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(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 5 May 2008

at the request of the Council of the European Union on a proposal for a regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny

(CON/2008/19)

(2008/C 117/01)

Introduction and legal basis

On 17 March 2008, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposed regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny (hereinafter the 'proposed regulation') ⁽¹⁾.

The ECB's competence to deliver an opinion on the proposed regulation is based on Article 105(4) of the Treaty establishing the European Community. 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.

General observations

The proposed regulation will result in the introduction of the new 'regulatory procedure with scrutiny', *inter alia*, as regards implementing powers conferred on the Commission in relation to a number of Community instruments in the field of statistics. The ECB has no specific comments on the provisions of the proposed regulation as they are in line with the joint statement of the European Parliament, the Council and the Commission on the introduction of the new 'regulatory procedure with scrutiny' into the comitology framework ⁽²⁾.

Having regard to the significant role played by implementing measures in EU legislation in the field of statistics, the ECB takes this opportunity to underline the importance of its advisory role under Article 105(4) of the Treaty, which requires the ECB to be consulted 'on any proposed Community act in its fields of competence'. In line with the stance taken in previous ECB opinions in relation to implementing measures in the field of financial services ⁽³⁾, the ECB considers that the proposed statistical implementing measures are

⁽¹⁾ COM(2007) 741 final and COM(2008) 71 final. The ECB opinion was requested with regards to the first and fourth part of the proposed regulation.

⁽²⁾ Statement by the European Parliament, the Council and the Commission concerning the Council Decision of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (2006/512/EC) (OJ C 255, 21.10.2006, p. 1).

⁽³⁾ See the introductory paragraph of ECB Opinion CON/2006/57 of 12 December 2006 on a draft Commission Directive implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions (OJ C 31, 13.2.2007, p. 1); see also paragraph 1.2 of the ECB Opinion CON/2007/4 of 15 February 2007 at the request of the Council of the European Union on eight proposals amending Directives 2006/49/EC, 2006/48/EC, 2005/60/EC, 2004/109/EC, 2004/39/EC, 2003/71/EC, 2003/6/EC and 2002/87/EC, as regards the implementing powers conferred on the Commission (OJ C 39, 23.2.2007, p. 1).

legislative in character and constitute 'proposed Community acts' within the meaning of Article 105(4) of the Treaty. Therefore, the Treaty provision which requires the ECB to be consulted on any proposed Community act in its field of competence includes an obligation for it to be consulted on these implementing measures ⁽¹⁾.

Done at Frankfurt am Main, 5 May 2008.

The President of the ECB
Jean-Claude TRICHET

⁽¹⁾ The lack of consultation between Community institutions has been the subject of several judgments by the Court of Justice. On the obligation to consult the European Parliament, see Case C-138/79, *Roquette Frères v Council of the European Communities* [1980], ECR 3333 and Case C-21/94, *Parliament v Council* [1995], ECR I-1827, paragraph 17. On the obligation of the High Authority to consult the Council and the Consultative Committee under the ECSC Treaty, see Case 1/54, *French Republic v High Authority of the European Coal and Steel Community* [1954-56], ECR 1, at p. 15 and Case 2/54, *Italian Republic v High Authority of the European Coal and Steel Community* [1954-56] ECR 37, at p. 52, which was confirmed by Case 6/54, *Kingdom of the Netherlands v High Authority of the European Coal and Steel Community* [1954-56], ECR 103, at p. 112. As far as Article 105(4) of the Treaty is concerned, in Case C-11/00, *Commission v European Central Bank* [2003], ECR I-7147, Advocate General Jacobs emphasised that '[c]onsultation of the ECB on proposed measures in its field of competence is a procedural step, required by a provision of the Treaty, which is clearly capable of affecting the content of the measures adopted. Failure to comply with such requirement must, in my view, be capable of leading to the annulment of the measures adopted', Opinion of Advocate General Jacobs given on 3 October 2002, paragraph 131.