EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 January 2009

at the request of the Banque centrale du Luxembourg

on the legal framework for the compilation of statistics and the role of the Banque centrale du Luxembourg in the fields of balance of payments and quarterly financial accounts statistics

(CON/2009/7)

Introduction and legal basis

On 3 December 2008 the European Central Bank (ECB) received a request from the Banque centrale du Luxembourg (BCL) for an opinion on a draft law on the organisation of the National Institute for Statistics and Economic Studies (*Institut national de la statistique et des études économiques*, referred to by the acronym STATEC) (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], since the draft law contains both provisions on the BCL and on the collection, compilation and distribution of monetary, financial, banking 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.

1. Purpose of the draft law

The draft law sets up a comprehensive legal framework for STATEC, to replace the Law of 9 July 1962, which it repeals. Primarily, it lists the tasks of STATEC, among which are the coordination and production of Community statistics as a partner of Eurostat and the European Statistical System. Furthermore, it reinforces the obligations of public authorities, public bodies, legal and natural persons to provide statistical information requested by STATEC, which may, in case of non-compliance with such obligations, use its rights to investigate and impose sanctions. Finally, the draft law sets up a comprehensive regime on statistical confidentiality, also providing for the circumstances in which access to individual statistical data may be granted for scientific purposes.

More particularly, by virtue of Article 3 of the draft law, one of STATEC's tasks is to 'compile, jointly with the BCL, the balance of payments and the financial accounts'; the methods of cooperation being laid down in an agreement between STATEC and the BCL. This provision complements but does not

1 OJ L 189, 3.7.1998, p. 42.

repeal the Law of 28 June 2000 amending the grand-ducal Regulation of 10 November 1944 relating to exchange control (hereinafter the 'Law of 28 June 2000'), which already provided for the distribution of powers between STATEC and the BCL in relation to balance of payments statistics. In this respect, the additional costs incurred by the BCL are covered by a multi-year, renegotiable agreement between the BCL and the Luxembourg Government. While Guideline ECB/2002/7 of 21 November 2002 on the statistical reporting requirements of the ECB in the field of quarterly financial accounts[2] requires the BCL to submit quarterly financial accounts statistics to the ECB, the ECB understands that under the draft law this task will be allocated to the BCL for the first time at national level.

This opinion focuses on those aspects of the draft law that are directly relevant to the BCL.

2. General observations

In general, the ECB welcomes the draft law to the extent that it optimises the reliability and efficiency of the statistical production process, in line with the recent proposal for a regulation of the European Parliament and of the Council on European Statistics[3]. In view of the BCL's statistical reporting obligations in the fields of balance of payments[4] and quarterly financial accounts[5], the ECB takes particular note that the draft law is in line with its previous recommendation[6] and organises the cooperation between STATEC and the BCL in these areas. Ensuring effective cooperation between the national central bank (NCB) as a producer of statistics and other statistical authorities is often vital to ensure the availability, quality and cost-effectiveness of the statistics required by the ECB. Specific national cooperation arrangements should also fully preserve the NCB's independence, which derives from the NCB's participation in the European System of Central Banks (ESCB) in general and from its duty to collaborate with the ECB on statistical matters in particular[7].

3. Specific remarks

3.1 *Adaptation of the Law of 23 December 1998 on monetary status and on the Banque centrale du Luxembourg (hereinafter the 'BCL Law') and the Law of 28 June 2000 to strengthen the reliability and efficiency of the statistical production process*

The draft law aims to set up a comprehensive framework fostering the production of reliable and efficient statistics. However, rules governing the production of statistics in Luxembourg remain

2 OJ L 334, 11.12.2002, p. 24.

3 See in this respect ECB Opinion CON/2007/35 of 14 November 2007 at the request of the Council of the European Union on a proposal for a regulation of the European Parliament and of the Council on European statistics.

4 Under Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the ECB in the field of balance of payments and international investment position statistics, and the international reserves template, OJ L 354, 30.11.2004, p. 34.

5 Under Guideline ECB/2002/7.

6 See ECB Opinion CON/2008/17 of 15 April 2008 at the request of the Luxembourg Minister for the Treasury and the Budget on a draft law improving the legislative framework for Luxembourg as a financial centre and on a draft law relating to social insurance contributions, in particular, paragraph 4.3.

7 See in this respect, ECB Opinion CON/2008/6 of 1 February 2008 at the request of the Portuguese Parliament on a draft law on the principles, rules and structure of the National Statistical System.

dispersed between the draft law, the BCL Law and the Law of 28 June 2000. There is also a partial overlap between the draft law and the Law of 28 June 2000 as both provide for the joint compilation of balance of payments statistics by STATEC and the BCL. Furthermore, there is a risk of inconsistency between these two texts, since the financial aspects of the cooperation appear to be governed not only by an agreement between STATEC and the BCL[8] but also by an agreement between the BCL and the Luxembourg Government[9]. The ECB recommends that the draft law should address this overlap and inconsistency and that the Law of 28 June 2000 should be amended accordingly.

