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EUROPEAN CENTRAL BANK

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 22 June 2006**

**at the request of the French Senate on a draft law on the Banque de France**

**(CON/2006/32)**

## Introduction and legal basis

On 30 May 2006, the European Central Bank (ECB) received a request from the French Senate for an opinion on a draft law (*proposition de loi*) on the Banque de France (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and fourth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1], as the draft law amends the Banque de France's Statute and relates to the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payment statistics. 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. Purpose of the draft law

1.1. The draft law replaces the Banque de France's Monetary Policy Council (MPC) with a new body, the Monetary Committee of the General Council (hereinafter the 'Monetary Committee'), which would form part of the Banque de France's General Council, whose task it is to administer the Banque de France[2]. The Monetary Committee would be composed of seven members as is currently the case for the MPC: the Banque de France's Governor and the two Deputy Governors, as well as four other members[3]. While the Monetary Committee would continue to examine monetary trends and analyse the implications of the monetary policy formulated within the ESCB framework[4], its tasks would be expressly extended in the Banque de France's Statute to the adoption of the measures transposing the ECB's guidelines[5]. The draft law defines the conditions of appointment of the four members of the Monetary Committee, other than the Governor and the

1 OJ L 189, 3.7.1998, p. 42.

2 Current Article L.142-6 of the Monetary and Financial Code (MFC).

3 Article L. 142-3 and Article L. 142-5 of the MFC, as proposed by the draft law.

4 First paragraph of Article L. 142-4 of the MFC, as proposed by the draft law.

5 Second paragraph of Article L. 142-4 of the MFC, as proposed by the draft law.

Deputy Governors, as well as the incompatibility regime with regard to the possibility of carrying on other professional activities and the rules relating to conflicts of interest applicable to them.

1.2. The draft law also introduces into the Banque de France's Statute a confirmation of the central bank's role and powers when collecting the statistical data needed to establish the balance of payments[6]. A specific provision deals with the possibility for the Banque de France to receive information from undertakings and professional associations relating to their financial situation and to communicate this information to central banks, to other institutions performing similar tasks and to credit institutions and financial institutions[7]. Finally, the draft law provides that the dividend paid by the Banque de France to the State will be increased by the amount of the savings on remuneration credits which result from this law[8].

## 2. Reform of the Banque de France's decision-making bodies

*Creation of the General Council's Monetary Committee*

2.1 The purpose of the reform of the Banque de France's decision-making bodies is to take into account the transfer of monetary policy responsibilities to the ECB[9] and to simplify the Banque de France's management and supervisory bodies by grouping them together[10]. The draft law provides for the MPC's disbanding. The ECB notes in this respect that, since the transfer of the monetary policy powers to the ESCB, the ECB's Governing Council is the single collegial decision-making body defining the euro area's monetary policy and, in particular, the body that adopts the guidelines and takes the decisions necessary to ensure the performance of the Eurosystem's tasks. In this context, the ECB welcomes the clarification brought by the abrogation of the MPC.

2.2 At the same time, the MPC will be replaced by the Monetary Committee, a body which will form part of the General Council. The draft law simplifies the conditions currently applicable to the appointment of the members of the MPC, other than the Governor and the Deputy Governors[11], in order to take into account the evolving functions of the MPC[12]. According to the preamble to the draft law, this should result in a significant downward adjustment of the remuneration of the four members of the Monetary Committee other than the Governor and the Deputy Governors[13]. One of the main changes introduced by this reform will be that the Monetary Committee members will be able to carry out other professional activities if certain conditions are fulfilled[14].

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6 Article L. 141-6 of the MFC, as proposed by the draft law.

7 Article L. 144-1 of the MFC, as proposed by the draft law.

8 Article 7 of the draft law.

9 Second sentence of the preamble to the draft law.

10 Preamble to the draft law, Article 1.

11 Cf. the current Article L. 142-3 of the MFC and Article L. 142-5 of the MFC, as proposed by the draft law.

12 Preamble to the draft law, seventh paragraph.

13 Preamble to the draft law, seventh paragraph.

14 Fourth paragraph of Article L.142-7 of the MFC, as proposed in Article 1 of the draft law.

*Personal independence*

2.3. As a matter of principle, membership of a decision-making body involved in the performance of ESCB-related tasks is incompatible with the exercise of other functions that might create a conflict of interest[15]. Concerning the Monetary Committee members (other than the Governor and Deputy Governors), the ECB notes in this respect that the draft law provides for a specific incompatibility regime and a set of rules on avoiding conflicts of interest.

2.4. As regards the incompatibility regime provided for in the draft law[16], the above four members of the Monetary Committee may not perform any duties or hold any interests in regulated entities[17] and may not hold any parliamentary office[18]. The ECB would recommend extending this incompatibility regime to the holding of an "office in the executive or legislative branches of the State or of regional or local administrations"[19]. The ECB also notes that a specific check procedure to prevent conflicts of interest has been set up in the draft law and that the prior agreement of a majority of Monetary Committee members (except the interested member) is required for the exercise of any other professional activity[20].

