EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 1 December 2005

on a proposal for a Council Regulation amending Regulation (EC) No 974/98 on the introduction of the euro

(CON/2005/51)

(2005/C 316/11)

On 10 November 2005 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a 'Proposal for a Council Regulation amending Regulation (EC) No 974/98 on the introduction of the euro' (COM(2005) 357 final) [1] (hereinafter the 'proposed regulation'). The ECB's competence to deliver an opinion is based on the third sentence of Article 123(4) of the Treaty establishing the European Community, which is the basis for the proposed regulation. 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. General remarks

1.1. The proposed regulation seeks to establish an appropriate legal framework for the future introduction of the euro in the Member States that have not yet adopted the euro (hereinafter the 'non-participating Member States'). These Member States have a strong interest in ensuring that a robust legal framework at Community level is adopted well in advance of their euro changeovers, in order to facilitate timely domestic legislative and practical preparations for the introduction of the euro. The EU in general and the Member States that have already adopted the euro (hereinafter the 'participating Member States') also have a strong interest in ensuring that any future euro area enlargement is implemented as smoothly and successfully as was the case for the adoption of the euro by the original 11 participating Member States and Greece, so that the enlargement of the euro area will have a positive impact. Indeed, the ECB considers that the successful introduction of the euro in the existing participating Member States played a key role in establishing the credibility of the euro, both within the EU and on the broader international stage.

2. Specific remarks

2.1. *Establishment of three euro changeover scenarios*

2.1.1. It is recalled that Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro [2], which governed the introduction of the euro in the original 11 participating Member States and Greece, was based on the approach endorsed by the European Council at its meeting in Madrid in 1995 (hereinafter the 'Madrid scenario'). The Madrid scenario provided for a transitional period between the introduction of the euro in scriptural form and the introduction of euro banknotes and coins and is the basis for the rules for the introduction of the euro currently contained in Regulation (EC) No 974/98. For further introductions of the euro some important practical aspects have changed substantially since the first changeover, which began on 1 January 1999. In particular, euro banknotes are now widely available within the euro area and throughout the EU, triggering the need for additional changeover scenarios to the Madrid scenario.

2.1.2. Under the proposed regulation the Council would authorise Member States to follow one of three different changeover scenarios: (a) a Madrid-style transitional period, i.e. a period of time during which the euro would only legally exist as a scriptural currency, whilst euro banknotes and coins, even if privately available and usable, would not be officially recognised as having domestic legal tender status; (b) a 'big bang' scenario, i.e. a single-step transition to the euro under which the dates for the introduction of the euro as a scriptural currency and for the cash changeover would be the same; or (c) a 'big bang' scenario with a phasing-out period of up to one year during which reference could continue to be made to the national currency unit in instruments having legal effect (e.g. invoices, company accounts and payslips).

2.1.3. The basic objective of the proposed regulation, which is clarified in its explanatory memorandum, is to establish these three alternative changeover scenarios for future Member States adopting the euro [3]. In order to ensure

[1] Version of 2 August 2005.

[2] OJ L 139, 11.5.1998, p. 1. Regulation as amended by Regulation (EC) No 2596/2000 (OJ L 300, 29.11.2000, p. 2).

[3] See the explanatory memorandum to the proposed regulation, p. 3.

a higher degree of transparency for EU citizens, and to ensure consistency with the goals of the EU's better regulation agenda, the ECB proposes that an explicit provision be introduced into the proposed regulation which would directly and more comprehensively reflect the three different changeover scenarios that will apply to the Member States concerned.

2.1.4. In particular, a number of the Member States which acceded to the EU on 1 May 2004 [1] have indicated publicly that they have a preference for the euro to be introduced in accordance with a 'big bang' scenario. Under the current text of the proposed regulation the concept of a 'big bang' euro changeover can only be derived from the definition of the transitional period, with the possibility of the euro adoption date and the cash changeover date in the Annex to the proposed regulation being two dates which coincide [2]. Although it is theoretically possible to conceive of the 'big bang' scenario as a transitional period lasting one split second, it is suggested that the 'big bang' scenario could be more transparently defined for the EU citizen as 'a single-step introduction of the euro under which the euro adoption date and cash changeover date coincide'.