Another issue to be resolved is how the new provisions of the draft law stipulating the BCL's power to compile financial accounts statistics together with the STATEC will fit into the current legal framework governing the BCL's activities. To ensure that the BCL may fulfil its regulatory powers and responsibilities in the fields of balance of payments and financial accounts statistics, and, as already recommended on the occasion of recent extensions of the BCL's powers[10], the legislator should consider expressly listing the BCL's tasks in the BCL Law, along the lines of Article 3 of the draft law.

3.2 *Preservation of the BCL's independence*

The ECB has emphasised that the principle of independence of NCBs is of utmost importance for the quality and integrity of statistics, which must not be subject to political considerations[11]. The statistical framework set up by the draft law should be scrutinised carefully in the light of the principle of independence. Institutional independence prohibits NCBs from seeking, taking or receiving instructions from any government body which may affect the fulfilment of the NCB's ESCB-related tasks. The ECB notes that under the current draft law the BCL's institutional independence may be affected. For that reason, the ECB suggests amending Article 3 of the draft law in such a way that STATEC fulfils its statistical tasks without prejudice to the BCL's independence. A comparable safeguard should be introduced into Article 10 (obligation to provide statistical information), Article 11(1) (right of investigation) and Article 12 (sanctions) of the draft law. Against the above background, it should also be ensured that all cooperation mechanisms between STATEC and the BCL, including the overall coordination, centralisation and consultation prerogatives and with the possible participation of the BCL in the 'Coordination Commission' (*Commission de coordination des statistiques publiques*)[12], and the joint power to compile balance of payments and financial accounts statistics, may in no way impair the BCL's independence, as enshrined in Article 108 of the Treaty and reflected in Article 5(2) of the BCL Law. The particular stipulation in Article 7(2) of the draft law that prior notification to STATEC

8 Under Article 3.3. of the draft law.

9 Under Article 1bis (4) of the grand-ducal regulation of 10 November 1944 relating to exchange control, as amended by the Law of 28 June 2000.

10 See paragraphs 4.2 and 4.8 of ECB Opinion CON/2008/42 of 10 September 2008 at the request of the Banque centrale du Luxembourg on amendments to the draft law improving the legislative framework for Luxembourg as a financial centre and amending the Law of 23 December 1998 on monetary status and on the Banque centrale du Luxembourg.

11 See the ECB's Convergence Report, May 2008, p. 5.

12 See Article 6(2) of the draft law.

of ‘any statistical survey in the general interest carried out by a public or private body’ is ‘without prejudice to the application of statistical powers conferred upon national or international public bodies’ is, in the ECB’s view, insufficient to ensure due compliance with the principle of the BCL’s independence. Moreover, the draft law as currently worded does not make it clear in connection with the BCL’s new joint prerogatives for balance of payments and financial accounts statistics whether the BCL will benefit from the specific regime set up under the BCL Law, in particular in relation to its independence and regulatory powers. In this context, the ECB recommends that the draft law should provide that all the abovementioned cooperation mechanisms between the BCL and STATEC are without prejudice to the principle of the BCL’s independence. Moreover, the BCL’s overall independence would be jeopardised if it could not autonomously avail itself of sufficient financial resources to fulfil its mandate.

3.3 *Reciprocity in the exchange of information between STATEC and the BCL*

The ECB notes that by virtue of Article 33(2) of the BCL Law, statistical confidentiality provisions do not prevent the exchange of information with STATEC, ‘subject to reciprocity to the extent necessary to the performance of the BCL’s tasks’. For consistency in the mechanism of statistical information exchange, the ECB recommends that a similar provision should be inserted in Article 13 of the draft law which sets up STATEC’s statistical confidentiality regime.

3.4 *Right of investigation and sanctions*

The ECB notes that the draft law gives STATEC rights to investigate and impose sanctions to ensure due compliance by public authorities and public bodies as well as by natural or legal persons to provide the requested statistical information. In line with its previous opinions[13], the ECB reiterates its recommendation that the BCL Law should be amended to give the BCL similar powers to impose sanctions.

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

Done at Frankfurt am Main, 27 January 2009.

[signed]

The Vice-President of the ECB

Lucas D. PAPADEMOS

13 See ECB Opinion CON/2008/17, in particular paragraph 4.3, and paragraph 4.2 of ECB Opinion CON/2008/42.