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(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 February 2019

on a proposal for a Council Decision on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

(CON/2019/6)

(2019/C 84/01)

Introduction and legal basis

On 19 December 2018 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Council Decision on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (hereinafter the 'proposed Decision') ⁽¹⁾.

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, as the proposed Decision relates to the ECB and the European System of Central Banks (ESCB). 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

1. The ECB takes note of the proposed Decision, which approves the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (hereinafter the 'Withdrawal Agreement'), on behalf of the Union and the European Atomic Energy Community (Euratom). In particular, the ECB takes note of the provisions of the Withdrawal Agreement on the reimbursement of the paid-in capital provided by the Bank of England to the ECB ⁽²⁾, and the participation of the Bank of England in the institutional arrangements laid down in Articles 282 and 283 TFEU and the Statute of the European System of Central Banks and the European Central Bank (hereinafter the 'Statute of the ESCB') during the transition period ⁽³⁾. The ECB also takes note of the provisions of the Withdrawal Agreement on the application of provisions of Union law on access to documents of the institutions, bodies, offices and agencies of the Union in the United Kingdom ⁽⁴⁾; the application of certain articles of the Statute of the ESCB in respect of the ECB in the United Kingdom ⁽⁵⁾; and the application of certain privileges and immunities to the ECB, the members of its organs, its staff, and the representatives of the national central banks (NCBs) in the ESCB in the United Kingdom ⁽⁶⁾.
2. In accordance with Article 50(2) of the Treaty on European Union, the Withdrawal Agreement sets out the arrangements for the withdrawal of the United Kingdom from the Union and Euratom, taking account of the framework for their future relationship. The conclusion of the agreement on the future relationship between the Union and the United Kingdom will take place after the United Kingdom has become a third country. In accordance with Articles 127(4) and 282(5) TFEU and relevant Union case-law ⁽⁷⁾, the ECB should be consulted on the agreement on the future relationship between the Union and the United Kingdom insofar as it falls within the ECB's fields of competence.

⁽¹⁾ COM (2018) 834 final.

⁽²⁾ See Article 149 of the Withdrawal Agreement.

⁽³⁾ See Article 128(4) of the Withdrawal Agreement.

⁽⁴⁾ See Article 122 of the Withdrawal Agreement.

⁽⁵⁾ See Article 123 of the Withdrawal Agreement.

⁽⁶⁾ See Article 117 of the Withdrawal Agreement.

⁽⁷⁾ See, for example, judgment of the Court of Justice of 30 April 1974, *R. & V. Haegeman v Belgian State*, Case C-181/73, ECLI:EU:C:1974:41, paragraph 5; judgment of the Court of Justice of 9 August 1994, *French Republic v Commission of the European Communities*, Case C-327/91, ECLI:EU:C:1994:305, paragraphs 15 to 17. See also ECB Opinion CON/2005/7. All ECB opinions are published on the ECB's website.

3. The Withdrawal Agreement establishes a Joint Committee that will be responsible for the implementation and application of the Withdrawal Agreement. The proposed Decision clarifies that the Commission will represent the Union within the Joint Committee and its specialised committees ⁽⁸⁾. In various cases specified in the Withdrawal Agreement, the Joint Committee will have the power to adopt decisions that are binding on the Union and the United Kingdom, and the Union and the United Kingdom must implement those decisions ⁽⁹⁾. In accordance with Articles 127(4) and 282(5) of the TFEU, and the principle of sincere cooperation under Article 13(2) of the Treaty on European Union, the ECB should be consulted on decisions of the Joint Committee that fall within its fields of competence.
4. The Withdrawal Agreement sets out that certain privileges and immunities applicable to the Union will apply in respect of the ECB, the members of its organs, its staff, and the representatives of the NCBs in the ESCB who take part in the activities of the ECB ⁽¹⁰⁾. The Withdrawal Agreement imposes various requirements on the Union to inform or notify the United Kingdom in respect of certain matters relevant to such privileges and immunities ⁽¹¹⁾. In the explanatory memorandum to the proposed Decision, the Commission has clarified that the provision of such information or notifications should in principle be done by the Commission on behalf of the Union, if necessary based on the information provided by the Member States or other institutions or relevant Union bodies or entities ⁽¹²⁾. The ECB takes note of this clarification, and stands ready to provide the Commission with the relevant information to be transmitted to the United Kingdom as appropriate.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 13 February 2019.

The President of the ECB

Mario DRAGHI

⁽⁸⁾ See Article 2 of the proposed Decision.

⁽⁹⁾ See Articles 164 and 166 of the Withdrawal Agreement.

⁽¹⁰⁾ See Article 117 of the Withdrawal Agreement.

⁽¹¹⁾ See, for example, Articles 102, 103 and 116(3) of the Withdrawal Agreement.

⁽¹²⁾ See page 4 of the Explanatory Memorandum.