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**Decree of 15 November 2005 in amendment of the annex meant in section 9c of the Foreign Financial Relations Act 1994\***

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We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.,

On the recommendation of Our Minister of Finance of 17 October 2005, nr. BJZ 2005-803M, directorate of Administrative and Legal Affairs;

Having regard to section 9c(3) of the External Financial Relations Act 1994;

Having heard the Council of State (advice of 2 November 2005, nr. W06.05/0486/IV);

Having read the further report of Our Minister of Finance of 7 November 2005, nr. BJZ 2005-887M, directorate of Administrative and Legal Affairs;

Have found good to decree:

#### SECTION 1

The annex meant in section 9c of the Foreign Financial Relations Act 1994 shall be amended as follows.

1. Section 2(1) shall read:

1. If a fine is imposed for non-compliance with a provision listed in table 1, the determination of the amount of the fine shall be based on the following division into categories by the sum of the foreign asset and liability positions, determined as monthly averages, across a period of 12 months prior to the said non-compliance, times the corresponding factors:

Category I: anyone having a sum of foreign asset and liability positions of less than €1 billion: factor 1;

Category II: anyone having a sum of foreign asset and liability positions of at least €1 billion but less than €4 billion: factor 2;

Category III: anyone having a sum of foreign asset and liability positions of at least €4 billion but less than €10 billion: factor 4;

Category IV: anyone having a sum of foreign asset and liability positions of at least €10 billion: factor 10.

2. In section 2(2), the phrase <in terms of total turnover in external payments> shall be replaced by: in terms of the sum of the positions of foreign assets and liabilities.

In section 2(3), the phrase <the data about total turnover in external payments during a period of twelve months prior to the case of non-compliance concerned> shall be replaced by: the data on the sum of the positions of foreign assets and liabilities, calculated as the monthly averages across a period of 12 months prior to the said non-compliance.

## SECTION II

This decree shall enter into force on the day after the date of issue of the *Staatsblad* in which it is published.

Direct and ordain that these presents with the accompanying explanatory memorandum shall be published in the *Staatsblad*.

Given at The Hague, 15 November 2005

Beatrix

The Minister of Finance  
G. Zalm

Issued the *twenty-ninth* of November 2005

the Minister of Justice  
J.P.H. Donner

## **1. Introduction**

Since 1 May 2003, the balance of payments for the Netherlands is compiled according to an entirely new methodology. Contrary to the prior situation, where the balance of payments used to be based largely on cross-border payments, only a limited group of designated residents now reports to De Nederlandsche Bank (DNB) by means of direct statements. As a result of this change, the criterion for categorisation “in terms of total turnover in external payments”, formulated in section 2(1) of the annex to the Foreign Financial Relations Act 1994, is no longer applicable and has been replaced by a categorisation criterion “in terms of the sum of foreign asset and liability positions”. This is explained in more detail as follows.

## **2. The old balance of payments compilation method**

Until 1 May 2003, reporting for balance of payments purposes was largely based on the regime of foreign exchange licences introduced in 1945. In the context of this regime, banks were obliged to report to DNB all cross-border transactions that had been settled in their books. Part of these transactions were those of customers, for whom the forms known as “Forms A and B” needed to be completed, stating the nature of each payment. Within the same general methodology, external payments settled independently by customers (through their own foreign accounts) were reported in so-called “HI statements”. Until the mid-1980s, this comprehensive reporting regime was used to everyone’s satisfaction. From then on, the pressure exerted by especially the exponential increase in securities transactions and the fast growth of cross-border services compounded the complexity of the system and increased both the probability of processing errors and the administrative burden on the sector. In order to ensure the continued quality of the balance of payments in the long term, an assignment to reconsider and simplify the balance of payment methodology was issued in 1999.

## **3. The new balance of payments system: direct reporting**

The reconsideration effort and the design, construction and implementation of the new balance of payments system took more than three years. Under the new system, the comprehensive methodology (involving the entry of all transactions in a ‘bookkeeping’ system) was abandoned in favour of a statistical approach. With a view to limiting the administrative burden on the sector, the new approach uses existing data sources wherever possible. The measurement of cash settlements by banks, for instance, is based in part on data collected by DNB in the context of monetary statistics. Also, the co-operation between DNB and Statistics Netherlands (‘CBS’) has been reinforced, with Statistics Netherlands collecting data on cross-border goods and services while DNB is responsible for statistical information on financial flows.

Data collection by DNB under the new system no longer involves the measurement of individual transactions via banks. The required material on cross-border financial flows is collected through direct reporting by a (statistically relevant) cross-section of firms involved in such transactions. They submit monthly reports on their financial dealings with foreign parties and on the income thus generated. Reporting firms are classified according to 'reporting profiles' (non-financial corporations, collective investment schemes, pension funds et cetera). Each profile has its own set of specific reporting forms geared to the specific target group, so that only information relevant to that group will be collected. All reporting forms are based in principle on a generalised 'reconciliation model'. Within each model, transactions and positions are reported as a coherent complex. Within the statement, opening and closing balances of financial assets and liabilities are reconciled with all intervening changes.

#### **4. Implications for the calculation base of fines**

A comparison of the old and the new reporting system reveals why the reference to 'total turnover in external payments' in section 2 of the annex to the Foreign Financial Relations Act 1994 had to be amended. Under the new reporting system, DNB no longer receives data on the turnover in external payments. Instead, direct statements are provided on successive positions (and intervening changes) vis-à-vis foreign parties. By consequence, a new criterium that would be applicable to all reporting categories had to be found. Eventually it was decided to take the sum of reported asset and liability positions, calculated as monthly averages across a 12-month period prior to the related case of non-compliance, as the new basis underlying the multiplication factor yielding the new fine rates (as determined in section 1 of the annex). The principle that fines are proportional to the relative importance of a reporting entity has been maintained. Empirical research by DNB has revealed that a relatively small number of reporting entities are responsible for a substantial part of positions. For instance, the statistic relevance of reporting entities with aggregate reported assets and liabilities averaging less than €1 billion is only 2%; that of reporting entities with average sums between €1 and €4 billion is 4%, that of reporting entities with average sums between €4 and €10 billion is 5%, while that of entities whose aggregate sums averages at least €10 billion is no less than 89%. Hence the division into these four successive rate categories, while the multiplication factors are proportionate to the sum of the positions reported by the fined entity.

The Minister of Finance

G. Zalm

*\* Please note this translation is for convenience and administrative purposes only. In case of conflict, the Dutch version ('Wet financiële betrekkingen buitenland 1994') will prevail.*