



EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 11 August 2005

**at the request of the Spanish Secretary of State for the Economy on a draft royal decree on the arrangements for the payment of the Banco de España's profits to the Treasury**

**(CON/2005/30)**

1. On 26 July 2005, the European Central Bank (ECB) received a request from the Spanish Secretary of State for the Economy for an opinion on a draft royal decree on arrangements for the payment of the Banco de España's profits to the Treasury (hereinafter the 'draft royal decree').
2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and 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 provisions<sup>1</sup> as the draft royal decree concerns a national central bank (NCB). 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.
3. The draft royal decree is based on the power granted to the Government by the second final provision of Law 12/1998 of 28 April amending the Law of Autonomy of the Banco de España to determine, by way of government regulation, the rules for the payment of the Banco de España's profits to the Spanish Treasury.
4. The draft royal decree would replace Royal Decree 1080/2002 of 22 October which applied from the financial year 2002 until the financial year 2004. Royal Decree 1080/2002 in turn replaced Royal Decree 1746/1999 of 19 November, which applied until the financial year 2001. The provisional nature of these Royal Decrees was a precaution triggered by the need to evaluate the application of Decision ECB/2001/16 of 6 December 2001 on the allocation of monetary income of the national central banks of participating Member States from the financial year 2002<sup>2</sup>.
5. Both Royal Decree 1746/1999 and Royal Decree 1080/2002 were the subject of consultation with the ECB. They established the same schedule for payment to the Treasury of profits accrued to the Banco de España and recorded by it, as follows:
  - In November of each year, 70% of the profits accrued and recorded by 30 September of the same financial year.

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

<sup>2</sup> OJ L 337, 20.12.2001, p. 55.

- In February of each year, 90% of the profits accrued and recorded by 31 December of the preceding financial year, discounting the instalment paid in November.
  - The remaining profits, following approval by the Government of the Banco de España's accounts for the financial year.
6. The ECB has already had the opportunity to comment on the rules for the distribution of the Banco de España's profits to the Treasury in ECB Opinions CON/99/16 and CON/2002/14<sup>3</sup>.
  7. The draft royal decree introduces two changes to the current arrangements for the payment of the Banco de España's profits to the Treasury, as follows: (i) the second payment of profits to the Treasury would be delayed from February to March; and (ii) profits could be excluded from payment to the Treasury upon authorisation by the Council of Ministers.
  8. The ECB notes that the deferral to March of the following financial year of the second payment of profits to the Treasury is a change of a purely technical nature that would nevertheless relieve operational pressures relating to closure of the Banco de España's accounts.
  9. The ECB welcomes the amendment proposed by the draft royal decree to enable the Council of Ministers to authorise the exclusion from payment to the Treasury of part of the Banco de España's profits. In this respect, the ECB recalls that according to the doctrine expressed by the European Monetary Institute (EMI) and the ECB in their convergence reports, the principle of financial independence of central banks requires that the 'NCBs should be in a position to avail themselves of the appropriate means to ensure that their ESCB-related tasks can be properly fulfilled<sup>4</sup>.' The NCBs must also, at all times, have sufficient financial means to carry out their other functions, i.e. to perform their national tasks, to meet their international obligations and cover properly their administrative and operational expenses<sup>5</sup>. It should be noted that Article 28.1 and Article 30.4 of the Statute of the European System of Central Banks and of the European Central Bank provide for further calls on the NCBs to make further contributions to the capital of the ECB and to make further transfer of foreign reserves. The principle of financial independence requires that compliance with these provisions leaves an NCB's ability to perform its functions unimpaired<sup>6</sup>. Therefore, the ECB welcomes the flexibility afforded by the draft royal decree which would allow the Banco de España to be able to retain part of its profits, thereby enabling it to build up financial reserves that should help to guarantee the availability of appropriate independent financial means to meet its obligations.

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<sup>3</sup> ECB Opinion CON/99/16 of 28 October 1999 at the request of the Banco de España on a draft Royal Decree on the arrangements for the payment of the Banco de España's profits to the Treasury and ECB Opinion CON/2002/14 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.

<sup>4</sup> Page 295 of the EMI's Convergence Report, March 1998.

<sup>5</sup> See Paragraph 6 of ECB Opinion CON/2003/22 of 15 October 2003 at the request of the Finnish Ministry of Finance on a draft government proposal to amend the Suomen Pankki Act and other related acts.

<sup>6</sup> See page 28 of the ECB's Convergence Report 2004.

10. The ECB notes that the draft royal decree establishes no procedures in relation to the authorisation to retain part of the Banco de España's profits. In this respect, the ECB has expressed the view in a previous opinion that financial independence requires that rules on the distribution of NCBs' profits should not afford ad hoc discretion to third parties, and in particular to political authorities<sup>7</sup>. The ECB therefore welcomes the inclusion of a safeguard clause in Article 2(2) of the draft royal decree, which states that the rules laid down in the draft royal decree 'shall not limit in any way the appropriate performance of tasks attributed to the Banco de España within the European System of Central Banks.' Nevertheless, the ECB suggests that the provisions on the exclusion of part of the Banco de España's profits from distribution to the Spanish Treasury should be made more specific. It would, in particular, be appropriate if they establish the procedure leading to authorisation by the Council of Ministers, including the role of the Banco de España in initiating such procedure in order to create additional legal certainty and avoid any exercise of discretion in this context.
11. As stated by the ECB in its previous opinions on this matter, the proposed measures do 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, established under Decision ECB/2001/15 of 6 December 2001 on the issue of euro banknotes<sup>8</sup> and Decision ECB/2001/16.
12. Decision ECB/2001/16 lays down a transitional period for the allocation of monetary income to the NCBs, which lasts until the financial year 2007. The ECB notes that the draft royal decree will apply until 2007, in order to reflect the duration of such transitional period.
13. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 11 August 2005.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<sup>7</sup> See page 29 of the ECB's Convergence Report 2004 and Paragraph 6 of ECB Opinion CON/2002/14.

<sup>8</sup> OJ L 337, 20.12.2001, p. 52.