



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 29 August 2005

at the request of the Belgian Ministry of Finance

on a preliminary draft law that amends the Law of 28 February 2002 regulating the compilation of the balance of payments and the international investment position of Belgium and amending the Decree Law of 6 October 1944 on foreign exchange control and various legal provisions

(CON/2005/31)

1. On 17 June 2005, the European Central Bank (ECB) received a request from the Belgian Ministry of Finance for an opinion on a preliminary draft law that amends the Law of 28 February 2002 regulating the compilation of the balance of payments and the international investment position of Belgium and amending the Decree Law of 6 October 1944 on foreign exchange control and various legal provisions (hereinafter the 'draft law')¹.
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 and fourth 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 provisions², since the draft law concerns the collection, compilation and distribution by the Nationale Bank van België/Banque Nationale de Belgique (NBB) of monetary, financial, banking, payment systems and balance of payments statistics. 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. Besides inserting into the Law of 28 February 2002 references to the statistical data covered by Regulation (EC) No 184/2005 of the European Parliament and of the Council of 12 January 2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment³, the draft law also makes substantive amendments to the Law of 28 February 2002, concerning a number of which the ECB has the following comments.

¹ For the ECB's views on the Law of 28 February 2002 regulating the compilation of the balance of payments and the international investment position of Belgium and amending the Decree Law of 6 October 1944 on foreign exchange control and various legal provisions (hereinafter the 'Law of 28 February 2002') see ECB Opinion CON/2001/23 of 30 August 2001 at the request of the Belgian Minister of Finance on a draft law on the compilation of the balance of payments and the international investment position of Belgium and amending the Decree Law of 6 October 1944 on foreign exchange control and various legal provisions.

² OJ L 189, 3.7.1998, p. 42.

³ OJ L 35, 8.2.2005, p. 23.

4. The ECB welcomes the fact that Article 5(a) of the draft law enables the NBB to implement the compilation methods for portfolio investment statistics provided for in Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template⁴.
5. The ECB also welcomes the fact that the draft law introduces the possibility of a direct reporting system (see Article 5(b) of the draft law), as opposed to the current system whereby statistical data are primarily collected through the intermediation of the banking sector, and notes that similar direct reporting systems have also been implemented in other Member States. Whilst reducing the reporting burden on the monetary financial institutions sector and other financial intermediaries, a direct reporting system should ensure the high quality of data contributed to euro area cross-border statistics. The ECB understands that the direct reporting system is considered as an alternative to the existing indirect reporting system but does not preclude use of indirect reporting in the future, for instance as a ‘fall-back’ method in relation to certain categories of transactions for which direct reporting proves unsatisfactory. Finally, the ECB understands that the insertion of an explicit reference to Article 3, §1 of the Law of 28 February 2002 into Article 3, §2 thereof – which precisely delimits the transactions about which the NBB is entitled to receive information – does not restrict the NBB’s existing powers. The ECB indeed understands that such delimitation already derives from the general reference in the second paragraph of Article 2 of the Law of 28 February 2002 to Articles 3 to 7 thereof.
6. In order to facilitate the operation of the direct reporting system, the draft law introduces two new data collection methods into the Law of 28 February 2002, namely (i) sample surveys (pursuant to the second paragraph of Article 5(b) of the draft law); and (ii) ‘secondary data collection’, i.e. the collection of already available data from public authorities and professional bodies (pursuant to the third paragraph of Article 5(b) of the draft law). The ECB notes that the possibility of sample surveys in certain cases is already currently provided for in the last paragraph of Article 4 of the Royal Decree of 19 March 2002 regarding the compilation of the balance of payments and the international investment position of Belgium⁵ (the decree that implemented the Law of 28 February 2002), and that this is now generalised under the draft law. Considering the importance for the accuracy of sample surveys of properly defining the categories of reporting agents covered by the surveys, with these reporting agents having precisely the same probability of being obliged to provide the information (see the second paragraph of Article 5(b) of the draft law), the ECB welcomes the additional provision inserted by the draft law into the Law of 28 February 2002 to the effect that the NBB may also be entrusted by royal decree with the task of delimiting how and when the sample surveys will be implemented (Article 5(d) of the draft law).

⁴ OJ L 354, 30.11.2004, p. 34.

⁵ See ECB Opinion CON/2002/3 of 14 January 2002 at the request of the Governor of the Nationale Bank van België/Banque Nationale de Belgique on a draft royal decree and draft accompanying regulations on the compilation of the balance of payments and the international investment position of Belgium.

The ECB expects that the Belgian authorities will also consult it in relation to such decree. The ECB also notes regarding the secondary data collection method provided for under the draft law, that the NBB can oblige public authorities to report their data, whereas professional bodies only report their data on a voluntary basis. While the ECB welcomes the possibility of secondary data collection, the ECB would like to note that if professional bodies were not to report relevant data available to them to the NBB, the NBB would have to collect these data in another way, which might prove less efficient and more costly to reporting agents. Therefore, the ECB would like to encourage the conclusion of cooperation agreements between the NBB and the relevant professional bodies laying down the modalities for data transmission by the latter to the NBB. This could be ensured either through a provision in the draft law or through a statement to this effect in the explanatory memorandum.

7. Article 4, §1 of the Law of 28 February 2002 currently refers in the context of the NBB's use of data to the NBB's compliance with its obligations in connection with the tasks falling upon the European System of Central Banks (ESCB), and Article 4, §2 currently separately refers in the context of the NBB's data communication to the communication of individual data by the NBB to the ECB. For consistency reasons, the draft law moves the reference to the ESCB's tasks from Article 4, §1 to Article 4, §2, but at the same time deletes the reference to communication of the data to the ECB from Article 4, §2. While the ECB acknowledges the reason for moving the reference to the ESCB, the ECB also understands that deleting the reference to communication of the data to the ECB will not limit existing data communication possibilities from the NBB to the ECB under the Law of 28 February 2002 and applicable Community legislation.
8. Finally, the draft law allows the NBB to communicate individual data to the *Commissie voor het Bank, Financier- en Assurantiewezen/Commission bancaire, financière et des assurances* (CBFA) (the Belgian Banking, Finance and Insurance Commission), provided that the CBFA is itself authorised to process such data in the context of its prudential supervision tasks (final paragraph of Article 6(b) of the draft law). In order to lay down unambiguously the conditions for such communication, it might be appropriate to mention explicitly in the draft law that the CBFA should be 'authorised to directly collect and process' the data instead of merely mentioning this in the explanatory memorandum to the draft law (see the penultimate paragraph on page 8 of the explanatory memorandum).
9. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 29 August 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET