



EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 1 September 2004

at the request of the Central Bank of Malta

on draft amendments to Central Bank of Malta Directive No 1 on minimum reserve requirements

(CON/2004/29)

1. On 2 August 2004, the European Central Bank (ECB) received a request from the Central Bank of Malta (CBM) for an opinion on a draft amendment to CBM Directive No 1 on minimum reserve requirements (hereinafter the 'draft legislative provisions').
2. The ECB's competence to deliver an opinion is based on Article 2(2) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions<sup>1</sup>, as the draft legislative provisions relate to an instrument of monetary policy of a non-participating Member State, i.e. minimum reserve requirements. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council has adopted this opinion.
3. The draft legislative provisions would allow the CBM to exempt, on a non-discriminatory basis, the following credit institutions from maintaining minimum reserve requirements: (i) those which are subject to winding-up or reorganisation proceedings; and (ii) those upon which the imposition of minimum reserve requirements would not serve the CBM's monetary policy objectives. In reaching a decision to grant an exemption to a credit institution on this latter basis, the CBM would be required to give due consideration to the extent to which that credit institution provides banking or ancillary services in the domestic market after taking into account, *inter alia*, that institution's provision of credit facilities, its involvement in the Maltese lira interbank market and its participation in the local payments system.
4. The ECB notes that pursuant to Article 122(3) of the Treaty establishing the European Community, the basic tasks to be carried out through the ESCB to define and implement the monetary policy of the Community set out in Article 105(2) of the Treaty do not apply to Member States with a derogation, such as Malta. Thus, as also further set out in Article 43.2 of the Statute of the European System of Central Banks and of the ECB, the central banks of Member States with a derogation retain their powers in the field of monetary policy according to national law.

---

<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

5. For the Eurosystem, minimum reserves are an important tool for the implementation of monetary policy which primarily fulfils the functions of stabilisation of money market interest rates and the creation or enlargement of a structural liquidity shortage. A similar exemption to that set out in the draft legislative provisions also exists in the ECB's framework, as set out in Article 2(2) of Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves. However, the draft legislative provisions and the ECB's framework differ significantly in this respect.
6. Exemptions from the ECB's minimum reserves regime for euro area credit institutions, except as regards reorganisation measures, are extremely rare. Under Article 2(2) of Regulation ECB/2003/9 the ECB may exempt, on a non-discriminatory basis, institutions for which the purpose of the ECB's minimum reserves system would not be met by imposing reserve requirements upon them. In reaching a decision on any such exemption, the ECB is required to take into account one or more of the following three criteria: (i) whether the institution is pursuing special purpose functions; and (ii) whether the institution is not exercising active banking functions in competition with other credit institutions; and (iii) whether the institution has all its deposits earmarked for purposes relating to regional and/or international development assistance. These criteria are strictly applied. Currently there is only one euro area credit institution with an exemption.
7. The ECB's possibility to exempt therefore is much narrower than that provided for in the draft legislative provisions, because of the criterion that 'the institution is not exercising active banking functions in competition with other credit institutions'. Under the ECB's minimum reserves system, this criterion is of general application, and it is understood as referring to the provision of any banking service that is in competition with banking services provided by other credit institutions established in the European Union (and not only the euro area), irrespective of where such services are provided. Where any credit institution or relevant branch provides any banking service that is in any way in competition with other credit institutions, the ECB therefore considers that an exemption would not be appropriate.
8. If Malta should, in due course, adopt the euro, the Eurosystem's regime would not, as described above, provide a possibility for an exemption such as that set out in the draft legislative provisions. The ECB therefore recommends inserting an additional criterion in paragraph 10(b) of the draft legislative provisions, namely that the institution is not exercising active banking functions in competition with other credit institutions established in the EU.

9. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB's website six months after the date of its adoption.

Done at Frankfurt am Main, 1 September 2004.

[signed]

*The President of the ECB*

Jean-Claude TRICHET