

OPINION OF THE EUROPEAN CENTRAL BANK

at the request of the Council of the European Union under Article 109l(4) of the Treaty establishing the European Community on a proposal for a Council Decision concerning the monetary arrangements in the French territorial communities of Saint-Pierre-et-Miquelon and Mayotte

(1999/C 127/06)

1. On 22 December 1998 the European Central Bank (ECB) received a request from the Council of the European Union for an ECB Opinion on a proposal for a Council Decision concerning the monetary arrangements in the French territorial communities of Saint-Pierre-et-Miquelon and Mayotte (COM(1998) 801 final).
2. The ECB's competence to deliver an opinion is based on Article 109l(4) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty'). In accordance with Article 17.5, first sentence, of the Rules of Procedure of the ECB, this ECB opinion has been adopted by the Governing Council of the ECB. It is only in the context of the exceptional circumstances of the changeover to the euro that the ECB has agreed to comply with request of the Council and adopt its opinion within the very short deadline established in the consultation request.
3. The draft Council Decision, which is based on Article 109l(4) of the Treaty, provides for the extension of the euro area to the French territorial communities of Saint-Pierre-et-Miquelon and Mayotte. It provides that the euro will become the currency of Saint-Pierre-et-Miquelon and Mayotte, circulate and have legal tender in these territories. As a measure necessary for the introduction of the euro in France, the draft Council Decision also aims to confer rights and impose obligations on the ECB and the national central banks, in particular the obligation to carry out monetary functions and operations of the European System of Central Banks (ESCB) in Saint-Pierre-et-Miquelon and Mayotte
4. It may be questioned whether Article 109l(4) of the Treaty provides a proper legal basis for extending the application of Community law relating to the introduction of the euro beyond the Community territory and for imposing obligations on the ECB and the national central banks to carry out functions and operations of the ESCB, as laid down in Chapter IV and Article 16 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute'), in Saint-Pierre-et-Miquelon and Mayotte. These territories are an integral part of France but do not form part of the Community. The Treaty, the Statute and secondary Community legislation do not apply immediately or directly in these territories. Article 105(2) of the Treaty, for example, confines the basic tasks of the ESCB, for example, to define and implement monetary policy, territorially to the Community. In addition, Article 109l(4) creates obligations only in a part of the Community, namely the Member States having adopted the single currency. According to Community law, these overseas territories have a special status.
5. The ECB notes a clear contradiction between Article 6 and Article 3 of the draft Council Decision: while Article 6 points out that the Council Decision is addressed to France, Article 3 imposes obligations on the ECB and the national central banks. From a logical point of view, neither the ECB nor the national central banks can be bound by decisions addressed to France. From a legal point of view, a Council Decision addressed to the ECB and the national central banks for the monetary functions and operations of the ESCB to be carried out outside the Community is inconsistent with the independence of the ECB and the national central banks as laid down in Article 107 of the Treaty. The ECB understands that no obligation can be imposed on the ECB and the national central banks by means of a Council Decision, and therefore suggests that the word 'shall' is replaced by 'may' in Article 3 of the draft Decision.
6. The ECB notes with concern that a Council Decision is being used to put in place an arrangement whereby the specific parts of Community law which it is, or will be, necessary to apply in Saint-Pierre-et-Miquelon and Mayotte in order for Economic and Monetary Union to function there are allowed to fall within the competence of France and its national legislation, while the ECB and the Commission of the European Communities will only be consulted. The ECB considers it vital for the specific application of the relevant Community law to be made in agreement with the ECB and the Commission of the European Communities.
7. The ECB notes with concern that the Commission of the European Communities proposes to adopt the Council Decision without having a clear knowledge of the future status and role of the Institut d'Emission des Départements d'Outre-Mer (IEDOM), which France intends to reform, in time, in order to achieve compatibility with the tasks assigned to the ESCB by the Treaty and the Statute. The ECB notes that all those tasks which fall within the competence of the ESCB should be carried out exclusively through the ECB and the national central banks.
8. This very special case of the two French territorial communities should not create a precedent for other cases that may arise in the future.
9. This Opinion will be published in the *Official Journal of the European Communities*.

Done at Frankfurt on 30 December 1998.

Vice-President
of the ECB

C. NOYER

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T. PADOA-SCHIOPPA