivers and provisional administrators. In particular, the draft law extends the possibility provided to the Unit by the law of 11 January 1993 of blocking a transaction for 24 hours "because of the gravity or of the urgency of the affair in question", by up to two working days. The explanatory memorandum mentions that the Unit has used this power on approximately 100 occasions since its creation in 1993. The memorandum also mentions that experience shows that 24 hours could, in certain circumstances, be insufficient to allow for further investigations. The ECB understands that Article 12 of the law of 11 January 1993, as amended, does not affect the irrevocability and finality of payments in the sense of Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems[5]. The new provision is therefore deemed an adequate tool in the fight against money laundering within the existing legal framework.

7. 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 30 September 2002.

The President of the ECB

[signed]

Willem F. DUISENBERG

4 OJ L 139, 11.5.1998, p. 1.

5 OJ L 166, 11.6.1998, p. 45.