EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 3 April 2006

at the request of Latvijas Banka
on a draft law amending the Law on Latvijas Banka

(CON/2006/19)

Introduction and legal basis

On 21 February 2006 the European Central Bank (ECB) received a request from Latvijas Banka for an opinion on a draft law amending the Law on Latvijas Banka (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 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 provisions[1], as the draft law relates to a national central bank (NCB). 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's main objective is to further enhance the compatibility of the Law on Latvijas Banka with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute'). It provides that Latvijas Banka is a member of the ESCB and acts in accordance with the ECB's guidelines and instructions. In addition, it recognises the ECB's right to approve Latvijas Banka's participation in international monetary institutions. The draft law also clarifies several other provisions of the Law on Latvijas Banka and aligns their terminology with other Latvian laws.

2. General observations

According to the consultation letter, the draft law will enter into force immediately after its adoption by the Latvian Parliament. The ECB also understands from the consultation letter that the Law on Latvijas Banka will be further amended as a separate exercise. Therefore, this opinion will not comment on

1 OJ L 189, 3.7.1998, p. 42.

provisions of the current Law on Latvijas Banka that will have to be adapted for Latvia to adopt the euro and Latvijas Banka to be integrated into the Eurosystem. However, the ECB notes that to comply with Article 109 of the Treaty, Latvian national legislation had to be adjusted to ensure its compatibility with the Treaty and the Statute by 1 May 2004. This process is expected to be finalised in time for the 2006 convergence report. Nevertheless, national legislation integrating an NCB into the Eurosystem need only enter into force when such integration becomes effective, i.e. the date on which the Member State with a derogation adopts the euro.

3. Specific observations

3.1 The ECB welcomes the proposed new wording of Article 2 of the Law on Latvijas Banka according to which Latvijas Banka is a member of the ESCB and subject to the ESCB regulatory framework (although the reference to guidelines and instructions of course become relevant only on Latvijas Banka's full integration in the Eurosystem in accordance with Article 14.3 of the Statute).

3.2 The ECB also welcomes the proposed new paragraph in Article 7 of the Law on Latvijas Banka which recognises the ECB's right to approve Latvijas Banka's participation in international monetary institutions as it brings the Law into line with Article 6.2 of the Statute. The ECB notes, however, that under Article 43.1 of the Statute this particular provision applies from the date of Latvijas Banka's integration into the Eurosystem. Therefore the proposed amendment should enter into force on the date on which Latvia adopts the euro.

3.3 The ECB notes that the draft law does not deal with the personal independence of the members of Latvijas Banka's Council (hereinafter the 'Council'). The grounds for dismissal of the Governor, Deputy Governor and other members of the Council currently laid down in Article 22 of the Law on Latvijas Banka are that: (1) they have submitted their resignation; or (2) a court sentence against the Governor of Latvijas Banka, the Deputy Governor or other member of the Council for an intentional crime has taken legal effect; or (3) the Governor of Latvijas Banka, the Deputy Governor or other member of the Council is unable to perform their functions for a period exceeding six successive months because of illness. The ECB's Convergence Report 2004, as well as ECB opinion CON/2005/20 of 14 June 2005, concluded that the grounds for dismissal of Latvijas Banka's Governor currently laid down in Article 22 of the Law on Latvijas Banka require further adaptation to comply fully with Article 14.2 of the Statute. The ECB therefore proposes already addressing this in the draft law as it is of immediate relevance.

3.4 The draft law amends Article 35 of the Law on Latvijas Banka so that Latvijas Banka may operate in financial markets of Latvia, Member States of the European Union and abroad by transacting in financial instruments and precious metals. The Law on the financial instruments market defines financial instruments as 'an agreement, which concurrently creates financial assets for one person, but financial liabilities or capital securities for another'. This is a rather wide definition and appears to cover also lending and borrowing of claims such as, for example, bank loans. Accordingly, the

proposed wording of Article 35 appears to be sufficiently wide to cover all transactions enumerated under Article 18.1 of the Statute.

3.5 Finally, the ECB notes the amendments to Article 38 of the Law on Latvijas Banka which provide for minimum reserve requirements. It is noted, however, that these measures do not contribute to further aligning Latvian reserve requirements with the regime adopted under Article 19 of the Statute and the relevant Community law[2]. Thus, the Article will have to be amended again, prior to integration of Latvijas Banka into the Eurosystem.

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

Done at Frankfurt am Main, 3 April 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

2 Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank, OJ L 318, 27.11.1998, p. 1 and Regulation/ECB/2003/9 of 12 September 2003 on the application of minimum reserves, OJ L 250, 2.10.2003, p. 10.