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FRANCE

Draft law concerning the introduction of the euro in Mayotte and Saint Pierre-et-Miquelon, draft decree concerning the introduction of the euro in Mayotte and Saint Pierre-et-Miquelon and a related draft decision of the Governor of the Banque de France

Dear Mr Jouyet,

On 19 September 2000 the European Central Bank (ECB) received your revised request for agreement on a draft law concerning the introduction of the euro in Mayotte and Saint-Pierre-et-Miquelon (hereinafter, the "draft law"), on the draft decree concerning the introduction of the euro in Mayotte and Saint-Pierre-et-Miquelon (hereinafter, the "draft decree") and a related draft decision of the Governor of the Banque de France (hereinafter, the "draft decision") pursuant to Article 4 of Council Decision 1999/95/EC of 31 December 1998 concerning the monetary arrangements in the French territorial communities of Saint-Pierre-et-Miquelon and Mayotte (hereinafter, "Council Decision 1999/95/EC"). As a step towards reaching an agreement on the above-mentioned draft legal acts, may I therefore make the following observations.

The ECB understands that the three draft legal instruments are intended to ensure that those parts of Community law which are or will be necessary for the functioning of economic and monetary union are applied in Mayotte and Saint-Pierre-et-Miquelon. The **draft law** will make applicable the provisions contained in Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro and Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro. In addition, Article 8 of the draft law stipulates that the Governor of Banque de France shall apply the measures necessary for performing the tasks laid down in Chapter 1 of Law No 93-980 of 4 August 1993 concerning the Statute of the Banque de France in order to ensure that these provisions give rise to the same effects as in metropolitan France. Article 9 of the draft law stipulates that the Government shall similarly apply in these two communities the provisions for which he is competent required for the introduction of the euro so that these provisions have the same effect

therein as in metropolitan France. The **draft decree** will make applicable Article 1 of Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro as amended and the second sentence of Article 11 of Council Regulation (EC) No 974/98. Finally, the **draft decision** will make applicable three Council Regulations, three ECB Regulations and one ECB Decision¹. This decision ensures that the minimum reserve system, the ECB's ability to impose sanctions, the statistical reporting requirements and the rules concerning banknotes are applied in the same way in Mayotte and Saint-Pierre-et-Miquelon as in metropolitan France.

The ECB welcomes the fact that France, in order to comply with Article 4 of Council Decision 1999/95/EC in Mayotte and Saint-Pierre-et-Miquelon, is starting to ensure the application of those parts of Community law which are or will be necessary for the functioning of economic and monetary union.

In its present form, the draft law and the draft decree provide for the application of the three Council Regulations No 2866/98, No 1103/97 and No 974/98 in Mayotte and Saint-Pierre-et-Miquelon by means of a transposing law which reproduces these provisions, while future amendments to the three Council Regulations will need to be reproduced again by a new transposing French law. However, the ECB considers that the draft law, the draft decree and any other future similar law should (i) merely state that these Community legal acts are applicable in these territories, identifying them but without reproducing or attaching to the law the legislation referred to; and (ii) include a dynamic clause ensuring that any future amendments to these Community legal acts will apply directly in these territories without any further need for implementation. Such an approach would be preferable as it would ensure legal certainty concerning the powers of the Community in these matters, equal treatment with the euro area Member States and the integrity of single monetary policy.

In this regard, the ECB has been informed that the French Council of State has adopted an opinion according to which the introduction of the euro in Mayotte and Saint-Pierre-et-Miquelon could not take, as the ECB would prefer, the form of a law which merely makes the provisions of the Treaty relating to economic and monetary union and its secondary legislation applicable to these communities but that instead, the Council of State considers it necessary that the transposition law itself contain the Community provisions to be applied in those territories. The Council of State argues that a Member

¹ Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank, Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions, Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank, Regulation (EC) No 2818/98 of the European Central Bank of 1 December 1998 on the application of minimum reserves, the Regulation (EC) No 2157/99 of the European Central Bank of 23 September 1999 on the powers of the European Central Bank to impose sanctions as being amended, Regulation (EC) No 2819/98 of the European Central Bank of 1 December 1998 concerning the consolidated balance sheet of the monetary financial institutions sector as being amended as well as the Decision of the European Central Bank of 7 July 1998 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes as amended.

State cannot proceed unilaterally to an extension, even partial, of a Treaty; in its view, the modification of the geographical application of a Treaty constitutes a revision of that Agreement, which operates in international law between the contracting parties and in principle according to the clauses providing for this in the Treaty itself.

However, taking into account that on 31 December 1998 the Council of the European Union unanimously agreed on Article 123 (4) EC (Article 109l (4)) of the EC Treaty) as the proper legal basis for the introduction of the euro in Mayotte and Saint-Pierre-et-Miquelon, the ECB considers that it is legally consistent with Community law that France, as mandated by the European Community, merely makes the provisions of the Treaty relating to economic and monetary union, and its secondary legislation, applicable to these communities through the draft law. Under these circumstances, the inclusion of a dynamic clause ensuring the direct applicability of any future amendments to this Community legislation in the above-mentioned territories seems to be perfectly feasible.

Having said this, the ECB would be prepared to accept the proposed approach as a possible implementation of Article 4 of Council Decision 1999/95/EC on the understanding that this is the only approach that is feasible under French law. In this case however, the following amendments to the draft texts would need to be made.

First, in Article 1 of the draft law, the words "or centimes" need to be deleted to bring the text in line with Council Regulation (EC) No 974/98 of 3 May 1998 that stipulates that "one euro shall be divided into one hundred cent".

Second, Articles 8 and 9 of the draft law would need to be amended in order to ensure not only that the relevant Community laws already in force are applied in Mayotte and St. Pierre et Miquelon but also that any amendments to these laws and also any future Community laws which are necessary for the functioning of economic and monetary union give rise to the same effect and enter into force in Mayotte and St. Pierre et Miquelon at the same time as in metropolitan France. To this end, Articles 8 and 9 of the draft law should be amended as follows:

Article 8 of the draft law: "The Governor of the Banque de France shall apply in the territorial communities of Saint-Pierre-et-Miquelon and Mayotte the measures necessary for performing the tasks laid down in Chapter 1 of Law No. 93-980 of 4 August 1993 concerning the Statute of the Banque de France, in particular those which are or will be necessary for the functioning of Economic and Monetary Union, in order to ensure that these provisions give rise to the same and simultaneous effect as in metropolitan France."

Article 9 of the draft law: "The Government shall similarly apply in these two communities the provisions for which he is competent required for the introduction of the euro and which are or will be necessary for the functioning of economic and monetary union, and which are not already covered by Article 8, in order to ensure that these give rise to the same and simultaneous effect as in metropolitan France".

Finally, the ECB considers that the draft law and the draft decree should indicate the Community origin of the legal text. The ECB understands that the implementation of Article 8 of the draft law by the draft decision of the Governor of the Banque de France, which has been attached for reasons of example only, will be subject to a separate consultation by the Banque de France.

If the above suggested changes were to be taken on board, I believe that the ECB would be in a position to give its agreement as required by Article 4 of Council Decision 1999/95/EC. I look forward to hearing from you in due course with a view to agreeing a revised version of the legislative framework as soon as possible.

Yours sincerely

[signed]

Willem F. Duisenberg