2.2. *Transitional period changeover scenario*

2.2.1. Under the existing provisions of Regulation (EC) No 974/98, 'transitional period' is defined as a three-year period beginning on 1 January 1999 and ending on 31 December 2001, except in the case of Greece, where the transitional period is a one-year period beginning on 1 January 2001 and ending on 31 December 2001 [3]. In other words, the existing Regulation (EC) No 974/98 defines a fixed period of time during which transitional provisions apply. By contrast, under the proposed regulation the definition of 'transitional period' does not establish any specific or maximum duration. Instead, the length of the transitional period for each Member State will be established on a case-by-case basis in the proposed Annex to Regulation (EC) No 974/98, meaning that the length of the transitional period would need to be completely renegotiated at the time of the abrogation of the derogation of each Member State concerned [4].

2.2.2. The ECB strongly recommends explicitly establishing a maximum length for the transitional period in the text of the proposed regulation, and this maximum length should be no longer than three years. In addition to this overall limit, the ECB recommends that the recitals to the proposed regulation clarify that the transitional period should be as short as possible, so as to encourage the establishment of shorter transitional periods than the maximum permissible three-year period. The arguments underlying the ECB's position regarding this point are set out below for the Council's consideration.

2.2.3. First, the practical aspects of the euro changeover are different today compared to the original euro changeover which began on 1 January 1999, when the euro banknotes and coins were not in existence. Given that euro banknotes are now widely available not only within the euro area but also throughout the whole EU, it would not be credible if the citizens of the Member States concerned had to wait longer than three years after the introduction of the euro as the currency of their Member States before euro banknotes and coins became legal tender.

2.2.4. Second, the transitional period should not be too long because the euro will have been legally declared the official currency of the Member State concerned at the very beginning of the transitional period [5]. Consistent with this, the ECB would formulate monetary policy for the Member State concerned [6] and all monetary policy operations would be carried out in the euro unit by the national central bank (NCB) of the Member State concerned [7]. New tradeable public debt would be issued in the euro unit by the Member State concerned [8]. It can be expected that there would be an increased use of the euro unit in both domestic payments and, especially, cross-border payments with the Member State concerned [9]. Also, the Member State concerned would be able to take appropriate measures to enable the change in the unit of account of their operating procedures from a national currency unit to the euro unit by organised markets and payment systems [10]. The experience of the original 11 participating Member States suggests that the wholesale banking sector and financial markets can be expected to switch to the euro unit at the very beginning of the transitional period. Against this background, the ECB does not consider it plausible for the transitional period between the introduction of the euro as the currency of the Member State concerned and the official introduction of the euro banknotes and coins to last longer than three years.

2.2.5. Third, it is true that it was prudent to have provided for a three-year transitional period during the first euro changeover, given the unprecedented logistical challenge involved in merging the currencies and legal tenders of 11 Member States into a single European currency. However, it is noted that Greece, which adopted the euro two years later than the original 11 participating Member States, successfully coped with a one-year transitional period. This suggests that if a Madrid-style transitional period is used for any further introductions of the euro, the transitional period should be shorter than three years.

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(1) Cyprus, Estonia, Latvia, Lithuania, Malta, Slovakia and Slovenia.
(2) Proposed Article 1(h) of Regulation (EC) No 974/98 and the proposed Annex thereto.
(3) Articles 1 and 2 of Regulation (EC) No 974/98.
(4) Proposed Article 1(h) of Regulation (EC) No 974/98.
(5) Proposed Article 2 of Regulation (EC) No 974/98.
(6) Article 105(2) of the Treaty and the first paragraph of Article 12.1 of the Statute of the European System of Central Banks and of the European Central Bank.
(7) Recital 9 to Regulation (EC) No 974/98.
(8) Recital 14 to Regulation (EC) No 974/98.
(9) Article 8(3) of and recital 13 to Regulation (EC) No 974/98.
(10) Article 8(4) of Regulation (EC) No 974/98.

2.2.6. Fourth, two principles are considered important for guiding the adoption of the euro: the principles of equal treatment and facilitation. While the principle of equal treatment implies that Member States joining later should not be confronted with additional hurdles, nor should they be allowed to join on looser terms, the principle of facilitation suggests that there is a need to be flexible in implementing the changeover. While equal treatment implies that Member States joining later are entitled to use the same maximum overall time specified in the Madrid scenario for the original participating Member States, they should be allowed, in line with the principle of facilitation, to complete the changeover more quickly, should this prove feasible and appropriate. Thus, establishing a maximum of three years for the transitional period would be consistent with the principle of equal treatment, taking account of the three-year transitional period applicable to the original 11 participating Member States under Regulation (EC) No 974/98. At the same time, providing for the possibility to shorten this three-year transitional period would satisfy the principle of facilitation.

2.2.7. Fifth, establishing a maximum length for the transitional period would be consistent with the legal technique used for defining other periods relevant to the different euro changeover scenarios, such as the phasing-out period and the dual circulation period. The proposed regulation sets a maximum length of one year for the phasing-out period ([1]). Regulation (EC) No 974/98 establishes the maximum length of the dual circulation period as six months ([2]).

2.2.8. To sum up, the ECB considers that, from the perspective of ensuring the credibility of the euro changeover process, fostering legal certainty and increasing efficiency, there is a compelling case for establishing a maximum length for the transitional period of no more than three years in the text of the proposed regulation. In order to encourage the establishment of shorter transitional periods than the maximum permissible three-year period, the ECB also recommends that the recitals to the proposed regulation clarify that the transitional period should be as short as possible. Finally, it is noted that such a clear-cut provision establishing a maximum length for the transitional period would avoid any further discussions upon any future abrogation of the derogations of the Member States concerned and the subsequent amendments to Regulation (EC) No 974/98, thus making the euro changeover process more predictable.

2.3. *Phasing-out changeover scenario*

2.3.1. As a general matter, the ECB understands the reasons for combining a 'big bang' scenario with a phasing-out period of up to one year during which there would be scope for the continued usage of the national currency unit in specific legal instruments, such as, according to the explanatory memorandum, invoices or company books ([3]). While it might be arguable whether invoices or company books constitute legal instruments within the meaning of the proposed regulation, the ECB understands that the concept of a phasing-out period is also intended to allow for the continued use of the national currency unit in new legal instruments such as standard-form contracts generated by electronic means (e.g. car rental contracts).

2.3.2. While the explanatory memorandum suggests that the phasing-out period would leave only 'certain scope for the usage of the national currency in specific legal instruments' ([4]), the provisions of the proposed regulation do not contain any limitation on the types of new legal instruments which may continue to refer to the national currency unit during the phasing-out period ([5]). The ECB notes that this approach allows a considerable degree of flexibility and subsidiarity to Member States in the application of the phasing-out period to different kinds of legal instruments.

2.3.3. One point which the ECB wishes to emphasise is that under the proposed regulation, acts performed under legal instruments containing references to the national currency unit during the phasing-out period are required to be performed only in the euro unit ([6]). This may prevent parties from referring to national currency units in payment instruments since such payment instruments would have to be performed in the euro unit rather than in the relevant national currency unit. However, insofar as payment instruments such as cheques and payment orders would be denominated in the national currency unit, this may create some inconvenience for payment operators as they would need to ensure that conversion from the national currency unit to the euro unit takes place before a transaction is performed. Furthermore, since payment instruments may potentially circulate outside the Member States which are applying a phasing-out period, it is important from an operational perspective to exclude the possibility of cross-border use of payment instruments denominated in the relevant national currency units. This can be achieved by restricting the application of the provisions on the phasing-out period to legal instruments to be performed in the Member State concerned (i.e. only in the Member State with the phasing-out period). Such an approach would encourage flexibility regarding the implementation of the provisions on the phasing-out period and limit it to the domestic level.

(1) Proposed Article 9a of Regulation (EC) No 974/98.
(2) Article 15 of Regulation (EC) No 974/98. It is noted that all 12 existing participating Member States shortened the dual circulation period to no longer than two months.
(3) See the explanatory memorandum to the proposed regulation, p. 3.
(4) See the explanatory memorandum to the proposed regulation, p. 3.
(5) Proposed Article 1(i) and proposed Article 9a of Regulation (EC) No 974/98.
(6) Third sentence of the proposed Article 9a of Regulation (EC) No 974/98.

2.3.4. The ECB notes that the earlier part of the phasing-out period (of up to one year after the cash changeover date) would overlap with the dual circulation period (of up to six months) during which both euro and national currency banknotes and coins would be permitted as legal tender within the territorial limits of the Member State concerned ([1]). The ECB notes that there is a discrepancy between the provision according to which acts performed under new legal instruments containing references to the old national currency unit during the phasing-out period are required only to be performed in the euro unit, and the fact that national currency banknotes and coins will remain legal tender within their territorial limits during the dual circulation period. This discrepancy can be addressed by means of an amendment to the text of the proposed regulation, under which the abovementioned provision would operate without prejudice to the provisions of Article 15 of Regulation (EC) No 974/98 (i.e. the provisions on the dual circulation period).

2.4. *Name of the euro*

2.4.1. The ECB understands that one Member State has entered a linguistic reservation relating to identification of the name of the single currency as the 'euro' in that Member State's language version of the proposed regulation. In this regard, the ECB would emphasise that the name 'euro' must be properly and consistently used throughout all language versions of the proposed regulation, in accordance with the requirement under Regulation (EC) No 974/98 that the name of the single currency be the same in all the official languages of the European Union, taking into account the existence of different alphabets ([2]). As noted by the ECB in a recent opinion on a draft Lithuanian law on the adoption of the euro ([3]), the relevant provisions of Regulation (EC) No 974/98 'make it clear that the name of the single currency is the "euro" and that this name should be identical in legal acts published in all Community languages […] The Community, as the exclusive holder of competence in monetary matters, determines alone the name of the single currency. As a single currency, the name of the euro needs to be identical in the nominative singular case in all Community languages to ensure that its singleness is apparent.'

2.4.2. Consistent with the foregoing, the euro banknotes which the ECB has authorised to be issued by the ECB and the NCBs of participating Member States since 1 January 2002 only identify the name of the single currency as the 'EURO' and the 'ΕΥΡΩ', i.e. the name of the currency in the Roman and Greek alphabets ([4]). For reasons of legal certainty, the ECB recommends that the text of the proposed regulation incorporates in its normative part a provision confirming that 'the spelling of the name of the euro shall be identical in the nominative singular case in all the official languages of the European Union, taking into account the existence of different alphabets'.

2.5. *Specific drafting suggestions*

In addition, the ECB has a number of specific drafting suggestions.

2.5.1. First, Regulation (EC) No 974/98 permits each Member State which opts for a Madrid-style transitional period to take measures which may be necessary to enable the change of the unit of their operating procedures from a national currency unit to the euro unit by markets for the regular exchange, clearing and settlement of any instrument listed in Section B of the Annex to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ([5]) (hereinafter the 'ISD') and of commodities ([6]). Given that the ISD has been repealed by the Markets in Financial Instruments Directive ([7]) (hereinafter the 'MiFID'), the reference to the instruments listed in Section B of the Annex to the ISD should be replaced by a reference to the instruments listed in Section C of Annex I to the MiFID, which contains a more detailed and sophisticated list of financial instruments than the ISD, including, for example, commodity, credit and weather derivatives.

2.5.2. Second, it is suggested to simplify the first paragraph of the proposed Article 10 of Regulation (EC) No 974/98 to provide that 'with effect from the respective cash changeover dates, the ECB and the national central banks of the participating Member States shall put into circulation banknotes denominated in euro in the participating Member States.'

2.5.3. Third, regarding the helpful reference to 'the provisions of any agreement under Article 111 of the Treaty concerning monetary matters' contained in the proposed Article 11 of Regulation (EC) No 974/98 (which addresses the legal tender status of euro coins issued by third countries such as Monaco, San Marino and Vatican City), the ECB would suggest that, consistent with some language versions (e.g. German) of the proposed regulation, the reference to Article 111 of the Treaty could be narrowed to paragraph 3 thereof, as this is the only paragraph of Article 111 referring to agreements concerning monetary matters (i.e. Article 111(3)).

([1]) Article 15 of Regulation (EC) No 974/98.

([2]) Article 2 of and recital 2 to Regulation (EC) No 974/98. See also paragraph 10 of ECB Opinion CON/2005/21 of 14 June 2005 at the request of Lietuvos bankas on a draft law on the adoption of the euro; available on the ECB's website at www.ecb.int.

([3]) Paragraph 10 of Opinion CON/2005/21.

([4]) Article 1(2) of Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (OJ L 78, 25.3.2003, p. 16).

([5]) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002//87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

([6]) Subparagraph (a) of the second indent of Article 8(4) of Regulation (EC) No 974/98.

([7]) Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

2.5.4. Fourth, regarding the proposed obligation for 'banks' to exchange their customers' national banknotes and coins for euro banknotes and coins free of charge up to specified ceilings pursuant to the proposed Article 15(3) of Regulation (EC) No 974/98, the ECB notes that, from a strict drafting perspective, the term 'credit institutions' is the term usually used to describe banks under both the Treaty and secondary Community law. Therefore, if the reference to 'banks' is replaced by a reference to 'credit institutions', as defined in the Consolidated Banking Directive, account needs to be taken of the fact that some 'credit' institutions included within the scope of that Directive are not involved in cash operations (e.g. electronic money institutions) [1] while others, exempted from the scope of the Directive (e.g. post office giro institutions), have proven important for the euro changeover in the past.

In view of the foregoing, it would be sensible to leave a certain discretion to the Member States concerned with regard to defining the other institutions that may need to be covered by this obligation to exchange banknotes and coins free of charge.

2.6. *Drafting proposals*

2.6.1. Where the above recommendations would lead to changes in the proposed regulation, drafting proposals are enclosed in the annex hereto.

Done at Frankfurt am Main, 1 December 2005.

The President of the ECB

Jean-Claude TRICHET

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[1] Articles 1(1) and 2(3) 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 institutions (OJ L 126, 26.5.2000, p. 1). Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

ANNEX

Drafting proposals

Text proposed by the Commission [1]	Amendments proposed by the ECB [2]

Amendment 1

Recitals to the proposed regulation

[No current proposal]	**The spelling of the name of the euro needs to be identical in the nominative singular case in all official languages of the EU, to ensure that its singleness is apparent.**

Justification — See paragraphs 2.4.1-2.4.2 of the opinion

Amendment 2

Recital 4 to the proposed regulation

In order to prepare a smooth changeover to the euro, Regulation (EC) No 974/98 provides for an obligatory transitional period between the substitution of the euro for the currencies of the participating Member States and the introduction of the euro banknotes and coins.	In order to prepare a smooth changeover to the euro, Regulation (EC) No 974/98 provides for an obligatory transitional period between the substitution of the euro for the currencies of the participating Member States and the introduction of the euro banknotes and coins. **Given that euro banknotes and coins are widely available to the public, such a transitional period should in future be as short as possible.**

Justification — See paragraphs 2.2.1-2.2.8 of the opinion

Amendment 3

Proposed Article 1 of Regulation (EC) No 974/98

[No current proposal]	**'"big bang" scenario' shall mean a single-step introduction of the euro under which the euro adoption date and cash changeover date coincide.**

Justification — See paragraph 2.1.4 of the opinion

Amendment 4

Proposed Article 1(h) of Regulation (EC) No 974/98

'transitional period' shall mean *the* period beginning at 00.00 on the euro adoption date and ending at 00.00 on the cash changeover date;	'transitional period' shall mean **a maximum** period **of three years** beginning at 00.00 on the euro adoption date and ending at 00.00 on the cash changeover date;

Justification — See paragraphs 2.2.1-2.2.8 of the opinion

Text proposed by the Commission (1)	Amendments proposed by the ECB (2)
Amendment 5 Proposed Article 1a of Regulation (EC) No 974/98	
The euro adoption date, the cash changeover date, and the phasing-out period, if applicable, for each participating Member State shall be as set out in the Annex.	**Each participating Member State shall adopt the euro in accordance with a scenario based on a transitional period or a 'big bang' scenario or a 'big bang' scenario combined with a phasing-out period.** The euro adoption date, the cash changeover date, and **the end date of** the phasing-out period, if applicable, for each participating Member State shall be as set out in the Annex to this Regulation.
Justification — See paragraph 2.1.3 of the opinion	
Amendment 6 Proposed Article 2 of Regulation (EC) No 974/98	
With effect from the respective euro adoption dates, the currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cent.	With effect from the respective euro adoption dates, the currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cent. **The spelling of the name of the euro shall be identical in the nominative singular case in all the official languages of the European Union, taking into account the existence of different alphabets.**
Justification — See paragraphs 2.4.1-2.4.2 of the opinion	
Amendment 7 Article 8 of Regulation (EC) No 974/98 (not currently subject to any amendment in the proposed regulation)	
4. Notwithstanding the provisions of paragraph 1, each participating Member State may take measures which may be necessary in order to: — […], — enable the change of the unit of account of their operating procedures from a national currency unit to the euro unit by: (a) markets for the regular exchange, clearing and settlement of any instrument listed in *section B of the Annex to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field* and of commodities; and (b) systems for the regular exchange, clearing and settlement of payments.	4. Notwithstanding the provisions of paragraph 1, each participating Member State may take measures which may be necessary in order to: — […], — enable the change of the unit of account of their operating procedures from a national currency unit to the euro unit by: (a) markets for the regular exchange, clearing and settlement of any instrument listed in **Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC** and of commodities; and (b) systems for the regular exchange, clearing and settlement of payments.
Justification — See paragraph 2.5.1 of the opinion	

Text proposed by the Commission (1)	Amendments proposed by the ECB (2)

Amendment 8

Proposed Article 9a, first paragraph, third sentence, of Regulation (EC) No 974/98

The acts performed under these legal instruments shall be performed only in the euro unit.	**Without prejudice to Article 15,** the acts performed under these legal instruments shall be performed only in the euro unit.

Justification — See paragraph 2.3.4 of the opinion

Amendment 9

Proposed Article 10, first paragraph, of Regulation (EC) No 974/98

With effect from *1 January 2002* the ECB *shall put into circulation banknotes denominated in euro*. The central banks of the participating Member States shall put into circulation banknotes denominated in euro *from the respective cash changeover date*.	With effect from **the respective cash changeover dates**, the ECB **and** the **national** central banks of the participating Member States shall put into circulation banknotes denominated in euro **in the participating Member States**.

Justification — See paragraph 2.5.2 of the opinion

Amendment 10

Proposed Article 11, second sentence, of Regulation (EC) No 974/98

[…] Without prejudice to Article 15 and to the provisions of any agreement under Article *111* of the Treaty concerning monetary matters, those coins shall be the only coins which have the status of legal tender in participating Member States. […]	[…] Without prejudice to Article 15 and to the provisions of any agreement under Article **111(3)** of the Treaty concerning monetary matters, those coins shall be the only coins which have the status of legal tender in participating Member States. […]

Justification — See paragraph 2.5.3. of the opinion

(1) Italics in the body of the text indicate where the ECB proposes deleting text.
(2) Bold in the body of the text indicates new text proposed by the ECB.