EUROPEAN CENTRAL BANK

EUROSYSTEM

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 24 September 2009**

**on the nomination procedure for the Governor of the Banque de France**

**(CON/2009/74)**

## Introduction and legal basis

On 18 September 2009 the European Central Bank (ECB) received a request from the French Ministry for Economic Affairs, Industry and Employment for an opinion on a draft organic law and a draft law on the application of Article 13, fifth paragraph, of the French Constitution (hereinafter, respectively, the 'draft organic law' and 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 indent 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 organic law and the draft law relate to the Banque de France. 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 organic law and of the draft law

1.1 The draft organic law and the draft law aim at implementing Article 13, fifth paragraph, of the French Constitution as amended by the Constitutional Law of 23 July 2008[2]. Article 13, fifth paragraph, of the French Constitution provides that, for positions or functions of particular importance in guaranteeing rights and freedoms or the Nation's economic and social life, the nomination power of the President of the French Republic is carried out after a public opinion from the relevant permanent committee of each House of the French Parliament. It further provides that the President of the French Republic may not carry out a nomination if the sum of each committee's negative votes represents at least three fifths of the valid votes within both committees.

1.2 Given that the positions or functions concerned by this Parliamentary control procedure are to be determined in an organic law by virtue of Article 13 of the French Constitution, the draft organic law precisely aims at setting the list of positions or functions which are to be subject to the new procedure in view of their importance in guaranteeing rights and freedoms or the Nation's

1 OJ L 189, 3.7.1998, p. 42.

2 Constitutional Law No 2008-724 of 23 July 2008 on modernising the institutions of the Vth Republic, *Journal Officiel de la République Française*, No 0171 of 24 July 2008, p. 11890.

economic and social life. The function of Governor of the Banque de France is among the positions and functions listed. The draft organic law therefore aims at making the specific procedure provided for in Article 13, fifth paragraph, of the French Constitution applicable to the Governor of the Banque de France, thereby giving the French Parliament the right to scrutinise the nomination of the Governor of the Banque de France by the President of the French Republic[3], including the right to veto, under certain conditions, a proposal for a nomination.

1.3 In accordance with Article 13 of the French Constitution, the draft law complements the draft organic law and determines for each of the concerned positions or functions the relevant permanent committees within the French National Assembly and Senate. For the function of Governor of the Banque de France, the committee competent in monetary matters would be the relevant permanent committee within each House of the French Parliament.

## 2. General observations

2.1 The provisions of the draft organic law and the draft law that concern the nomination procedure of the Governor of the Banque de France are compatible with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') and do not interfere with the personal independence requirements under Article 14.2 of the Statute of the ESCB.

2.2 The inclusion of the Governor of the Banque de France in the list of holders of positions and functions concerned may result in an extension of the length of the nomination procedure[4]. In this regard, the ECB notes the need for the smooth and continuous functioning of the decision-making bodies of the Banque de France[5] under the new nomination procedure.

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

Done at Frankfurt am Main, 24 September 2009.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

3 Article L.142-8, seventh paragraph, first sentence, of the French Monetary and Financial Code provides that the Governor and the two Deputy Governors of Banque de France are nominated by a decree in the Council of Ministers for a six-year term of office, which may be renewed once.

4 See impact assessment of the draft organic law and draft law on the application of Article 13 of the French Constitution, p. 4, point 3.2.

5 ECB Convergence Report, May 2008, p. 14.