



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK
of 28 February 2005
at the request of Central Bank of Malta
on a draft directive No 5 on statistical reporting requirements
(CON/2005/5)

1. On 20 January 2005, the European Central Bank (ECB) received a request from the Central Bank of Malta (CBM) for an opinion on a draft directive No 5 on statistical reporting requirements (hereinafter the 'draft directive').
2. The ECB's competence to deliver an opinion is based on the fourth 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 provisions¹, as the draft directive relates to the collection of financial statistical information. 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 directive is based on Article 24B of the Central Bank of Malta Act² (hereinafter the 'Act'), which empowers the CBM to issue directives on the definition and imposition of its statistical reporting requirements. Pursuant to the draft directive, credit institutions³ would be required to report statistical information, as required and defined by the Banking Directive BD/06⁴, to the CBM and not merely to the Malta Financial Services Authority (MFSA), the competent authority for banking regulation. It is understood that such information would relate in particular to end-of-month stock positions. The CBM would have the power to verify the accuracy of the statistical information submitted or compulsorily collect it and, in the event of a credit institution failing to comply with the statistical reporting requirements, to sanction the non-compliance by imposing an administrative penalty pursuant to regulations to be issued by the Minister of Finance under other provisions of the Act⁵. Finally, queries and requests for interpretation of the reporting requirements under Banking Directive BD/06 required by the CBM would be decided upon by the

1 OJ L 189, 3.7.1998, p. 42.

2 Article 24B of the Central Bank of Malta Act, Cap. 204 of the Laws of Malta.

3 The draft directive is intended to apply to credit institutions licensed under the Banking Act, Cap. 371.

4 Banking Directive BD/06/2005 of the Malta Financial Services Authority (Banking Unit) on the statutory financial information to be submitted by credit institutions authorised under the Banking Act Cap. 371.

5 Legal Notice 75 of 2003, as amended by Legal Notice 330 of 2004, issued in accordance with the powers granted by Article 52A of the Central Bank of Malta Act, Cap. 204 of the Laws of Malta.

CBM after consultation with the MFSA, unless the query concerned the reserve deposit requirements, in which case it would be dealt with and decided solely by the CBM.

4. The draft directive is not intended to replace the statistical reporting requirements of Banking Directive BD/06, under which credit institutions are obliged to report their financial information to the MFSA. These requirements are unaffected and remain fully in place. Instead, the draft directive will ensure that the CBM will no longer have to rely on the MFSA's enforcement and sanctioning powers, pursuant to the Banking Act, to enforce its own powers to collect statistical information, as is the case at present. The draft directive is thus intended to enable the CBM to enforce its statistical reporting requirements and to impose sanctions for non-compliance.
5. Article 5.2 of the Statute of the European System of Central Banks and of the European Central Bank provides that the national central banks (NCBs) shall carry out, to the extent possible, the tasks described in Article 5.1, i.e. the European System of Central Banks (ESCB) tasks defined by the Treaty establishing the European Community and the Statute. Article 43.1 of the Statute implies that legal instruments adopted by the ECB for the fulfilment of its statistical reporting requirements do not confer any rights or impose any obligations on the non-participating Member States.
6. Article 10 of the Treaty requires that 'Member States shall take all appropriate measures ... to ensure fulfilment of the obligations arising out of this Treaty'. More specifically, Article 4 of Council Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank⁶ requires that 'Member States shall organise themselves in the field of statistics and shall fully cooperate with the ESCB in order to ensure the fulfilment of the obligations arising out of Article 5 of the Statute'.
7. Recital 17 of Regulation (EC) No 2533/98 states that, while it is recognised that the statistical information needed to fulfil the ECB's statistical reporting requirements is not the same for the participating as for the non-participating Member States, Article 5 of the Statute applies to both participating and non-participating Member States.
8. On the basis of the above, the ECB welcomes the CBM's initiative to adopt a directive on the collection of statistical information. The ECB notes that the NCBs' reporting provisions are an indispensable component of the national statistical collection systems. The ECB does not comment in detail on national reporting provisions as they may differ considerably between Member States, depending on various national and external factors. The ECB's comments (see paragraph 12 below) are therefore of a general nature only and are meant to serve as a guide, enabling the CBM to shape its reporting requirements in line with those of the Eurosystem in preparation for Malta's adoption of the euro.
9. The ECB welcomes the core objective of the draft directive, which is to clarify the legal obligations of credit institutions to provide financial information, in particular end-of-month stock positions, directly to the CBM and not only to the MFSA. The ECB understands that, although in practice

⁶ OJ L 318, 27.11.1998, p. 8.

credit institutions already provide such information to the CBM, Banking Directive BD/06 only requires them to report such information to the MFSA. This clarification of credit institutions' reporting obligations towards the CBM is welcome, as accurate statistical information is necessary for the CBM to fulfil its tasks and such clarification will help to ensure that the information is reported properly and in time to the CBM.

10. The ECB appreciates that under the draft directive the CBM would be empowered to verify the statistical information and compulsorily collect it, if the credit institution were not to provide the information itself. These powers appear to be in line with Article 6 of Regulation ECB/2001/13⁷.
11. The ECB also welcomes the fact that the draft directive stipulates that administrative penalties may be imposed by the CBM for non-compliance with the statistical reporting obligations to which it relates. The ECB nevertheless observes that, notwithstanding that the CBM may impose administrative penalties independently, it is for the Minister of Finance to prescribe minimum and maximum administrative penalties by regulation.
12. The ECB notes in passing that the draft directive requires statistical information to be provided according to the terms and conditions of, and within the time periods indicated in, Banking Directive BD/06. In the ECB's view, the scope of Banking Directive BD/06 would be too narrow to fulfil all the ECB's statistical reporting requirements for monetary financial institutions (MFIs) located in the euro area, once Malta has become a participating Member State⁸. MFIs other than credit institutions are also required to report statistical data to the ECB, via their NCBs. In Malta this would be the case for Money Market Funds (MMFs), which fall within the definition of MFIs and would thus also be required to report data under Regulation ECB/2001/13. Secondly, Banking Directive BD/06 does not require the data on revaluation adjustments from reporting agents which the ECB would need in order to compute flows. It is thus important for the CBM to maintain the statutory power to require additional information from credit institutions and MMFs (via the MFSA or directly) prior to Malta becoming a participating Member State.
13. At the same time, it is the task primarily of the NCBs to assess whether any proposed detailed reporting instructions and collection methods at national level are the most efficient, effective and the least burdensome for the reporting agents concerned.
14. This opinion does not prejudice any later assessment by the ECB of the Maltese reporting scheme and the statistical information reported to it in compliance with the ECB's statistical reporting requirements.

⁷ Regulation ECB/2001/13 of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector, OJ L 333, 17.12.2001, p. 1.

⁸ I.e., a Member State which has adopted the single currency (see Article 1 (definitions) of Council Regulation (EC) 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank, OJ L 318, 27.11.1998, p. 8.

15. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 28 February 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET