



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 10 October 2005

at the request of the Central Bank of Cyprus on a draft directive on the maintenance of minimum reserves with the Central Bank of Cyprus

(CON/2005/35)

Introduction

1. On 8 August 2005 the European Central Bank (ECB) received a request from the Central Bank of Cyprus (CBC) for an opinion on a draft directive on the maintenance of minimum reserves with the Central Bank of Cyprus (hereinafter the 'draft directive').
2. The ECB's competence to deliver an opinion is based on Article 2(2) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft directive relates to an instrument of monetary policy, i.e. minimum reserves, of a non-participating Member State. 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 purpose of the draft directive is to amend the CBC's minimum reserve regime with a view to the future application of the ECB's minimum reserve requirements in Cyprus on adoption of the euro. The draft directive lays down detailed rules on, *inter alia*, (a) the scope of application of the obligation to hold minimum reserves with the CBC, including exemptions from that obligation; and (b) the reserve base, the reserve ratios and the procedure for calculating minimum reserves and notifying banks and designated financial institutions thereof; and (c) the periods over which compliance with reserve requirements will be calculated; and (d) the remuneration to be paid on minimum reserves held by banks and designated financial institutions with the CBC; and (e) the infringement procedure and sanctions to be imposed for breach of the CBC's minimum reserve requirements.

Legal framework and general observations

4. The legal framework underlying the Eurosystem's minimum reserve regime is laid down in (i) Article 19 of the Statute of the European System of Central Banks and the European Central Bank; (ii) Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application

¹ OJ L 189, 3.7.1998, p. 42.

of minimum reserves by the European Central Bank²; and (iii) Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves³. The purpose of this legal framework, which is directly applicable to and binding on euro area credit institutions, is to ensure that the terms and conditions of the Eurosystem's minimum reserve regime are uniformly applied throughout the euro area.

5. First, in the course of preparing for the introduction of the euro in Cyprus, the CBC will need to examine whether the Eurosystem's minimum reserve requirements can be effectively fulfilled in Cyprus and whether all necessary measures have been adopted to ensure that the competent authorities have the legal power to assist and cooperate with the ECB on the collection and verification of the information necessary for the operation of the Eurosystem's minimum reserve regime. The ECB understands that the CBC is currently reviewing its Statutes to *inter alia* ensure that it will be in a position to meet the Eurosystem's requirements, also with regard to minimum reserves.
6. Second, because the Eurosystem's minimum reserve regime is highly dependent for its data on the Eurosystem's statistical reporting regime and because any changes to this regime would have implications for minimum reserve holdings, the CBC is advised that a key element for achieving consistency between the Cypriot minimum reserve regime and that of the Eurosystem is the incorporation into Cypriot law of statistical reporting requirements corresponding to those of the Eurosystem and their correct application. A recent general assessment by the ECB of the CBC's statistical preparedness suggests a convergence between the CBC's statistical reporting requirements and those of the ECB⁴.
7. Third, the ECB may have to consider introducing certain transitional arrangements for the application of the Eurosystem's minimum reserve regime on the introduction of the euro in Cyprus⁵ such as, for instance, a transitional maintenance period for credit institutions located in Cyprus to meet the ECB's minimum reserve requirements.
8. Without prejudice to these general observations, the ECB welcomes the CBC's initiative to review the Cypriot minimum reserve regime with a view to bringing it into line with that of the Eurosystem. Although non-participating Member States retain their powers in the field of monetary policy, it is nevertheless beneficial for them gradually to achieve consistency with Eurosystem standards so that credit institutions operating in their territory can already prepare for the minimum reserve requirements that will apply once the euro has been introduced.

² OJ L 318, 27.11.1998, p. 1.

³ OJ L 250, 2.10.2003, p. 10.

⁴ See ECB Opinion CON/2005/13 of 30 May 2005 at the request of the Central Bank of Cyprus on a draft directive on the reporting by monetary financial institutions of their monthly balance sheets.

⁵ As in the case of Regulation ECB/2000/11 of 2 November 2000 concerning transitional provisions for the application of minimum reserves by the European Central Bank following the introduction of the euro in Greece (OJ L 291, 18.11.2000, p. 28).

Technical comments

9. Section 13 of Part V of the draft directive effectively restricts a credit institution's ability to revise its data on the reserve base or on the required reserves, by only allowing one business day for revisions to be communicated to the CBC. Noting the role of timely revisions in improving the quality of minimum reserve related data, the ECB invites the CBC to consider extending the deadline in Section 13, Part V of the draft directive for the communication by credit institutions to the CBC of data revisions.
10. The second sentence of Section 8 of Part III of the draft directive appears to be misleading. This sentence concerns the standard deduction applicable in cases where the actual amount of debt securities issued with an agreed maturity of up to two years and held by other Cypriot credit institutions cannot be proved. It should be noted that the standard deduction mentioned in this section is not applicable to the whole of the reserve base (deposits and debt securities issued) but only to the total outstanding amount of debt securities issued with an agreed maturity of up to two years.
11. Finally, the ECB notes that the definition of winding-up proceedings in Section 2 of the draft directive appears to disregard the fact that Part XIII of the Cypriot Banking Law⁶ (hereinafter the 'Banking Law') specifically regulates such proceedings in the case of banks and electronic money institutions. The CBC is therefore invited to reconsider the draft directive's definition of winding-up proceedings, which currently refers to the Cypriot Companies Law⁷ instead of referring, as it should, to the *lex specialis* provisions of Part XIII of the Banking Law.
12. Without prejudice to the preceding observations, the ECB considers that the draft directive is otherwise generally consistent with Regulation ECB/2003/9.

Applicability of minimum reserve requirements to cooperative credit societies

13. The ECB notes that the draft directive applies the CBC's minimum reserve requirements to all credit institutions operating in Cyprus except for cooperative credit institutions (hereinafter 'cooperatives') which, unlike other credit institutions operating in Cyprus, are not supervised by the CBC. Moreover, the ECB notes that the explanatory memorandum to the draft directive states that cooperatives 'may be incorporated in the CBC's minimum reserve system at a later stage'.
14. Concerning the applicability of the Eurosystem's minimum reserve requirements to cooperatives on the introduction of the euro in Cyprus, the ECB notes that Article 2(1) of Regulation ECB/2003/9 provides that the following categories of institutions are subject to minimum reserve requirements (a) credit institutions, as defined in the first subparagraph of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions⁸

⁶ N.66(I)/1997, Ar.3168, 18.7.97, as amended.

⁷ Cap.113, as amended.

⁸ OJ L 126, 26.5.2000, p. 1.

(hereinafter the ‘Consolidated Banking Directive’), other than participating national central banks (NCBs); and (b) branches of credit institutions, as defined in Article 1(3) thereof, other than participating NCBs. The first subparagraph of Article 1(1) of the Consolidated Banking Directive defines a credit institution as ‘an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account’. Article 2(3) of the Consolidated Banking Directive exempts certain institutions from its scope of application including, in particular, NCBs, post office giro institutions and specific national institutions.

15. The ECB notes that cooperatives have been granted a derogation from the scope of application of the Consolidated Banking Directive until 31 December 2007⁹. However, this temporary derogation does not automatically entail their exemption from the Eurosystem’s minimum reserve requirements that were established for monetary policy purposes. Indeed, the ECB considers that, for the purposes of deciding on the applicability of the Eurosystem’s minimum reserve requirements to an institution or group of institutions, it is necessary to test whether that institution or institutions fulfil the criteria laid down in the first subparagraph of Article 1(1) of the Consolidated Banking Directive, i.e. whether their business is to (i) receive deposits or other repayable funds from the public; and (ii) grant credits for their own account. Furthermore, the ECB notes that cooperatives are treated as credit institutions for the purposes of Cypriot law, although they are not subject to the provisions of the Banking Law. Therefore, the ECB supports the CBC’s intention, as indicated in the explanatory memorandum to the draft directive, to already consider incorporating cooperatives into the CBC’s minimum reserve regime, as this would smoothen their transition to the Eurosystem’s minimum reserve framework.
16. This opinion will be published on the ECB’s website.

Done at Frankfurt am Main, 10 October 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁹ Annex VII to the Act of Accession (entitled ‘List referred to in Article 24 of the Act of Accession: Cyprus’), provides under Title 2 (Freedom to Provide Services) as follows: ‘In Cyprus, Directive 2000/12/EC shall not apply to the Cooperative Credit and Savings Societies, in so far as they are not in conformity with the provisions of this Directive, until 31 December 2007. As from the date of accession and until the end of the above period the Cypriot authorities shall inform the Commission at the beginning of each year about the number of non-conforming Cooperative Credit and Savings Societies which continue to be excluded, as well as the market share that they represent.’