I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 November 2008

on a proposal for a Council Regulation amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments

(CON/2008/77)

(2008/C 328/01)

Introduction and legal basis

On 12 November 2008, the European Central Bank (ECB) received a request from the EU Council for an opinion on a proposal for a Council Regulation amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments ([1]) (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community as the ECB administers the loans granted under this facility. 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

The regulation currently in force ([2]), adopted in February 2002, lowered the EUR 16 billion ceiling in the previous regulation to EUR 12 billion ([3]). The ECB considers that, in the present financial circumstances, non-euro area Member States are more likely to request assistance under the medium-term financial assistance (MTFA) facility than was previously envisaged, and their requests for assistance are likely to involve much higher amounts than was anticipated in 2002. Therefore, the ECB is of the opinion that, in view of international economic and financial developments, the potential demand for assistance might go beyond the current ceiling of EUR 12 billion. It therefore supports an increase in the ceiling to EUR 25 billion so as to enable the Community to react to potential requests for financial assistance.

2. Specific observations

Procedure for amending the ceiling of the facility

The proposal would introduce a new paragraph 3 in Article 1 of Regulation (EC) No 332/2002 which would empower the Commission to revise the ceiling after having received the opinion of the Economic and Financial Committee (EFC) as regards both the urgent need to revise the ceiling and the revised

([1]) COM(2008) 717 final/2.
([2]) Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).
([3]) The facility under Regulation (EC) No 332/2002 replaced the facility under Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments (OJ L 178, 8.7.1988, p. 1).

ceiling itself. The ECB has serious concerns as to the appropriateness of the proposed procedure. On the one hand it is of the view that urgency does not justify the introduction of this new procedure. In particular, given that it is planned to adopt the proposed regulation within a very short deadline, the Council would clearly also be in a position to raise the ceiling within a very short deadline in the future. On the other hand, the ECB has doubts as to the legality of the delegation of this power to the Commission ([1]). Therefore, the ECB favours deleting the introduction of this new procedure in the Regulation. Such an approach is also suggested by the European Parliament's resolution on this matter ([2]) and was envisaged during preparatory work on the proposed regulation by the Council.

3. **Drafting proposals**

Where the above advice would lead to changes in the proposed regulation, drafting proposals are set out in the Annex.

Done at Frankfurt am Main, 25 November 2008.

The Vice-President of the ECB
Lucas D. PAPADEMOS

([1]) If the Council were to delegate the power to raise the ceiling to the Commission, it would have to do so in accordance with Article 202 of the Treaty. According to the Court of Justice's case-law, when the Council confers implementing powers on the Commission, it can only impose requirements in respect of the exercise of these powers which are laid down in advance in the 'Comitology decision' (Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23)), see the judgement of the Court of 10 December 1970 in Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel v Köster* [1970] ECR 116. The procedure whereby a Commission decision is taken following consultation of the EFC is not one of the procedures in the Comitology decision. Therefore, the ECB is of the view that if a case were to be brought before the Court of Justice on this matter, it would be very difficult to defend the legality of such a delegation of powers.

([2]) European Parliament legislative resolution of 20 November 2008 on the proposal for a Council Regulation amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments, P6_TA(2008)0560.

ANNEX

Drafting proposals

Text proposed by the Commission	**Amendments proposed by the ECB**
Amendment 1 Recital 2 of the proposed regulation	
An *ad hoc* procedure should be foreseen for future revisions of that ceiling, with a view to improving the capacity of the Community to react quickly to major changes in the financial environment affecting the total amount of support potentially needed by the Member States	[Deletion]
Justification — *See paragraph 2 of the opinion*	
Amendment 2 Article 1, second indent, of the proposed regulation	
The following paragraph 3 is added: 'Where a serious deterioration of the financial environment calls for urgent Community medium term financial assistance to several Member States, the Commission may decide a revision of the ceiling after having received the opinion from the Economic and Financial Committee as regards both the urgent need to revise the ceiling and the revised ceiling itself. The new ceiling shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.'	[Deletion]
Justification — *See paragraph 2 of the opinion*	