



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK**of 25 November 2003****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, the Law of 22 March 1993 on the legal status and supervision of credit institutions and the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms on intermediaries and investment advisers****(CON/2003/25)**

1. On 28 October 2003, the European Central Bank (ECB) received a request from the Belgian Ministry of Finance for an opinion 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, the Law of 22 March 1993 on the legal status and supervision of credit institutions and the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms on intermediaries and investment advisers (the 'draft law').
2. The ECB's competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty establishing the European Community and the second and fifth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions¹, as the draft law contains provisions concerning, among other things, restrictions on cash payments and new obligations for the financial sector that could 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. On 30 September 2002 the ECB adopted European Central Bank Opinion CON/2002/24 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. The ECB refers back to this opinion, a copy of which is annexed, for the provisions of the draft law it has already addressed. In the current opinion the ECB has examined the new provisions and where relevant provisions from the earlier draft law whose wording has been amended.

¹ OJ L 189, 3.7.1998, p. 42.

4. Like its predecessor, 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/EEC on prevention of the use of the financial system for the purpose of money laundering². However, it goes further than its predecessor by taking into account the review of the Forty Recommendations issued by the Financial Action Task Force (FATF) on 20 June 2003 as well as the FATF's Eight Special Recommendations on the financing of terrorism issued on 31 October 2001.
5. Firstly, the ECB welcomes the fact that within the list of predicate offences contained in Article 3 of the Law of 11 January 1993, the counterfeiting of coins or banknotes has been included³. Including the offence of counterfeiting ensures compliance with FATF Recommendation 1, which states that countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.
6. Secondly, Article 10bis of the Law of 11 January 1993⁴ would now provide that 'The price at which immovable property is sold may only be paid by means of a bank transfer or a cheque, except for an amount that does not exceed 10% of the sale price, and provided that this amount is not greater than EUR 15 000'. In Article 10ter⁵ a general prohibition on cash payments for items whose value is equal to or higher than EUR 15 000 is introduced. The ECB notes that this specific restriction on cash payments 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 Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁶, 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.
7. Thirdly, the abovementioned Article 10bis restricts the means of paying for immovable property to bank transfers and checks. The ECB notes that the objective of this provision is to facilitate the traceability of payments and considers that this objective would be better served by wording that also allows the use of other traceable means of payment.
8. Fourthly, the new Article 4(5) of the Law of 11 January 1993⁷ requires the entities referred to in Article 2 of the Law of 11 January 1993, whose activity includes the transferring of money within the meaning of Article 139bis of the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms, on intermediaries and investment advisers, to incorporate in transfers of money as well as in any communications relating to them, the relevant and exact information regarding the clients ordering these transactions. Furthermore, these same entities must

2 OJ L 344, 28.12.2001, p. 76.

3 As amended by Article 5 of the draft law which inserts a paragraph 1bis point 2° e) into Article 3.

4 As amended by Article 18 of the draft law.

5 As amended by Article 19 of the draft law.

6 OJ L 139, 11.5.1998, p. 1.

7 As amended by Article 7(5) of the draft law.

ensure that this information is stored and retransmitted if they intervene as intermediaries in a payment chain. The ECB understands that the requirement proposed in the new paragraph will only be applicable to entities mentioned in the first paragraph of Article 139bis of the Law of 6 April 1995 when performing activities other than those related to clearing and settlement services. In fact, it is almost impossible to apply this provision in practice to institutions when they are providing clearing and settlement services. From the ECB's perspective, the tasks of these entities include the safe and efficient transmission of information contained in a payment message, but do not extend to checking the accuracy of the data included in the payment message itself. However, for the sake of clarity, the ECB suggests clearly stating in Article 7(5) of the draft law that entities performing clearing and settlement services are exempted from the requirements laid down by this Article.

9. Finally, according to the commentary concerning Article 38 of the draft law, 'A new transitional provision must be inserted obliging, on the one hand, the undertakings and professions that have recently become subject to the identification requirement to identify their normal clients within the year following the entry into force of the draft law and, on the other hand, obliging the undertakings and professions already subject to the identification requirement to apply the new rules laid down in Article 4 of the Law of 11 January 1993 to their existing clients within the year following the entry into force of the draft law'. However, the proposed provision that will replace the existing Article 24 of the Law of 11 January 1993 does not limit the transitional regime to the clients of entities that will in future be subject to the identification requirement. Nor does the proposed provision limit the transitional regime to the new identification measures that credit institutions and investment firms will in future have to comply with. It would be advisable to modify the wording to bring it into line with the commentary.
10. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB's website six months after the date of its adoption.

Done at Brussels on 25 November 2003.

The President of the ECB

[signed]

Jean-Claude TRICHET