EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

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

(CON/2001/23)

1. On 24 July 2001, the European Central Bank (ECB) received a request from the Belgian Minister of Finance for an opinion 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.

2. The ECB's competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the "Treaty"), the second indent of Article 4(a) of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the "Statute"), and on 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 legislative proposal contains provisions concerning the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics by the Nationale Bank van België/Banque Nationale de Belgique. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, this opinion has been adopted by the Governing Council of the ECB.

3. The main purpose of the draft law is to entrust to the Nationale Bank van België/Banque Nationale de Belgique from 1 January 2002 the task of collecting the appropriate basic data enabling it to compile statistics related to Belgium's balance of payments and international investment position. The Nationale Bank van België/Banque Nationale de Belgique would thus assume responsibility for the statistical work currently performed by an institution common to Belgium and the Grand Duchy of Luxembourg, the Belgisch-Luxemburgs

1 OJ L 189, 3.7.1998, p. 42.

Wisselinstituut/Institut belgo-luxembourgeois du change, which the Belgian and Luxembourg Governments have decided to abolish when the reason for the monetary association between the two countries has ceased to exist with the introduction of euro banknotes and coins on 1 January 2002.

4. As a general observation, the ECB notes that the innovations introduced by the draft law relate mainly to the explicit reference, on the one hand, to the international investment position of Belgium as such, while this was previously considered to be a statistic ancillary to the balance of payments, and, on the other hand, to the participation by the Nationale Bank van België/Banque Nationale de Belgique in the European System of Central Banks (ESCB). As a consequence, the restrictive list of authorised uses of data collected specifies that this is without prejudice to compliance with the obligations relating to duties in respect of the ESCB. The ECB welcomes this clarification and notes that the draft law in this respect does not give rise to any specific remarks.

5. Article 4 of the draft law, which provides that the individual information collected shall be used by the Nationale Bank van België/Banque Nationale de Belgique for the purposes of establishing the balance of payments and the international investment position of Belgium, specifies the restrictive conditions under which this information can be disclosed, notably with respect to third parties. Article 4(5) of the draft law provides, however, for a limit to statistical secrecy in the two specific cases of money laundering and financial embargo measures. The draft law provides in particular that the compulsory regulations issued in order to implement financial embargo measures will take precedence over the principle of statistical secrecy, which implies that the Nationale Bank van België/Banque Nationale de Belgique will have to communicate information in its possession to the competent authority in charge of monitoring compliance with financial embargo measures.

6. The ECB is of the view that Article 4(5) of the draft law does not imply any infringement of the confidentiality regime as defined in Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank[2]. Article 8(5)(c) of the abovementioned Regulation allows national central banks to use the confidential statistical information collected to fulfil the ECB's statistical reporting requirements exclusively for the exercise of the tasks of the ESCB, except if it is used in the field of prudential supervision or for the exercise in accordance with Article 14(4) of the Statute of functions other than those specified in the Statute. In addition, the principle of statistical secrecy is further strengthened by Article 5(2) of the draft law, which reinforces the standards of confidentiality applying to the entire staff of the Nationale Bank van België/Banque Nationale de Belgique in the field of statistics. The obligations imposed by law on the Nationale Bank van België/Banque Nationale de Belgique, when it acts as a collector of

2 OJ L 318, 27.11.1998, p. 8.

statistical information relating to capital transfers to zones affected by an embargo, are not regarded by the ECB as falling within the statistical functions of the ESCB. As a result, the ECB would welcome a clarification in the draft law further specifying that such obligations are not related to the statistical purpose of ESCB reporting requirements.

7. The ECB confirms that it has no objection to the publication of this opinion at the discretion of the competent national authorities.

Done at Frankfurt am Main on 30 August 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG