



**EUROPEAN CENTRAL BANK**

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 18 January 2002**

**at the request of the Danish Ministry of Economic and Business Affairs  
on a draft act amending the Act on money laundering**

**(CON/2002/4)**

1. On 5 December 2001 the European Central Bank (ECB) received a request via Danmarks Nationalbank from the Ministry of Economic and Business Affairs for an opinion on a draft act amending the Act on money laundering (hereinafter referred to as 'the draft act'). Subsequently, the draft act was revised. On 27 December 2001 the ECB received a request to take the revisions to the draft act into account in the present opinion.
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 first, second, 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<sup>1</sup>, as the draft act, amongst other things, contains provisions on the withdrawal from circulation of possible euro counterfeits and on companies that engage in commercial activities concerning the transfer of money and other assets. The draft act may have an influence on the stability of financial institutions and markets and, possibly, the efficiency of payment 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 implements changes intended to fulfil the requirements laid down by the UN Convention of 9 December 1999 regarding the suppression of financing of terrorism and UN Security Council Resolution No. 1373 of 28 September 2001 regarding the combating of terrorism. In addition, the draft act responds to the recommendations of the Financial Action Task Force (FATF) which are part of the international efforts to combat terrorism. The draft act concentrates on Recommendations III, IV, VI and VII. In this respect and as explained in the general remarks, the draft act includes provisions regarding the reporting of transactions suspected of being related to terrorism as well as the freezing of suspected terrorist assets. It also extends the scope of the Act on money laundering to include 'alternative systems of payment and wireless payment transfers

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

under the duty to report obligation' and the obligation to ensure at all times the ability to identify senders in payment-transaction activities. Finally, the draft act introduces the possibility of imposing sanctions for non-compliance with the requirements of Article 6(1) of Council Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting<sup>2</sup>, in accordance with Council Regulation (EC) No 1339/2001<sup>3</sup>. Having regard to the provisions of Council Decision 98/415/EC, the provisions in the draft act which are intended to implement the Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering<sup>4</sup> are not provisions on which the Danish consulting authority has to formally consult the ECB. This opinion focuses on the implementation of the FATF recommendations mentioned above.

4. First, the ECB would like to recall the commitment of the Eurosystem to contribute to the adoption, implementation and execution of measures against the use of the financial system for terrorist activities, as expressed in the Governing Council's public statement of 1 October 2001. In order to ensure that public trust in the integrity of the financial system is fully preserved, it is of the utmost importance that financial systems do not work to the benefit of persons and organisations associated with terrorist activities. Against this general background, the ECB welcomes the objective of the draft act of combating the financing of terrorism more efficiently.
5. The ECB notes that the obligations already in place to combat money laundering are in Europe addressed to credit institutions and financial institutions. Hence, whenever the payment system operator ensures that only supervised institutions may participate, no further requirements should be imposed on the payment system itself. The ECB is of the opinion that to be effective the combating of money laundering and financing of terrorism needs to be organised in an efficient and coordinated way. Duplication of effort and unnecessary burdens on enterprises should be avoided and the institutions subject to obligations should have a clear understanding of the requirements imposed on them. Against this general background, the ECB would like to put forward some specific comments on the provisions of the draft act.
6. The general remarks explain that, according to Section 1(6), companies that administer payment transfers will be obliged to ensure that it is possible at all times to identify the sender during an electronic payment transaction. Details regarding the identity of the sender must follow the payment even when this involves several transactions before it reaches its final destination. Furthermore, the required information must be 'comprehensive'. This means, as explained in the general remarks, that the sender must not denote persons who are clearly providing incorrect information regarding their identity. It is also specified that a lack of the required information shall be considered as suspicious by the payment-transaction agent. According to the draft act, the

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2 OJ L 181, 4.7.2001, p. 6.

3 OJ L 181, 4.7.2001, p. 11.

4 OJ L 166, 28.6.1991, p. 77.

information regarding the sender would be that referred to in Section 4 Subsection 1 of the Act on money laundering. Subsection 1 provides that companies must obtain proof of identity when establishing business relationships with their participants, including in connection with the opening of an account or a safe custody. The proof of identity must include name, address, national registration number (CPR number) or business registration number (CVR number) or other similar documentation if the person in question does not have a CPR or CVR number. The ECB is of the view that if these provisions were to apply to payment system operators, such operators should request the information detailed above from their participants at the time of setting up of the initial business relationships, which is in fact the case at present. However, regarding the processing of each individual payment message, the ECB would like to state the following. First, with a view to fostering the adoption of measures to combat terrorist activities, the ECB supports and promotes any initiatives for harmonisation in the area of payment messaging, in particular with a view to making the inclusion of certain fields in a payment message mandatory. However, the task of payment systems operators is to ensure the secure and safe transmission of information contained in a payment message. The information, which is provided by the participants, is checked before the start of processing, but such checking is only intended to verify that the relevant mandatory fields in the payment message are properly filled in. The truthfulness of the content is not checked. Payment systems operators need to rely in this respect on the information provided to them by the originator of the payment. On this point, the ECB is of the view that a requirement on payment systems operators to ensure and verify that the information regarding the sender is both sufficient and meaningful would not improve on current procedures imposed by the banking supervisory and anti-money laundering authorities on banks and non-bank financial institutions and other entities, in accordance with the FATF recommendations. Indeed, as the requirements laid down in the draft act are also imposed on banks and non-bank financial institutions and other entities, which are the originators of payment orders in the payment systems, duplication of the same requirements at the level of the operators of the systems themselves should be avoided. In addition, the possible technical constraints on the implementation of such requirements in the Danish payment systems and the impact that such requirements could have on the smooth functioning and efficiency of the payment systems should be carefully considered.

