



EUROPEAN CENTRAL BANK

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 26 June 2001**

**at the request of the Nationale Bank van België/Banque Nationale de Belgique on a draft law relating to the cash changeover to the euro in Belgium**

**(CON/2001/15)**

1. On 11 June 2001 the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB) for an opinion on a draft law relating to the cash changeover to the euro in Belgium (hereinafter referred to as the “Draft Law”).
2. The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the “Treaty”), Article 3(1) of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank and 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<sup>1</sup>. In accordance with such Articles, the scope of this opinion is limited to those provisions of the Draft Law that relate to the powers of the ECB.
3. In accordance with the first sentence of Article 17(5) of the Rules of Procedure of the European Central Bank<sup>2</sup>, this opinion has been adopted by the Governing Council of the ECB.
4. The ECB notes that in line with Article 15 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro<sup>3</sup>, Articles 2 and 3 of the Draft Law introduce a dual circulation period, which will be limited to the period running from 1 January 2002 to 28 February 2002. From 1 March 2002, banknotes and coins denominated in Belgian francs will cease to be legal tender.
5. As per Article 2(2), banknotes denominated in Belgian francs will be exchangeable without time limit at the NBB as, according to the NBB, was traditionally the case in Belgium.
6. Article 2(3) stipulates that exchanges of Belgian franc banknotes which take place after the NBB has credited the Belgian Treasury for the amount of the banknotes, which have not been presented for exchange to the NBB, will be charged to the account of the Belgian Treasury.

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> OJ L 125, 19.5.1999, p 34.

<sup>3</sup> OJ L 139, 11.5.1998, p 1.

This provision results from Article 9 of the Organic Law on the NBB, which will be repealed from 28 February 2002. However, this law produces legal effects after this date that need to be settled in order to avoid double payment by the NBB with respect to the withdrawn notes. This provision does not appear to interfere with the accounting rules applying to banknotes that cease to be legal tender nor with the decision of when the NBB and the Belgian Treasury settle the payment referred to in Article 2(3). The ECB understands that this time of payment will depend upon a separate agreement, between the Belgian Treasury and the NBB, implementing Article 9, which agreement has yet not been finalised. This matter was among others addressed in the context of an ex-post informal opinion of the ECB delivered to the NBB at the end of February 2001.

7. The ECB notes that coins denominated in Belgian francs will only be exchangeable at the NBB and DE POST/LA POSTE until 31 December 2004, as provided by Article 3 of the Draft Law. There seem to be no limits or fees imposed on the exchange of coins as, according to the NBB, this was traditionally the case for withdrawn coins<sup>4</sup>.
8. The NBB has confirmed to the ECB that Article 4 of the Draft Law refers to the existing practice in Belgium. Following this practice, Article 4 authorises both the NBB and DE POST/LA POSTE to accept coins without limits, and implements the possibility provided for by Article 11 of the aforementioned Council Regulation (EC) No 974/98 for Member States to appoint persons/institutions to accept more than 50 coins in any single payment (*“Except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State, no party shall be obliged to accept more than 50 coins in any single payment”*).
9. The NBB also confirmed that Article 4 maintains the existing practice of the NBB according to which this service is without charge, in order to meet the needs of individuals and households and that, in so far as this service goes beyond these needs, the NBB or DE POST/LA POSTE would be entitled to charge a fee.
10. Article 5 of the Draft Law allows the transfer of the capital gains realised on the transfer of assets in gold from the NBB to the ECB for an amount of EUR 177,114,566. The ECB has confirmed in an earlier opinion that this transfer may be considered to give rise to a realised capital gain. For this reason such gain may be accounted for in the profit and loss account and may be subject to distribution. The distribution avoids treating the income as current income in the budget but affects it to the Zilverfonds, being a legal entity, created by law as a long-term funding structure for pension liabilities. The ECB understands that this fund invests mainly in public government bonds and therefore contributes to the decrease of the Belgian public debt.
11. The ECB welcomes Article 6 of the Draft Law to the extent that it confirms the responsibility of the NBB for the quality of banknote circulation. This task constitutes a public mission and is

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<sup>4</sup> Articles 7 to 18 of the Draft Law deal also with coins.

a natural corollary of the issuance. It is performed free of charge by the NBB. The NBB confirms that supplementary services provided at customer demand may be subject to a fee.

12. The ECB understands that Article 19 of the Draft Law transposes two existing provisions of Belgian criminal law into the Penal Code and adapts them to the introduction of the euro. The new Article 178bis of the Penal Code is intended to prevent fanciful means of payment from being put into circulation which might confuse the consumers as to which is the real legal tender. The new Article 178ter of the Penal Code protects the banknotes and coins against all kinds of damage which would jeopardise their use as legal tender.
13. The ECB understands that the purpose of Article 23 of the Draft Law is to facilitate and protect the withdrawal of banknotes denominated in Belgian francs. The ECB is of the view that national measures taken in the context of the withdrawal of national banknotes (including the marking or neutralisation of such banknotes) should be possible. However, once the characteristics of this marking will have been decided by Royal Decree, the ECB should be informed about them considering that article 52 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank requires national central banks to exchange at par banknotes of all participating Member States.
14. The ECB notes that Article 35 of the Draft Law protects the frontloading and subfrontloading operations in Belgium by penalising the use of euro banknotes as a means of payment before 1 January 2002. Banknotes used before this date as a means of payment may moreover be confiscated.
15. The ECB welcomes Article 37(8) of the Draft Law which abrogates Article 76 of the Programme Law of 2 January 2001 as this Article 76 might have allowed for credit facilities, prohibited under Article 101 of the Treaty (see the opinion of the ECB of 27 February 2001).
16. The ECB confirms that it has no objection to the publication of this opinion at the discretion of the competent national authority.

Done at Frankfurt am Main on 26 June 2001.

*The President of the ECB*

[signed]

Willem F. DUISENBERG