



**E U R O P E A N   C E N T R A L   B A N K**

**OPINION OF THE EUROPEAN CENTRAL BANK**

**at the request of Banque de France under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI on a draft instruction No. 2-98 relating to the operations of Banque de France on the money market**

**CON/98/29**

1. On 27 May 1998, the EMI received a request for an opinion from Banque de France on a draft instruction No. 2-98 and its annexes (the “Draft Instruction”) relating to the operations of Banque de France on the money market and implementing Decision No. 97-2 of 27 March 1997 of the Monetary Policy Council of Banque de France. An Explanatory Memorandum was also submitted to the EMI.
2. In accordance with Article 109l (2) of the Treaty, the ECB has taken over the advisory functions of the EMI which has gone into liquidation upon the establishment of the ECB on 1 June 1998. The ECB’s competence to deliver an opinion is based on Article 1.1, second indent, of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions.
3. The Draft Instruction is purported to replace Banque de France’s Instructions No. 1-95 and 2-95 dated 11 December 1995 and Instruction No. 3-97 dated 27 March 1997. According to the Explanatory Memorandum, the main objectives of the Draft Instruction are (i) to extend the collateral eligible for repurchase transactions to Treasury bonds; (ii) to allow for variable rates tender procedure and (iii) to improve the procedure rules for mobilisation of French private claims.
4. The ECB welcomes that the above mentioned changes introduced by the Draft Instruction in the present regulation of money market operations prepare for a smooth transition with the beginning of Stage Three of EMU. The ECB acknowledges, however, that the Draft Instruction, in its present drafting, purports to cover only the period starting from the date it is implemented in June 1998, until the end of Stage Two. In this context, the ECB stresses that further amendments to the Draft Instruction will be needed, as from the start of Stage Three of EMU,

to put it fully in line with the ESCB rules and principles and that the new text will have to be submitted by Banque de France to the ECB.

5. The Draft Instruction implements the possibility stated in the Decision No. 97-2 of 27 March 1997 of the Monetary Policy Council, for Banque de France to accept Treasury bonds as underlying assets for repurchase agreements. This will apply to Banque de France's monetary policy operations as well as within the framework of the TBF system. This modification has been technically facilitated by the implementation of the system RGV (Relit Grande Vitesse) in which Treasury bonds as well as Treasury bills will now be treated. The ECB welcomes this measure as broadening the range of assets eligible as collateral, being therefore in line with its current preparatory work on this area.
6. The Draft Instruction creates the possibility for Banque de France to use variable rate tender procedure which, according to the Explanatory Memorandum, will be open as from September 1998. In the same line, the Draft Instruction suppresses the "Opérateurs Principaux de Marché" as being credit institutions acting as exclusive Banque de France's intermediaries for tender procedures and repurchase transactions entered into for 5 to 10 days. The ECB welcomes these amendments to Banque de France's money market operations framework as preparatory measures in view of the beginning of Stage Three of EMU.
7. Further to the Explanatory Memorandum, the ECB acknowledges that the changes brought by the Draft Instruction to the procedure for the mobilisation of French private claims, as allowing for a better identification of the claims transferred by the counterparties, will comfort the legal framework of such procedure under French law No. 81-1 of 2 January 1981. The ECB consequently welcomes such improvements.
8. The ECB has several remarks on individual provisions of the Draft Instruction itself. In the framework of repurchase agreements, Article 2.1.2.4, last paragraph, states that in case a substitution is accepted by Banque de France, securities may only be substituted by securities of the same category as defined in Article 2.1.2.2. The ECB notes that this restriction is not mentioned in the repurchase agreement itself figuring in Annex I.A. For the sake of clarity, it could prove useful that the repurchase agreement itself mentions or refers to these provisions.
9. In the context of the mobilisation of French private claims, Article 2.2.2.3 specifies the risk control measures to be applied to such claims. The ECB reminds that as from the start of Stage Three the appreciation of risk control measures for tier two assets by National Central Banks will be subject to ECB approval. From this standpoint, the amount stated in Article 2.2.2.3 might not be consistent with the measures to be defined and which will apply as from the beginning of Stage Three.

10. As for tender procedure rules, the two last parts of Article 3.1.2(b) provide rules relating to counterparties' submission of tender bids and as well as the need for counterparties to cover the liquidity which will be granted to them by sufficient underlying assets. The ECB is of the opinion that those general provisions which are stated for variable rate tender procedures only should also apply to fixed rate tender procedures.

11. The ECB has the following remarks concerning the agreement relating to the mobilisation of private claims ("convention de mobilisation globale de créances privées").

- Article 4 states that the transfer of private claims is made to secure credit obtained from Banque de France, or "when it is possible, from another National Central Bank of the ESCB". As not sufficiently precise, this sentence could create confusion as implying that Banque de France's domestic counterparties could get refinancing from another NCB within the euro area, whilst remote access is not currently being contemplated by the ESCB as from the beginning of Stage Three. The same ambiguity exists in the last sentence of Article 8 of the convention.

- Article 12 first sentence refers to "France Métropolitaine" only in connection with the application of the Monetary Policy Council's Decision to be enacted as for the beginning of Stage Three. From this stand point the ECB reminds that any restriction to the scope of Banque de France eligible counterparties to those established on the territory of metropolitan France only, as from the beginning of Stage Three, is not consistent with the Treaty. This would imply indirectly that the access to the counterparties located in the overseas departments to Banque de France operations is to be made through the IEDOM, which raises the issue of the compatibility with the Treaty of the current institutional framework for monetary matters in the overseas departments.

10 June 1998