7. Secondly, it should be borne in mind that at present sender and recipient information can be transmitted directly from the sending bank to the receiving bank. As mentioned above, the presence of mandatory sender and recipient information can be checked automatically by a payment system before a payment message is accepted for processing. During the transmission and processing of a payment the sender and recipient information does not necessarily have to be forwarded to the settlement part of the payment system. It depends on the topology of a payment system whether all or only part of the data included in a payment message are forwarded to this part. Therefore, the provision requiring that the sender should be identified *at all times* throughout the life cycle of a payment should be understood as not necessarily involving the settlement of the payment itself.

8. According to Section 1(2) of the draft act, companies that engage in commercial activities concerning the transfer of money and other values must ensure that they are registered with the Public Prosecutor for Serious Economic Crime in order to carry out this type of commercial activity. The registration requirement does not apply to companies that are under the supervision of the Danish Financial Supervisory Authority. The ECB has no objection as such to the purpose of the draft act as stated in the general remarks - that all companies engaged in the transfer of money and other values must be registered. It is explained that this provision intended to implement Recommendation VI of the FATF on 'alternative remittance', the main intention of which is to capture payment-transactions agencies outside the financial sector in order to be able to subject them to the duty to report. The ECB understands that this registration requirement does not apply to Danmarks Nationalbank, when acting as the operator of any payment or clearing system. Moreover, the ECB understands that all payment systems must already be registered with the Danish Financial Supervisory Authority according to the Danish national law implementing Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems<sup>5</sup>.
9. Section 1(13) of the draft act is intended to implement the FATF's Recommendation III on freezing and confiscating terrorist assets. It introduces a new Section 10a in the Act, which provides that when there is reason to suspect that a transaction had some connection to terrorism, the company must carry out an investigation of the transaction. If the investigation does not clear up the matter the Public Prosecutor for Serious Economic Crime must be informed. Transactions may then only be carried out in agreement with this person. These requirements also apply broadly to 'all companies engaged in commercial activities concerning transfer of money and other assets'. The ECB is of the opinion that this provision should not apply to payment systems as such, which are not structured to carry out investigations, as outlined above. Requiring the agreement of the Public Prosecutor for Serious Economic Crime before being able to process a payment message is contrary to the fundamental logic and functioning of a payment system. Any reporting to this person should be carried out by the entity originating the payment. The ECB considers that this provision of the draft act goes beyond the scope of Recommendation III of the FATF which it believes was not intended to impose similar requirements at the level of payment systems. The comments above also apply to the new Section 10b, according to which the Danish Financial Supervisory Authority may adopt more specific regulations regarding the obligation to give notice to the Public Prosecutor for Serious Economic Crime regarding financial transactions involving uncooperative countries.
10. Finally, the ECB welcomes the provision in the amended Section 13 of the Act which, in connection with the new Section 10d, intends to impose sanctions on credit institutions and any other establishments involved in the sorting and distribution to the public of notes and coins as a

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<sup>5</sup> OJ L 166, 11.6.1998, p. 45.

professional activity, where they fail to immediately hand over to the police any notes or coins which they know or have sufficient reason to believe to be counterfeit, and which they have withdrawn from circulation. The ECB notes that the obligations contained in the directly applicable Article 6(1) of Council Regulation (EC) No 1338/2001, which is extended to Denmark under the terms of Council Regulation (EC) No 1339/2001, are covered by the new Section 10d. On that basis the amended Section 13 (together with the provisions of the Danish criminal code) imposes sanctions for failure to comply with Article 6(1) of Council Regulation (EC) No 1338/2001 and therefore further fulfils the obligation imposed on the Member States by Article 6(2) of that Regulation. In view of this method chosen to apply Article 6 of Council Regulation (EC) No 1338/2001, the ECB underlines the importance of establishments subject to sanctions according to the new Section 10d and the amended Section 13 being the same as the establishments referred to in Article 6(1) of the Regulation. Furthermore, the ECB would welcome efforts by the national central banks and the banking industry to ensure the effectiveness of the detection and the withdrawal from circulation of possible euro counterfeits, as an accompaniment to the draft act's implementation of Article 6 of Council Regulation (EC) No 1338/2001.

11. 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 18 January 2002.

*The President of the ECB*

[signed]

Willem F. DUISENBERG