2.5. The draft law provides that 'those members of the Monetary Policy Council appointed by decree of the Council of Ministers who hold office on the date this law is published shall as of right be members of the Monetary Committee. Their term of office shall not be extended after its expiry'[21]. The ECB suggests clarifying this provision to ensure that only the four members of the Monetary Committee other than the Governor and the Deputy Governors are referred to by this provision. Indeed, the Governor and the Deputy Governors are also members of the MPC and appointed by a Council of Ministers decree. Their mandate as members of the MPC is renewable[22] and therefore their mandate as members of the Monetary Committee has to be renewable. The ECB also recommends deleting the reference to the MPC in the provision of the Statute of the Banque de France relating to litigation[23].

2.6. Under the draft law, it is also provided that 'If any member [of the Monetary Committee other than the Governor or the Deputy Governors] is unable to complete their term of office, they shall be replaced immediately (…). In any such case, the person appointed shall hold office only for the remainder of the term of the member replaced'[24]. Furthermore, in such cases, contrary to the generally applicable rule, the terms of office of the members of the Monetary Committee may be

15 ECB Convergence Report, May 2006, 3.1.3, Safeguards against conflict of interest, p. 65.
16 Article L. 142-7 of the MFC, as proposed by the draft law.
17 As listed in Book V of the MFC.
18 Article L.142-7 of the MFC, as proposed by the draft law.
19 ECB Convergence Report, May 2006, 3.1.3, Safeguards against conflict of interest, p. 65.
20 Fourth paragraph of Article L.142-7 of the MFC, as proposed by the draft law.
21 Article L. 142-5 of the MFC, as proposed in Article 2 of the draft law.
22 Current last paragraph of Article L. 142-8 of the MFC.
23 Current Article L.144-3 of the MFC.
24 Article L.142-5 of the MFC, sixth paragraph (as proposed in Article 1 of the draft law).

renewed[25]. However, the principle of personal independence, as laid down in Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank[26], requires that the same rules for the security of tenure of the office of Governor should apply to other members of the decision-making bodies of NCBs involved in the performance of ESCB-related tasks. As a consequence, the draft law should be amended in order to bring the terms of office of a member of the Monetary Committee replacing another member who is unable to complete their term of office into line with Article 14.2 of the ESCB Statute.

## 3. Other comments

3.1. The ECB welcomes the clarifications made on the role of the Banque de France regarding balance of payments and international investment position statistics[27]. A decree to be adopted will set out the sanctions applicable in the case of breaches of reporting obligations[28]. The ECB understands that this decree will be without prejudice to the ECB's competence to impose sanctions on reporting agents for specific breaches of their statistical reporting obligations[29].

3.2. The ECB notes the following concerns regarding Article 7 of the draft law[30]. First, since it enables the French authorities to interfere with the allocation of profits to be proposed by the Banque de France's General Council, such provision might be considered as affecting the Banque de France's institutional independence. Second, this provision of the draft law seems to imply that the amount of the savings on remuneration credits which result from this law would be automatically due to the French State even in the absence of a dividend paid by the Banque de France. The ECB recalls that 'the decision on allocation of profits should be taken by the NCB's decision-making body on professional grounds, and should not be subject to the discretion of third parties'[31]. As a consequence, the ECB would recommend deleting such provision, since it is incompatible with Article 108 of the Treaty as well as with the Monetary and Financial Code[32].

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25 Article L.142-5 of the MFC, seventh paragraph (as proposed in Article 1 of the draft law).

26 As further explained in the ECB Convergence Reports of 2004 and 2006 (October 2004, 2.3.1, 'Central bank independence', p. 27 and May 2006, 3.1.3, 'Personal independence', p. 64).

27 Article L. 141-6 of the MFC, as proposed by the draft law.

28 Article L.141-6 I and II of the MFC, as proposed in Article 2 of the draft law.

29 See Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank, (OJ L 318, 27.11.1998, p. 8) and Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions, (OJ L 318, 27.11.1998, p. 4).

30 Article 7 of the draft law provides that the dividend paid by the Banque de France to the State will be increased by the amount of the savings on remuneration credits which result from this law.

31 ECB Convergence Report, May 2006, 3.1.4, 'Distribution of profits, NCBs' capital and financial provisions', p. 66.

32 Fourth paragraph of the Article L.142-2, of the MFC as proposed by the draft law and current Article R.144-4 of the MFC (regulatory part).

## 4. Final observations

4.1. Should the provisions of the draft law be subject, in the course of the parliamentary procedure, to substantial amendments falling within the ECB's field of competence, the ECB wishes to draw the consulting authority's attention to the need to re-consult the ECB on these amendments.

4.2. The ECB will also need to be consulted on the draft amendments to the regulatory part of the Monetary and Financial Code pursuant to the changes introduced to the Statute of the Banque de France, as well as on the draft version of the decree referred to in Article 2 of the draft law[33].

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

Done at Frankfurt am Main, 22 June 2006.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

33 New proposed Article L.141-6, III of the MFC, as proposed by the draft law.