



OPINION OF THE EUROPEAN CENTRAL BANK

of 7 December 2011

on the legislation governing the financing of the central register of bank account numbers

(CON/2011/98)

Introduction and legal basis

On 25 November 2011, the European Central Bank (ECB) received a request from the Belgian Ministry of Finance for an opinion on a draft royal decree on the functioning of the central contact point referred to in Article 322 §3 of the Belgian Income Tax Code (hereinafter the 'draft royal decree').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, and 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 provisions¹, as the draft royal decree relates to the Nationale Bank van België/Banque Nationale de Belgique (NBB). 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.

1. Purpose of the draft royal decree

- 1.1 The draft royal decree implements Article 322 §3 of the Belgian Income Tax Code establishing a central contact point, i.e. a central register of bank account numbers managed by the NBB (hereinafter the 'central register'). The ECB was consulted on an earlier draft of the legislation establishing this central register, in respect of which it issued Opinion CON/2011/30².
- 1.2 The draft royal decree: (i) defines the tasks entrusted to the NBB in relation to the central register; (ii) lays down the procedures for the credit institutions' communication of data to the central register³ and for the consultation of the central register⁴; and (iii) lays down the data protection rules⁵. With regard to the financing of the tasks entrusted to the NBB, the draft royal decree provides that the NBB will charge to the Belgian State all costs incurred in relation to the development, installation, operation and maintenance of the central register and that the operating costs will be charged on a quarterly basis. The payment terms of such costs will be agreed between

¹ OJ L 189, 3.7.1998, p. 42.

² All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

³ Articles 2 to 6 of the draft royal decree. The following data must be communicated: (a) the client's identity, (b) the client's bank account numbers, (c) the agreements with such clients, and (d) the reference date for the data.

⁴ Articles 9 to 14 of the draft royal decree.

⁵ Articles 15 to 19 of the draft royal decree.

the NBB and the Belgian Treasury⁶. Finally, the liability of the NBB in relation to the operation of the central register will be explicitly limited to cases of misconduct or wilful negligence⁷, on account of the extremely limited control⁸ that the NBB has over the accuracy and completeness of the data contained in the central register⁹.

2. Monetary financing prohibition and central bank independence

In order to comply with the prohibition on monetary financing under Article 123 of the Treaty, it needs to be ensured that the NBB will be fully and adequately remunerated for all the costs incurred when performing activities related to the tasks entrusted to it in connection with the central register¹⁰. If the remuneration is not provided in advance, it should be ensured that the costs incurred by the NBB in performing these activities will be fully and promptly reimbursed on market terms.

The ECB understands: (i) that the financing arrangements in the draft royal decree ensure that the NBB will be fully reimbursed by the Belgian State for all costs incurred in developing, installing, operating and maintaining the central register; (ii) that the Federal Public Service Finance and the NBB will agree on the procedures for the reimbursement of these costs¹¹; (iii) that the costs for the operation of the central register will be reimbursed on a quarterly basis; and (iv) that the terms on which the operating costs are charged to the State reflect the standard practice for IT contracts¹². The ECB considers that the financing arrangements laid down in the draft royal decree address in a satisfactory manner the concerns that the ECB had expressed in CON/2011/30 in respect of the monetary financing prohibition and central bank independence.

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

Done at Frankfurt am Main, 7 December 2011.

[signed]

The President of the ECB

Mario DRAGHI

⁶ Article 20 of the royal draft decree. See also the reference to CON/2011/30 in the explanatory memorandum, Part D, p. 18.

⁷ Article 21 of the royal draft decree.

⁸ See, for instance, Articles 7 and 12 of the draft royal decree.

⁹ Explanatory memorandum, Part C, p. 18.

¹⁰ See CON/2011/30.

¹¹ Article 20, second paragraph, of the royal draft decree. The ECB understands that costs other than the operational costs will be charged partly in advance and partly at delivery.

¹² Explanatory memorandum, Part D, p. 19.