C/2024/4418

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OPINION OF THE EUROPEAN CENTRAL BANK

of 15 May 2024

on a Recommendation for a Council Decision on the amendment to the Monetary Agreement with the Principality of Andorra and to the Monetary Agreement with the Republic of San Marino (CON/2024/16)

(C/2024/4418)

Introduction and legal basis

On 16 April 2024 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a Commission Recommendation for a Council Decision on the amendment to the Monetary Agreement with the Principality of Andorra and to the Monetary Agreement with the Republic of San Marino ([1]) (hereinafter the 'proposed decision').

The ECB's competence to deliver an opinion is based on Article 219(3) of the Treaty on the Functioning of the European Union, which provides that, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union with one or more third States or international organisations, the Council, on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. 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.

1. General observations

1.1. In 2011 a Monetary Agreement between the Union and the Principality of Andorra ([2]) was concluded, followed in 2012 by a Monetary Agreement between the Union and the Republic of San Marino ([3]) (hereinafter the 'Monetary Agreements'). In December 2023, the Commission concluded the negotiation of an Association Agreement with Andorra and San Marino ([4]) (hereinafter the 'Association Agreement').

1.2. The ECB welcomes the objectives of the proposed decision, namely to avoid the duplication of similar efforts in the framework of the Monetary Agreements and of the Association Agreement, on the part both of the Union and of Andorra and San Marino. There is a partial overlap between the Union legal acts to be implemented by Andorra and San Marino pursuant to the Monetary Agreements and the Association Agreement. If this overlap is not addressed, there would be a duplication of efforts as the implementation of the overlapping Union legal acts would be monitored in parallel in the framework of the Monetary Agreements and the Association Agreement.

1.3. At the same time, the ECB observes that the introduction of the amendments to the Monetary Agreements envisaged in the proposed decision will have significant effects for the framework of the Monetary Agreements. The Monetary Agreements establish a Joint Committee ([5]), which plays a crucial role in the assessment of the implementation of the Union legal acts listed in the Annexes to the Monetary Agreements. In the case of the Monetary Agreement between the Union and Andorra, the Joint Committee is composed of representatives of Andorra, the Commission, Spain, France and the ECB. The Joint Committee of the Monetary Agreement between the Union and San Marino is

([1]) COM(2024) 134 final.
([2]) OJ C 369, 17.12.2011, p. 1.
([3]) OJ C 121, 26.4.2012, p. 5. This Monetary Agreement replaced the previous Monetary Agreement between the Italian Republic, on behalf of the European Community, and the Republic of San Marino (OJ C 209, 27.7.2001, p. 1).
([4]) See the Commission's press release of 12 December 2023, 'The Commission welcomes the end of the negotiations for an Association Agreement with Andorra and San Marino', available on the Commission's website at www.ec.europa.eu. The ECB has not seen the text of the Association Agreement, as agreed at negotiators' level, although the Association Agreement is the source of the proposed changes to the Monetary Agreements.
([5]) See Article 11 of the Monetary Agreements.

composed of representatives of San Marino, the Commission, Italy and the ECB. The ECB understands that the composition of the Sub-committee that will assess the implementation of the Union legal acts listed in the relevant Annex to the Association Agreement but marked as relevant for the application of the Monetary Agreements will be very different than that of the Joint Committees of the Monetary Agreements. It is not envisaged that the ECB is to be an official member of the Sub-committee. Because of the significance of the proposed amendments, the ECB is of the view that it should be fully associated with the negotiations in its field of competence, in line with past practice.

2. **Specific observations**

2.1. The explanatory memorandum to the proposed decision states that the Union legal acts on banking and financial law and on combating money laundering and terrorist financing listed in the relevant Annex to the Association Agreement and 'relevant for the euro' will be clearly marked as such so that when their implementation is assessed in the context of the Association Agreement, this is also done for the purposes of the Monetary Agreements. It is explained that it is the intention of the Commission services to invite their ECB counterparts to join the Commission's delegation to the Sub-committee on financial services established under the Association Agreement when the implementation of the Union acts that are also relevant for the application of the Monetary Agreements is being discussed. The ECB welcomes the Commission's intention to invite the ECB to the meetings of the Sub-committee when the subject-matter of the discussions is relevant for the application of the Monetary Agreements. The proposed decision does not specify how such participation would be formalised and what the status of the ECB in those meetings would be. The ECB understands that it would be invited to the relevant meetings of the Sub-committee as an observer.

2.2. The proposed decision provides for the insertion of a provision in the Monetary Agreements by which all new acts pertaining to the subset of Union legal acts on banking and financial law relevant for the euro and all new Union legal acts on combating money laundering or terrorist financing become part of the relevant Annex to the Association Agreement exclusively once these Union legal acts become applicable under the Association Agreement ([6]). The explanatory memorandum to the proposed decision states that different segments of the protocol on financial services of the Association Agreement may come into effect for the associated States in a progressive manner. Thus, until the Union legal acts falling within a given segment become applicable under the Association Agreement, the relevant Union *acquis* would continue to be incorporated and considered in the Annexes to the Monetary Agreements.

2.3. The ECB observes that there could be a significant time lapse between the adoption of the Association Agreement and the coming into effect for the associated States of the segments of the protocol on financial services incorporating Union legal acts on banking and financial law and on combating money laundering and terrorist financing. Hence, to ensure legal certainty, the relevant provision of the Monetary Agreements ([7]) should explicitly state that, if a Union legal act of the relevant Union *acquis* is adopted or amended before it becomes applicable under the Association Agreement, it will be added to the Annexes to the Monetary Agreements and transferred to the relevant Annex of the Association Agreement once it becomes applicable under the Association Agreement. Moreover, the proposed decision does not clarify the exact point in time at which it will be considered that the Union legal acts pertaining to a given segment of the protocol on financial services become applicable under the Association Agreement. It is necessary to have clarity on this aspect to ensure legal certainty on the timeline for the transfer of responsibilities from the framework of the Monetary Agreements to the framework of the Association Agreement.

([6]) See Article 1, first paragraph, point (a), of the proposed decision.
([7]) As referred to in Article 1, first paragraph, point (a), of the proposed decision.

2.4. The proposed decision establishes that a provision should be included in the Monetary Agreements by which the Union legal acts on banking and financial law necessary for the euro and all Union legal acts on combating money laundering or terrorist financing that are listed in the Association Agreement but are relevant for the smooth use and protection of the euro should be clearly marked ([8]). This would allow the assessment of the implementation of these acts by the two associated States to be done under the Association Agreement for the purposes of the Monetary Agreements. The ECB welcomes the inclusion of such a provision, as it is the key provision of the proposed decision for the purposes of avoiding duplication between the Monetary Agreements and the Association Agreement. At the same time, the ECB points to a lack of clarity regarding the implementation of this measure. It remains unclear whether a provision with the same content is also to be included in the Association Agreement and who would decide on the marking of Union legal acts as relevant for the application of the Monetary Agreements. The ECB stands ready to participate in this task. The marking exercise could, for instance, be decided upon in the meetings of the Sub-committee on financial services established under the Association Agreement. Furthermore, to provide greater legal certainty, the ECB would propose marking the relevant Union legal acts as 'relevant for the application of the Monetary Agreement', instead of as 'relevant for the euro', 'necessary for the euro' or 'relevant for the smooth use and protection of the euro'.

2.5. Furthermore, the ECB suggests establishing in the same provision that, following meetings on the status of the implementation of Union legal acts listed in the relevant Annex to the Association Agreement and marked as relevant for the application of the Monetary Agreements, an 'implementation spreadsheet' will be shared with the relevant Joint Committee of the Monetary Agreements. Without this, there is a risk that the marking of certain Union legal acts as relevant for the application of the Monetary Agreements and the statement that the assessment of the implementation of those legal acts in the framework of the Association Agreement will be done at the same time for the purposes of the Monetary Agreements will be devoid of any purpose. The Joint Committees of the Monetary Agreements will need to be duly informed of the status of implementation of the relevant Union legal acts to determine whether it has any impact on the application of the Monetary Agreements. The ECB understands that a provision of the same nature is to be included in the Association Agreement.

2.6. The proposed decision proposes the inclusion of a provision establishing that the subset of Union legal acts on banking and financial law relevant for the euro and all new Union legal acts on combating money laundering or terrorist financing, having become part of the Association Agreement, would be automatically incorporated in the Annexes to the Monetary Agreements if the Association Agreement is partially or fully suspended or if it is terminated ([9]). For completeness, the ECB suggests clarifying that this process would also be accompanied by the assessment of the implementation of the relevant Union legal acts, which would be undertaken in the framework of the Monetary Agreements.

2.7. The ECB welcomes the proposed decision's insertion of a provision in the Monetary Agreements that would ensure that Union legal acts of a monetary law nature remain governed exclusively by the Monetary Agreements ([10]). As explained in the explanatory memorandum to the proposed decision, legal acts of a monetary law nature include legal measures in the fields of banknotes and coins, fraud and counterfeiting, statistical reporting to the ECB, and acts under Article 133 of the Treaty. Hence, they comprise, inter alia, all the legal acts adopted by the ECB that are listed in the Annexes to the Monetary Agreements.

([8]) See Article 1, first paragraph, point (c), of the proposed decision.
([9]) See Article 1, first paragraph, point (d), of the proposed decision.
([10]) See Article 1, first paragraph, point (e), of the proposed decision.

2.8. Lastly, the proposed decision establishes that the Commission alone is empowered to negotiate, conclude, and sign the amendment to the Monetary Agreements with Andorra and San Marino ([11]). The ECB observes that this departs from the practice followed to date, whereby the ECB has been fully associated with the negotiations concerning the Monetary Agreements in its field of competence ([12]). Furthermore, the amendment to the Monetary Agreements to be negotiated with Andorra and San Marino pursuant to the proposed decision is not of a minor and technical nature. As mentioned in paragraph 1.3 of this opinion, the proposed amendment has important consequences for the Monetary Agreements' framework, especially for the role of the Joint Committees established in the Monetary Agreements. Hence, the proposed decision should establish that the ECB will be fully associated with the negotiations in its field of competence, in line with past practice.

Where the ECB recommends that the proposed decision is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 15 May 2024.

The President of the ECB
Christine LAGARDE

([11]) See Article 2 of the proposed decision.

([12]) See Article 7 of Council Decision 1999/97/EC of 31 December 1998 on the position to be taken by the Community regarding an agreement concerning the monetary relations with the Republic of San Marino (OJ L 30, 4.2.1999, p. 33); Article 7 of Council Decision 2004/548/EC of 11 May 2004 on the position to be taken by the Community regarding an agreement concerning the monetary relations with the Principality of Andorra (OJ L 244, 16.7.2004, p. 47); and Article 3 of Council Decision 2009/904/EC of 26 November 2009 on the position to be taken by the European Community regarding the renegotiation of the Monetary Agreement with the Republic of San Marino (OJ L 322, 9.12.2009, p. 12).