EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 14 June 2005

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

(CON/2005/20)

1. On 27 April 2005 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'). Latvijas Banka has requested the ECB's opinion before the submission of the draft law to the Latvian Ministry of Finance.

2. 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 concerns a national central bank. 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.

3. The ECB understands that the primary objective of the draft law is to ensure that the Law on the Latvijas Banka is compatible with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. The draft law contains six articles which mainly address issues raised in the ECB's Convergence Report 2004, namely Latvijas Banka's primary objective of price stability, its right to open accounts for members of the European System of Central Banks (ESCB) and the need for Latvijas Banka's credit operations to be backed by adequate collateral. The draft law also contains two technical provisions which will update the Law on Latvijas Banka in accordance with other more recent Latvian legal acts.

4. The ECB notes that the draft law, which would enter into force without delay after its adoption by the Latvian Parliament, addresses issues which are of immediate relevance in view of Latvijas Banka's membership of the ESCB, as well as some of the issues which will need to be dealt with to ensure compatibility with Community law when Latvia adopts the euro and Latvijas Banka is fully integrated into the Eurosystem. In the latter context the ECB understands that further amendments to the Law on Latvijas Banka are currently being drafted as a separate exercise to cover the remaining issues not dealt with by the draft law.

1 OJ L 189, 3.7.1998, p. 42.

5. Pursuant to Article 3 of the Law on Latvijas Banka as currently drafted, Latvijas Banka's main objective is to implement monetary policy by controlling the amount of money in circulation with the aim of maintaining price stability in the Latvian State. As noted in the ECB's Convergence Report 2004, this provision requires adaptation in order to comply fully with the Treaty and the Statute. Under the draft law Latvijas Banka's main objective is to maintain price stability. The ECB welcomes this adaptation which will allow Latvijas Banka to meet the criteria of functional independence as regards the ESCB's primary objective of maintaining price stability.

6. The ECB notes that, notwithstanding the draft law's objective of ensuring the compatibility of the Law on Latvijas Banka with the Treaty and the Statute, the draft law does not deal with the issue of 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 decision sentencing the Governor of Latvijas Banka, the Deputy Governor or a member of the Council for a deliberate crime has taken legal effect, or (3) the Governor of Latvijas Banka, the Deputy Governor or a member of the Council is unable to perform their functions for a period exceeding six successive months because of illness. It is recalled that the ECB's Convergence Report 2004 concluded that the grounds for dismissal of the Governor of Latvijas Banka currently laid down in Article 22 of the Law on Latvijas Banka require further adaptation in order to comply fully with Article 14.2 of the Statute. The ECB therefore suggests that this issue be addressed in the draft law.

7. Article 12 of the Law on Latvijas Banka currently provides that Latvijas Banka is entitled to open accounts only for the Latvian Government, foreign banks, international monetary, financial and credit institutions, Latvian banks and other credit institutions. Thus, as indicated in the ECB's Convergence Report 2004, Latvijas Banka's right to open accounts for credit institutions needs to be extended to comply with Article 17 of the Statute. The Law on Latvijas Banka may not in any case restrict Latvijas Banka's right to open accounts for members of the ESCB/Eurosystem. The ECB therefore welcomes the suggested rewording of Article 12 of the Law on Latvijas Banka insofar as it is less restrictive than the current provisions of the Law. The ECB notes, however, that the suggested wording is still slightly more restrictive than what is required by Article 17 of the Statute, which provides that in order to conduct their operations, the ECB and the national central banks (NCBs) may open accounts for credit institutions, public entities and other market participants and accept assets, including book entry securities, as collateral. The current proposed wording of Article 12 of the Law only entitles Latvijas Banka to open accounts for the Government of Latvia, credit institutions, international organisations and 'other institutions'. It does not explicitly refer to the members of the ESCB. In this regard it is noted that NCBs that are members of the ESCB are established under different legal arrangements, all of which might or might not be covered by the concept of 'institutions' (some of the NCBs are not strictly public institutions but instead are established as companies). Therefore, in order to avoid any doubts as to whether ESCB

members are covered by Article 12 of the Law on Latvijas Banka, the ECB recommends including an explicit reference to them in the draft law. Furthermore, Article 17 of the Statute refers to other market participants, although it is not entirely clear whether such other market participants would also be covered by the current wording of the draft law. Therefore, for the purposes of clarity, the ECB would welcome the inclusion of an explicit reference to market participants in the draft law.

8. Article 36 of the Law on Latvijas Banka provides that Latvijas Banka is entitled to grant short-term loans against collateral to those Latvian banks and other credit institutions, foreign banks, and international foreign exchange, financial and credit institutions that have opened an account with Latvijas Banka. In its Convergence Report 2004 the ECB noted that pursuant to the second indent of Article 18.1 of the Statute, Article 36 of the Law on Latvijas Banka will need to subject credit operations with credit institutions and other market participants to adequate collateral. As a consequence, the ECB welcomes the suggested rewording of Article 36, which provides that Latvijas Banka shall be entitled to effect, against adequate collateral, credit operations with credit institutions and other financial market participants. However, from a strictly drafting perspective it is noted that, while the draft law refers only to credit operations, Article 18 of the Statute refers to all types of open market operations. While it is aware of Latvijas Banka's intention to draft further amendments in order to ensure full compliance with the Treaty and the Statute when Latvijas Banka joins the Eurosystem, the ECB would still welcome at this stage a more extensive alignment of the text of Articles 36 and 37 of the Law on Latvijas Banka with the relevant provisions of Article 18 of the Statute in order to reflect Latvijas Banka's entitlement to conduct a wide range of open market operations both for liquidity providing and absorbing purposes.

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

Done at Frankfurt am Main, 14 June 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET