

EUROPEAN CENTRAL BANK

RECOMMENDATION OF THE EUROPEAN CENTRAL BANK

of 1 March 2001

for a Council regulation concerning an amendment to Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank

(ECB/2001/2)

(2001/C 89/05)

EXPLANATORY MEMORANDUM

I. Introduction

Article 123(1) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') requires the Council of the European Union (hereinafter referred to as the 'Council'), as soon as it has confirmed which Member States fulfil the necessary conditions for the adoption of a single currency, to adopt the complementary legislation referred to in Article 107(6) of the Treaty and Article 42⁽¹⁾ of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'statute'). A special procedure is foreseen within the Treaty for the adoption of the provisions referred to in Article 107(6): the Council shall adopt them either on a proposal from the Commission or on a recommendation from the European Central Bank (ECB). To avoid any duplication of effort before the start of stage III of economic and monetary union, the European Monetary Institute and the Commission agreed that the ECB would prepare a recommendation for a Council regulation in accordance with Article 19.2 of the statute. On 7 July 1998, the ECB submitted to the Council Recommendation 98/C 246/06 for a Council regulation (EC) concerning the application of minimum reserves by the European Central Bank⁽²⁾. On 23 November 1998, the Council adopted Regulation (EC) No 2531/98 concerning the application of minimum reserves by the European Central Bank⁽³⁾. It would be consistent to apply the same procedure to introduce the proposed amendments to Regulation (EC) No 2531/98.

The first sentence of Article 7(2) of Regulation (EC) No 2531/98 stipulates in general that whenever a sanction is imposed in accordance with Article 7(1), the principles and procedures set out in Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the

European Central Bank to impose sanctions⁽⁴⁾ shall apply. However, the second sentence of Article 7(2) of Regulation (EC) No 2531/98 has provided for some deviations. In particular, it stipulates that the period referred to in Article 3(7) of Regulation (EC) No 2532/98 shall be reduced.

Article 3(7) of Regulation (EC) No 2532/98 stipulates that: 'If no decision has been taken by the Governing Council of the ECB **within two months** of the request, the undertaking concerned may request a judicial review of the decision of the Executive Board in accordance with the Treaty'. Article 7(2) of Regulation (EC) No 2531/98 has reduced this period to 15 days by stating that: 'Whenever a sanction is imposed in accordance with paragraph 1, the principles and procedures set out in Regulation (EC) No 2532/98 shall apply. However, Article 2(1) and (3) and Article 3(1), (2), (3) and (4) of that Regulation shall not be applicable, and **the periods referred to in Article 3(6), (7) and (8) thereof shall be reduced to fifteen days**'.

The experience of the ECB in handling a request of review by the Governing Council of a decision of the Executive Board to impose a sanction for non-compliance with the obligation to hold the required level of minimum reserves has proved that the reduced period of 15 days does not provide for sufficient time for the Governing Council (i) to assess the complexity of the case in a comprehensive manner; (ii) to comply with the procedural requirements which derive from the right of defence of the undertakings; and (iii) to satisfy the procedural requirements for the Governing Council to take a decision. Only due to these requirements, it would be impossible for the Governing Council to take a decision and this would entitle, after the expiry of the 15-day period, an undertaking to directly lodge a request for judicial review by the European Court of Justice without the Governing Council having delivered a decision on the request for review.

To prevent such situations, which may render the review procedure ineffective, the ECB should like to kindly request the Council to extend the 15-day time limit for the review of sanctions in the field of minimum reserves, in order to ensure a proper functioning of the review procedure.

⁽¹⁾ Article 42 of the statute states:

'In accordance with Article 107(6) of this Treaty, immediately after the decision on the date for the beginning of the third stage, the Council, acting by a qualified majority either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this statute.'

⁽²⁾ OJ C 246, 6.8.1998, p. 6.

⁽³⁾ OJ L 318, 27.11.1998, p. 1.

⁽⁴⁾ OJ L 318, 27.11.1998, p. 4.

It is therefore proposed to revert back to the normal two months period by deleting the reference made to Article 3(7) of Regulation (EC) No 2532/98 in Article 7(2) of Regulation (EC) No 2531/98, as follows: 'Whenever a sanction is imposed in accordance with paragraph 1, the principles and procedures set out in Regulation (EC) No 2532/98 shall apply. However, Article 2(1) and (3) and Article 3(1), (2), (3) and (4) of that Regulation shall not be applicable, and the periods referred to in Article 3(6) and (8) thereof shall be reduced to 15 days'.

II. Comments on the articles

Article 1 — Amendment

This article proposes to delete the current reference to the reduced period for the Governing Council of the ECB to take

a decision in response to a request for review of a sanction decided by the Executive Board of the ECB. As a result, the normal period of two months which is stated in Regulation (EC) No 2532/98 would also apply in the cases of non-compliance with the obligation to hold the required amount of minimum reserves.

Article 2 — Final provisions

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities* and shall apply to requests made after the date of publication.

SUGGESTED AMENDMENT TO COUNCIL REGULATION (EC) No 2531/98 CONCERNING THE APPLICATION OF MINIMUM RESERVES BY THE EUROPEAN CENTRAL BANK

'THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the "statute") and in particular to Article 19.2 thereof,

Having regard to the recommendation of the European Central Bank (ECB),

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Commission,

Acting in accordance with the procedure laid down in Article 107(6) of the Treaty establishing the European Community and in Article 42 of the statute and under the conditions set out in Article 43.1 of the statute, paragraph 8 of the protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland and paragraph 2 of the protocol on certain provisions relating to Denmark,

Whereas:

(1) The Council adopted on 23 November 1998 Regulation (EC) No 2531/98 concerning the application of minimum reserves by the European Central Bank ⁽¹⁾.

(2) Specific sanctions and procedures are set out in Regulation (EC) No 2531/98, providing for a simplified procedure for the imposition of sanctions in the event of certain kinds of infringements but referring to Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions ⁽²⁾ for the

principles and procedures relating to the imposition of sanctions.

(3) The experience with the review procedure laid down in Article 3(7) of Regulation (EC) No 2532/98 and simplified by Article 7(2) of Regulation (EC) No 2531/98 has proved that the reduced period of 15 days does not provide for sufficient time for the Governing Council to take a proper decision.

(4) In order to provide for an effective review procedure, the period for the Governing Council to take a decision has to be extended to two months,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment

In Article 7(2) of Regulation (EC) No 2531/98, the reference to Article 3(7) of Regulation (EC) No 2532/98 shall be deleted.

Article 2

Final provisions

This regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

The provisions of this regulation shall apply to requests which are made after the date of publication of this Regulation. To this purpose, the date on which the request is received by the ECB is relevant.

This regulation shall be binding in its entirety and directly applicable in all Member States.

This recommendation is addressed to the Council of the European Union.

This recommendation shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main on 1 March 2001.

(¹) OJ L 318, 27.11.1998, p. 1.

(²) OJ L 318, 27.11.1998, p. 4.

The President of the ECB

Willem F. DUISENBERG
