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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 17 October 2008

at the request of the Polish Minister for Finance

on a draft law amending the Law on Narodowy Bank Polski and certain other laws

(CON/2008/53)

Introduction and legal basis

On 9 September 2008 the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law amending the Law on Narodowy Bank Polski and certain other laws (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and 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 provisions[1], as the draft law relates to Narodowy Bank Polski (NBP) and to the collection, compilation and distribution of 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.

1. Purpose of the draft law

1.1 The draft law amends the Law on Narodowy Bank Polski[2] (hereinafter the 'Law on NBP') and certain other laws by extending the legal framework for NBP's collection of statistical information to statistical reporting by non-banking financial institutions operating in Poland, in particular by investment funds[3]. In this regard, the draft law is intended to align statistical reporting requirements in Poland with Regulation ECB/2007/8 of 27 July 2007 concerning statistics on the assets and liabilities of investment funds[4].

1.2 Furthermore, the draft law introduces rules on the transmission of the collected statistical information, allowing NBP to transfer such information to specified national and international entities, including the ECB[5]. Finally, the draft law permits the reciprocal sharing of individual and

1 OJ L 189, 3.7.1998, p. 42.

2 Law on Narodowy Bank Polski of 29 August 1997 (consolidated text: Dz.U. of 1 April 2005 No 1, item 2).

3 The data collected by NBP under the proposed provisions will be used to implement monetary policy, perform periodic assessments of the State's monetary position as well as to compile the balance of payments and international investment position statistics (see Article 23(2) and Article 23(2c) of the Law on NBP, as amended by Article 1(1)(a) to (b) of the draft law). See point 1 of the explanatory memorandum to the draft law.

4 OJ L 211, 11.8.2007, p. 8. See point 1 of the explanatory memorandum to the draft law.

5 See Article 23(7) of the Law on NBP, as amended by Article 1(e) of the draft law.

aggregated statistical information between NBP and the Polish Central Statistical Office, to the extent necessary for the performance of their statutory functions[6].

2. General observations

2.1 Article 5.2 of the Statute of the European System of Central Banks and of the European Central Bank provides that 'national central banks shall carry out, to the extent possible, the tasks described in Article 5.1', which are the tasks of the European System of Central Banks (ESCB) as defined by the Treaty and the ESCB Statute. Although regulations adopted under Article 34.1 of the ESCB Statute do not confer any rights or impose any obligations on Member States that have not adopted the euro (hereinafter the 'non-participating Member States'), Article 5 of the ESCB Statute applies to all Member States, whether or not they have adopted the euro[7]. Further, Article 47.2 of the ESCB Statute provides that the ECB's General Council is required to contribute to the collection of statistical information as referred to in Article 5 of the ESCB Statute. In addition, Article 10 of the Treaty requires Member States to 'take all appropriate measures ... to ensure fulfilment of the obligations arising out of this Treaty' and, more specifically, Article 4 of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank[8] requires all Member States to 'organise themselves in the field of statistics … and fully cooperate with the ESCB in order to ensure the fulfilment of the obligations arising out of Article 5 of the Statute'. These provisions therefore mean that non-participating Member States are under an obligation to design and implement at national level all measures they consider appropriate to carry out the collection of statistical information needed to fulfil the ECB's statistical reporting requirements and to make timely preparations in the field of statistics in order for them to become participating Member States[9].

2.3 In this context, it is primarily the task of the national authorities of non-participating Member States to determine which detailed reporting requirements and collection methods are the most efficient and effective at the national level and the least burdensome for the reporting population concerned. The ECB notes that the reporting regimes for collecting statistical data by national central banks 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 are therefore of a general nature only and are meant to serve as a guide, enabling NBP to shape its

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6 See Article 23(8) and (9) of the Law on NBP, as amended by Article 1(e) of the draft law.

7 First sentence of recital 5 to Regulation ECB/2007/8.

8 OJ L 318, 27.11.1998, p. 8. 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.

9 See ECB Opinion CON/2007/24 of 8 August 2007 at the request of Banca Națională a României on a draft regulation concerning statistical reporting of assets and liabilities recorded on the balance sheet of non-banking financial institutions.

reporting requirements in line with those of the Eurosystem in preparation for Poland's adoption of the euro[10].

3. Collection of statistical information

The ECB welcomes both objectives of the draft law, i.e. clarifying the legal obligations of financial institutions outside the banking sector to provide statistical information directly to NBP and aligning NBP's statistical framework with the ECB's requirements, in particular as laid down in Regulation ECB/2007/8. Achieving consistency with the ECB's statistical standards will enable reporting agents to become familiar with the statistical reporting regime that will apply once the euro has been introduced in Poland. The above comments do not prejudice any future ECB assessment relating to the reporting scheme for statistics on balance sheet assets and liabilities of non-banking financial corporations in Poland.

4. Rules on exchange of information

4.1 The ECB welcomes the proposed amendments to the Law on NBP, which will enable individual and aggregated statistical data to be exchanged, on the basis of reciprocity, between NBP and the Central Statistical Office[11]. As this extended data-sharing may prevent duplication in the collection of statistical data, the proposed amendments are expected to reduce the reporting burden on the reporting population in Poland. At the same time, they may further enhance the quality of the statistics concerned.

4.2 Furthermore, the draft law will allow NBP to disclose data collected from individual financial institutions to: (i) the ECB, in connection with NBP's obligations stemming from its participation in the ESCB; (ii) foreign entities, in performance of Poland's international obligations; (iii) the Minister for Finance, for the purposes of management of the public debt; and (iv) other entities, as specified in separate provisions[12]. The ECB notes that this part of the amendments introduced by the draft law is substantially similar to the amendments proposed in the previous draft law amending the Law on NBP, as commented in ECB Opinion CON/2008/39[13]. The ECB reiterates in this respect that the Community law provisions protecting the confidentiality of information reported by market participants apply not only to NBP's provision of information to the ECB but also to other exchanges of supervisory and statistical information. The draft law needs to precisely define the other instances when NBP is allowed to disclose information. In addition, it needs to refer to the requirement to comply with Community law in this respect. Moreover, the ECB understands that the draft law's provisions amending Article 23 of the Law on NBP will be

10 See ECB Opinion CON/2005/5 of 28 February 2005 at the request of Central Bank of Malta on a draft directive No 5 on statistical reporting requirements.

11 See Article 23(8) and (9) of the Law on NBP, as amended by Article 1(e) of the draft law.

12 See Article 23(7) of the Law on NBP, as amended by Article 1(d) and Article 3 of the draft law.

13 See paragraph 3.4 of ECB Opinion CON/2008/39 of 1 September 2008 at the request of the Polish Minister for Finance on a draft law on the Financial Stability Committee.

reconciled later in the drafting procedure with the amendments proposed by the draft provisions commented on in ECB Opinion CON/2008/39, in so far as both proposals amend Article 23 of the Law on NBP.

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

Done at Frankfurt am Main, 17 October 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET