



EUROPEAN CENTRAL BANK
EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 14 December 2018

on the organisation of the functioning of the central register of bank accounts and financial transactions

(CON/2018/57)

Introduction and legal basis

On 28 November 2018 the European Central Bank (ECB) received a request from the Belgian Ministry of Finance for an opinion on a draft royal decree organising the functioning of 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/EC¹, 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 draft law implements the Law of 8 July 2018 organising the central register of bank accounts and financial transactions (hereinafter the 'Law of 8 July 2018')². The draft law relates, in particular, to the exchange of information between the reporting agents and the central register, on the one hand, and between the central register and legal persons authorised to consult the register, on the other hand. The draft law also contains a chapter on the enforcement of data protection provisions as well as the implementation of administration sanctions.
- 1.2 The draft law also implements Article 10 of the Law of 8 July 2018 on the cost recovery mechanism, which concerns all costs incurred by the NBB for the establishment, operation and maintenance of the points of contact that ensure access to the central register. The draft law distinguishes between investment costs, defined as the costs incurred by the NBB for the analysis, development, testing and establishment of the central register in the establishment environment as well as any further development of the central register or the platform on which it is operated, and

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).

² Loi du 8 juillet 2018 portant organisation d'un point de contact central des comptes et contrats financiers et portant extension de l'accès au fichier central des avis de saisie, de délégation, de cession, de règlement collectif de dettes et de protêt, Wet van 8 Juli 2018 houdende organisatie van een central aanspreekpunt van rekeningen en financiële contracten en tot uitbreiding van de toegang tot het centraal bestand van berichten van beslag, delegatie, overdracht, collectieve schuldenregeling en protest.

operating costs, defined as the total costs incurred by the NBB in the context of the central register, excluding investment costs³.

Operating costs

- 1.3 The NBB invoices a provisional amount corresponding to the estimated operating costs at the beginning of each quarter following the date as of which the NBB renders the central register accessible to centralising bodies and, in their absence, to persons authorised to receive information⁴. Invoices are issued by the NBB to each centralising body, where applicable, or to the person authorised to receive information, and the amount set out in the invoice is payable within 90 calendar days.⁵ The NBB determines the provisional amounts to be invoiced by using a provisional tariff per consultation which is calculated as a ratio of the NBB's estimated operating costs for the respective calendar year and the sum of expected consultations in the same calendar year. The expected consultations are estimated prudently on the basis of the estimates provided by each centralising body, where applicable, or by persons authorised to access information from the central register⁶. The NBB calculates the provisional amounts corresponding to the estimated operating costs by multiplying the provisional tariff per consultation by the number of consultations requested in the previous quarter on behalf of a given centralising body, where applicable, or by the persons authorised to receive information from the central register⁷.
- 1.4 In the course of the six months following the end of each calendar year, the NBB calculates the definitive amount corresponding to the actual operating costs for the elapsed calendar year.⁸ First, the NBB determines the definitive tariff per consultation which is calculated as the ratio of the NBB's incurred operating costs and the sum of the consultations received in the same calendar year.⁹ Second, the NBB determines the definitive amounts corresponding to the actual operating costs (attributable to each centralising body or person authorised to receive the information) by multiplying the definitive tariff per consultation by the number of consultations actually submitted by each centralising body or person authorised to access information from the central register in the elapsed calendar year.¹⁰ Depending on whether the definitive amount corresponding to the actual operating costs is lower or higher than the provisional amount corresponding to the estimated operating costs, the NBB draws up a credit note or issues an additional invoice¹¹.

Investment costs

- 1.5 In January 2019, the NBB will invoice an amount corresponding to the initial investment costs to a limited number of institutions according to a predefined key, namely, the Ministry of Justice (17% share in the key), the Ministry of Finance (14%), the Royal Federation of Notaries (57%), the

3 Article 1 of the draft law.
 4 Article 21 paragraph 2 of the draft law.
 5 Articles 21 paragraph 2 and 23 sub-paragraph 2 of the draft law.
 6 Article 21 paragraph 1 of the draft law.
 7 Article 21 paragraph 2 of the draft law.
 8 Article 21 paragraph 3 of the draft law.
 9 Article 21 paragraph 3 sub-paragraph 1 of the draft law.
 10 Article 21 paragraph 3 sub-paragraph 2 of the draft law.
 11 Article 21 paragraph 3 sub-paragraph 4 of the draft law.

