EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 29 May 2006

at the request of the Belgian Ministry of Finance
on a draft royal decree establishing the balance of payments, the international investment position and international trade statistics for services and foreign direct investment in Belgium

(CON/2006/25)

Introduction and legal basis

On 17 March 2006, the European Central Bank (ECB) received a request from the Belgian Ministry of Finance for an opinion on a draft royal decree establishing the balance of payments, the international investment position and international trade statistics for services and foreign direct investment in Belgium (hereinafter the 'draft royal decree').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and on the second, third, fourth and fifth 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 royal decree relates to the collection by the Nationale Bank van België/Banque Nationale de Belgique (NBB) of data from Belgian residents to establish the balance of payments and related monetary and financial 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.

1. Purpose of the draft royal decree

The draft royal decree is intended to implement the Belgian Law of 28 February 2002 regulating the compilation of the balance of payments, the international investment position and the statistics of the international trade in services and the foreign direct investments 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')[2], as last amended by the Law of 1 May 2006[3]. The

1 OJ L 189, 3.7.1998, p. 42.

2 For the ECB's views on 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 controls and various legal provisions.

3 For the ECB's views on the Law of 1 May 2006 see ECB Opinion CON/2005/31 of 29 August 2005 at the request of the Belgian Minister of Finance on a preliminary draft law that amends the Law of 28 February 2002 regulating the

main change by the Law of 1 May 2006 is the introduction of the possibility to implement a direct reporting system for the collection of statistical data by the NBB, as opposed to the previously applicable system whereby the relevant data were primarily collected through the banking sector. Following this amendment, the draft royal decree intends to replace the Royal Decree of 19 March 2002 concerning the establishment of the balance of payments and the international investment position of Belgium[4], which currently implements the Law of 28 February 2002. The draft royal decree thus specifies how, according to the categories of economic agents and/or foreign transactions concerned, statistical data will need to be provided to the NBB, which is empowered to adopt more detailed regulations in this manner. Although the draft royal decree thereby largely maintains the structure and content of the Royal Decree of 19 March 2002, it contains adaptations that are necessary mainly to take account of the new direct reporting system and of the reporting of foreign transactions instead of the current reporting of foreign payments.

2. General observations

2.1 As a general comment, the ECB refers to paragraphs 5 and 6 of its Opinion CON/2005/31 on the benefits of a direct reporting system and of sample surveys as facilitating the operation of such system. The data reporting requirements laid down in the draft royal decree are also based on such system and method. The ECB therefore welcomes the purpose and effects of the draft royal decree in reducing the administrative burden for undertakings and natural persons who carry out professional activities, while at the same time ensuring the high quality of the data used to compile the euro area balance of payments and international investment position statistics, in accordance with 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 template[5]. The ECB notes in this respect that, in order to perform the tasks of the European System of Central Banks, the ECB, assisted by the national central banks, including the NBB, collects the necessary statistical information either from the competent national authorities or directly from economic agents, thereby endeavouring to limit as far as possible the overall reporting burden for the economic agents concerned.

2.2 The ECB also welcomes the exclusion of natural persons' private transactions from the draft royal decree thus exempting them completely for such transactions from its reporting requirements. Given that no threshold applies to this exemption for natural persons, this exemption is obviously wider than the exemption for cross-border payments in Article 6(1) of Regulation (EC)

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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.

4 For the ECB's views on the Royal Decree of 19 March 2002 establishing the balance of payments and the international investment position of Belgium (hereinafter the 'Royal Decree of 19 March 2002') see ECB Opinion CON/2002/3 of 14 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.

5 OJ L 354, 30.11.2004, p. 34.

No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro[6] (hereinafter 'the Regulation') and, similarly, in Article 2 of the Royal Decree of 19 March 2002. As regards the categories of transactions covered by the draft royal decree, it should be ensured that the reporting requirements for such transactions are in line with Article 6(1) of the Regulation, when such transactions fall within its scope of application (see e.g. the second and third paragraphs of Article 1 of the Regulation for this scope). In particular, the ECB questions whether the cross-border reporting requirements for payment card issuers and operators of payment card systems in Article 6 of the draft royal decree should not be subjected to the conditions laid down in the Regulation, particularly the EUR 12 500 exemption threshold in Article 6(1) thereof.

2.3 Additionally, in the context of national legislation on the reporting of payment-related transactions, such as the draft royal decree, the ECB refers to the establishment of the Single Euro Payments Area (SEPA) by the European banking industry and strongly supported by the ECB. The SEPA aims to establish the euro area as a domestic payment area without internal borders. When fully implemented, a single set of payment instruments will be used for both national and cross-border payments in the euro area, thereby eliminating differences between national and euro area cross-border payments.

3. Technical observations

3.1 The ECB proposes using the concept of 'monetary financial institution' instead of 'credit institution' in the fourth indent of Article 1, §1 of the draft royal decree. This concept is defined in Regulation ECB/2001/13 of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector[7] and is also used in the fourth indent of Article 1, §1 of the Royal Decree of 19 March 2002.

3.2 In addition, the ECB notes that the draft royal decree will, when adopted, apply retroactively from 1 January 2006 (Article 21). While the draft royal decree's reporting requirements mostly simplify the current requirements under the Royal Decree of 19 March 2002, the ECB trusts that, for every category of reporting agent and transaction subject to the draft royal decree, retroactive compliance with the reporting requirements imposed by the draft royal decree will be possible without imposing a burden on the reporting agents.

6 OJ L 344, 28.12.2001, p. 13.

7 OJ L 333, 17.12.2001, p. 1. Regulation as last amended by Regulation ECB/2004/21 (OJ L 371, 18.12.2004, p. 42).

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

Done at Frankfurt am Main, 29 May 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET