EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 June 2006

at the request of the Latvian Ministry of Finance
on a draft law amending the Latvian Constitution

(CON/2006/27)

Introduction and legal basis

On 8 May 2006, the European Central Bank (ECB) received a request from the Latvian Ministry of Finance for an opinion on a draft law entitled amendments to the Constitution of the Republic of Latvia (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 the status of Latvijas Banka under the Latvian Constitution (hereinafter the 'Constitution'). 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 is designed to reconcile the text of the Constitution, which provides that all administrative institutions of the State shall be under the authority of the Cabinet of Ministers, and the existence in practice of independent administrative institutions, which are not placed under the authority of the Cabinet of Ministers.

1.2 These provisions concern, inter alia, Latvijas Banka. While the general principle provided for in the draft law is to entitle the Parliament to designate those institutions which are not subordinated to the Cabinet of Ministers and to legislate on their tasks and structure, Latvijas Banka is explicitly mentioned in the text of the draft law as a central bank whose organisation and competences are provided for by a special law and which is supervised by the Parliament.

1 OJ L 189, 3.7.1998, p. 42.

2. General observation

The ECB welcomes the fact that the draft law aims to confirm Latvijas Banka's status in the Constitution and would like to stress the importance of ensuring that the proposed amendments do not entail any changes with regard to the status and functions of Latvijas Banka, but only restate its position in the hierarchy of different institutions at the constitutional level.

3. Specific observations

3.1 The ECB has two concerns with regard to the content of the provisions governing Latvijas Banka in the draft law. First, the ECB takes note of the fact that the wording used in Article 88 of the Constitution in relation to Latvijas Banka is different from the wording in Article 87 in relation to the State Audit Office. Following adoption of the draft law, the State Audit Office and Latvijas Banka will be the only independent bodies defined specifically in the text of the Constitution. However, while Article 87 clearly provides that the State Audit Office is an independent collegial body, Article 88 on Latvijas Banka merely identifies Latvijas Banka as the central bank. For details concerning the central bank's organisation and competences, Article 88 instead refers to a specific law, namely the Law on Latvijas Banka, which in turn provides that Latvijas Banka is independent in the adoption of its decisions and in their practical implementation[2].

3.2 The ECB notes that the independence of Latvijas Banka, which is also a member of the European System of Central Banks, is laid down in Article 108 of the Treaty and Article 7 of the Statute on the European System of Central Banks and of the European Central Bank. These two provisions prohibit the national central banks (NCBs) and the members of their decision-making bodies from seeking or taking instructions from Community institutions or bodies, from any government of a Member State or from any other body. In addition, they prohibit Community institutions and bodies and the governments of the Member States from seeking to influence those members of the NCBs' decision-making bodies whose decisions may affect the fulfilment of the NCBs' ESCB-related tasks. These requirements already apply to Latvia, and the ECB understands that the wording of Article 88 of the Constitution does not entail a restriction on Latvijas Banka's independence. If, however, this understanding is incorrect, the wording of Article 88 will need to be further considered and amended in order to reflect the independent status of Latvijas Banka.

3.3 Second, the ECB notes that the draft law provides that 'Latvijas Banka shall be supervised by the Parliament'. Although this provision might be intended to clarify that Latvijas Banka is not an institution under the authority of the Cabinet of Ministers, but instead an independent authority under the Parliament, there is a clear risk that the language used will be interpreted differently. The ECB notes in particular that the absence of a similar provision in Article 87 in relation to the State Audit Office, together with the absence of constitutional confirmation of Latvijas Banka's independence, may be interpreted as limiting Latvijas Banka's independence.

2 Article 13(2) of the Law on Latvijas Banka.

3.4 While similar wording is currently used in Article 43(1) of the Law on Latvijas Banka, the ECB notes that the term 'supervision' is usually applied to designate a much stronger link between the supervisor and the supervised entity than, for example, oversight or accountability. The ECB would therefore like to stress that the notion of 'supervision' is misleading, since it could be interpreted as allowing the Parliament to interfere with Latvijas Banka's tasks in a manner which goes beyond the level covered by the accountability regime and does not adequately reflect the requirement of central bank independence under the Treaty and the Statute. The ECB's May 2006 Convergence Report, contains the following statement: 'dialogue between NCBs and third parties, even when based on statutory obligations to provide information and exchange views, is compatible with central bank independence provided that: (i) this does not result in interference with the independence of the members of the NCB's decision-making bodies; (ii) the special status of Governors in their capacity as members of the ECB's General Council is fully respected; and (iii) confidentiality requirements resulting from the Statute are observed'[3]. In accordance with Article 113(3) of the Treaty and Article 15.3 of the Statute, the ECB addresses an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council. Against this background, the ECB would welcome it if the proposed provision pursuant to which Latvijas Banka will be supervised by the Parliament were replaced by a provision on the status of Latvijas Banka as an independent authority under the Parliament or, alternatively, if this provision were deleted.

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

Done at Frankfurt am Main, 9 June 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

3 ECB Convergence Report May 2006, p. 63.