National Chamber of Bailiffs (3%) and the department for the treatment of financial information (9%). Additional invoices are to be prepared within the calendar month in which each update or expansion of the content or features of the central register or its IT platform is implemented¹². Invoices are payable within 90 calendar days¹³.

- 1.6 In addition, at the beginning of each calendar year after the central register becomes operational, the Ministers of Justice and Finance will establish the amount of the contribution towards investment costs payable to the abovementioned institutions in respect of each information request submitted during the same calendar year. This tariff per consultation is calculated as the ratio of the overall value of the NBB's investment costs invoiced by the NBB to the abovementioned institutions up to that date, and the sum of consultations that the NBB expects to receive during the current calendar year, taking into account a linear amortization of each investment over ten consecutive six-month periods (i.e., five years)¹⁴. On the basis of this tariff, the NBB will invoice the resulting amounts payable by the centralising bodies and the persons authorised to receive information at the same time and in the same manner as the provisional amounts for the contributions towards operating costs are invoiced to these persons¹⁵. The NBB will, in respect of any resulting amounts received by NBB, issue credit notes at the beginning of the subsequent calendar year in favour of the Ministries of Justice and Finance, the Royal Federation of Notaries, the National Chamber of Bailiffs and the department for the treatment of financial information, in accordance with their respective shares in the predefined key (see paragraph 1.5 above)¹⁶.

2. General observations

- 2.1 The ECB has issued a number of opinions related to the central register operated by the NBB¹⁷, most recently on the Law of 8 July 2018. In its opinions, the ECB noted, in particular, that the task entrusted to the NBB in relation to the central register is not a central banking task, nor does it facilitate the performance of such a task. Rather, the ECB understood that the task entrusted to the NBB in relation to the central register is linked to a governmental task, as it is meant to support the government's efforts in combating tax fraud and preventing the use of the financial system for the purpose of money laundering, the financing of terrorism and financial crime in general. Consequently, to safeguard the NBB's financial independence and as a guarantee against the circumvention of the monetary financing prohibition, the ECB emphasised that the NBB needs to be, at the least, fully and adequately remunerated when carrying out its tasks in relation to the central register¹⁸.

¹² Article 22 paragraph 1 of the draft law.

¹³ Article 23 paragraph 2 of the draft law.

¹⁴ Article 22 paragraph 2 sub-paragraph 1 of the draft law.

¹⁵ Article 22 paragraph 2 sub-paragraph 3 of the draft law.

¹⁶ Article 22 paragraph 2 sub-paragraph 4 of the draft law.

¹⁷ See Opinions CON/2011/30, CON/2011/98, CON/2016/35, CON/2017/20 and CON/2018/4. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

¹⁸ See, in particular, paragraph 2 of Opinions CON/2011/30 and CON/2011/98; paragraphs 2.2, 3.2 and 3.8 of CON/2016/35; paragraph 4.2 of CON/2017/20; paragraph 2.3 of CON/2018/4. In the same vein, see also paragraph 3.2 of Opinion CON/2015/36 and the ECB's 2018 Convergence Report, p. 30.

- 2.2 The ECB notes that according to Article 23 of the draft law the invoiced amounts in respect of all operating and investment costs are payable within 90 days. In this respect, the ECB wishes to emphasise that, for the purposes of the monetary financing prohibition, Article 1(1)(b)(iii) of Council Regulation (EC) No 3603/93¹⁹ defines 'other type of credit facility', inter alia, as 'any transaction with the public sector resulting or likely to result in a claim against that sector'. Hence, to ensure compatibility with the prohibition of monetary financing, the draft law should ensure that the detailed arrangements for the reimbursement of the NBB's operating and investment costs do not result in any claim by the NBB against the public sector.
- 2.3 With regard to the credit notes issued by the NBB to the Ministries of Justice and Finance, the Royal Federation of Notaries, the National Chamber of Bailiffs and the department for the treatment of financial information, the ECB notes that they are issued in respect of payments due to those institutions from the centralising bodies and the persons authorised to receive information from the central register, which payments are received by the NBB on behalf of those institutions. Therefore, the issuance of these credit notes by the NBB does not relate to any credit in favour of the institutions concerned.

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

Done at Frankfurt am Main, 14 December 2018.

[signed]

The President of the ECB

Mario DRAGHI

¹⁹ Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1). Articles 104 and 104b of the Treaty are now Articles 123 and 125 of the Treaty on the Functioning of the European Union.