EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 26 January 2018

on organising the central register of bank accounts and financial transactions

(CON/2018/4)

Introduction and legal basis

On 22 December 2017 the European Central Bank (ECB) received a request from the Belgian Ministry of Finance for an opinion on a draft law organising the central register of bank accounts and financial transactions (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third indent of Article 2(1) of Council Decision 98/415/EC[1], as the draft law contains provisions concerning the Nationale Bank van België/Banque Nationale de Belgique (NBB). 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 main purpose of the draft law is to serve as the stand-alone legal framework for the operation and maintenance by the NBB of the central register of bank accounts and financial transactions.

1.2 The register was initially established and operated by the NBB in accordance with the Law of 14 April 2011 which was implemented by Royal Decree on 17 July 2013. It was then designed as a component part of the Income Tax Code and served as a database available exclusively to the tax authorities for controlling and recovery purposes. Access to the database was subsequently expanded in 2016, in particular, to support efforts to combat money laundering, the financing of terrorism and financial crime in general.

1.3 Under the draft law, the existing central register of bank accounts and financial transactions will become a multi-purpose database that will, in particular, serve as the centralised automated mechanism, contemplated for all Member States under the Proposal for a Directive of the European Parliament and of the Council and amending Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist

1 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

financing[2], as a means of facilitating the timely identification of any natural or legal person holding or controlling payment or bank accounts held in Belgium. To this end, the provisions on the operation and maintenance of the central register of bank accounts and financial transactions have been extracted from the Income Tax Code and placed in a stand-alone piece of legislation.

1.4 The list of reporting agents under the draft law will include stock exchange brokers, payment and electronic payment institutions, foreign exchange agents, lenders, leasing companies and insurance undertakings, as well as credit institutions. These entities will be required to provide additional information relating to the designation of proxyholders, the renting of safes by credit institutions, the execution of certain types of insurance contracts, foreign money transfers in exchange for a withdrawal or remittance of cash and exchange transactions involving cash or precious metals in exchange for a withdrawal or remittance of cash. The Administration of the Treasury for Belgium will be tasked with monitoring the compliance of the reporting entities with the new obligations under the draft law and imposing fines. Communication between the central register, the reporting entities and the persons requesting information will exclusively take place electronically.

1.5 The draft law provides that legal or private persons may be either directly authorised to access the register or, where necessary, by way of a centralising institution tasked with managing the information requests, designated by the King. The persons authorised to access the register and the centralising institutions should establish and implement policies and procedures to ensure compliance with the relevant requirements by those requesting and receiving information from the central register, in particular, with respect to ensuring that the request is in line with the purpose for which access was granted and maintaining data confidentiality. Persons authorised to receive information from the register and all centralising institutions must also enter into a framework agreement with the NBB with respect to the technical conditions and practical arrangements governing access to the register.

1.6 Under the draft law, the persons authorised to receive information or the centralising institution will reimburse the NBB for all the costs incurred as a result of the establishment, functioning and maintenance of the register. The costs incurred by the NBB will be shared between the persons authorised to receive information in proportion to the number of their respective requests for information from the register and, where appropriate, to any other relevant factor determined by the King. The King will determine the arrangements for implementing these provisions, including (1) the method for calculating the interim payment to be paid by the persons authorised to receive information or, where appropriate, by the centralising institution in order to cover the NBB's costs in advance, and the method for calculating the definitive amount of the share of the NBB's costs for each person authorised to receive information or the centralising institution and; (2) the frequency of the invoices sent by the NBB as well as the payment period, which may not exceed ninety calendar days.

2 COM/2016/0450 final - 2016/0208 (COD).

1.7 The draft law excludes any civil liability of the NBB and the members of its decision-making bodies or staff as a result of any mistake or negligence arising in the performance of its tasks under the draft law, except in cases of fraud, willful misconduct or gross negligence. The NBB is also authorised to use the information in the register for scientific or statistical purposes, or in the context of performing its public interest missions and tasks in accordance with the Act of 22 February 1998 on the Organic Status of the National Bank of Belgium[3].

2. General observations

2.1 The ECB has issued a number of opinions on the Law of 14 April 2011 on the central register of bank accounts and the Royal Decree of 17 July 2013 on the functioning of the central point of contact establishing and expanding access to the central register for banks accounts and financial transactions[4].

2.2 The ECB welcomes the enactment of a stand-alone piece of legislation specifically dedicated to the central register for bank accounts and financial accounts with comprehensive and detailed rules on its establishment, functioning and financing.

2.3 The ECB particularly welcomes the introduction of a cost recovery mechanism designed to ensure the full recovery of the costs incurred by the NBB in the establishment, maintenance and operation of the register, through the combination of an *ex ante* interim payment made by the persons authorised to receive information from the register and the centralising institution to the NBB to cover the expected costs of the register for a period of one year and the *ex post* quarterly invoicing by the NBB of the actual costs incurred by the NBB in respect of these persons. This cost recovery mechanism safeguards the financial independence of the NBB under the Treaty and dispels concerns relating to the prohibition of monetary financing under the Treaty that are associated with the NBB carrying out government tasks[5]. The ECB requests to be consulted under Article 127(4) of the Treaty on the implementing regulation relating to this cost recovery mechanism as it is an important element for assessing that the prohibition of monetary financing is properly addressed.

2.4 The various mechanisms aimed at alleviating the operational burden of the NBB – including the access to the register that exclusively takes place in electronic form; the monitoring by the Administration of the Treasury of the compliance by reporting entities with their obligations; the involvement of the centralising institutions and the limited liability of the NBB and its decision-making bodies and staff in the establishment and operation of the central register – are also a welcome development. These mechanisms reduce the scope for operational and political risks,

3 « Loi du 22 février 1998 fixant le statut organique de la Banque Nationale de Belgique ».

4 See ECB Opinions CON/2011/30, CON/2011/98 and CON/2016/35. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

5 See paragraphs 3.2 and 3.8 of ECB Opinion CON/2016/35.

thereby enhancing the independence of the NBB.

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

Done at Frankfurt am Main, 26 January 2018.

[signed]

The President of the ECB

Mario DRAGHI