



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

at the request of the French Ministry of Economics, Finance and Industry under Articles 109l (2) and 109f (6) of the Treaty establishing the European Community and Article 5.3 of the Statute of the European Monetary Institute on a draft law concerning savings and financial security

1. On 16 September 1998 the European Central Bank (ECB) received a request from the French Ministry of Economics, Finance and Industry for an ECB Opinion on a draft law concerning savings and financial security (hereinafter referred to as the “Law”).
2. In accordance with Article 109l(2) of the Treaty establishing the European Community (hereinafter referred to as the “Treaty”), the ECB has taken over the advisory functions of the European Monetary Institute (EMI), which went into liquidation upon the establishment of the ECB on 1 June 1998. The ECB’s competence to deliver an opinion is based on Article 1.1, fifth indent, of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions, as the Law contains provisions concerning the safety and soundness of financial institutions and markets. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the ECB, this ECB Opinion has been adopted by the Governing Council of the ECB.
3. The ECB notes that the objective of the Law is to foster the trust of the general public in the financial sector through a number of specific measures. Such measures relate to 1) the conduct of prudential supervision and in particular cross-sectoral and international supervisory co-operation and flows of information, 2) the protection of depositors, investors and insured persons, and 3) disciplinary and redress measures to be taken vis-à-vis financial institutions.

A number of the provisions of the Law specifically purport to strengthen the stability of the financial system and to improve the financial supervisory framework in France.

The enlargement of the set of preventive actions that can be taken by the “Commission bancaire” (cf. Article 31 of the Law) as well as the option available to the “Commission bancaire” to limit or even prohibit the disbursement of dividends to shareholders of a credit institution or investment firm (cf. Article 35 of the Law) are likely to increase both the possibility of and the choice of method available regarding early intervention of such supervisory authority. Early intervention is understood to be an effective tool for reducing or avoiding the cost of failures and market exits of credit institutions.

A committee, comprising supervisory authorities from different sectors of the financial industry (“collège des autorités de contrôle des entreprises du secteur financier”), is established (cf. Article 40 of the Law) with a view to 1) facilitating the exchange of information among supervisory authorities of financial conglomerates involved in credit, investment and/or insurance activities, and 2) raising issues of common interest pertaining to the co-ordination of control of such financial conglomerates. The ECB notes that the establishment of this committee is in line with the studies of several international fora regarding the ways of improving the prudential supervision of financial conglomerates.

Article 42 of the Law sets out the relationship between the “Commission bancaire” and supervisory authorities of other countries. As such, the “Commission bancaire” and the supervisory authorities of the EEA may 1) ask one another for any information necessary for the execution of their mission, or 2) arrange for a third party supervisory authority to carry out, or themselves carry out, on-site examinations of subsidiaries and branches, established in the EEA, of credit institutions or investment firms subject to their control. The new Article 42-2 introduces means for the exchange and verification of information, as well as for on-site examinations of subsidiaries and branches located outside the EEA, which are similar to the ones described above, but subject to the condition that an agreement must be entered into to provide for reciprocity between the “Commission bancaire” and the relevant prudential supervisor.

The ECB takes note that the Law also lays down an enhanced and streamlined structure of deposit insurance and investor protection. For the further organisation planned for the deposit insurance and funding of the scheme, the introduction of risk-based premia (according to which poorly managed and more risky institutions would have to pay higher insurance premia) could be considered in order to provide an incentive for credit institutions to move towards safe and sound management. As for the scope of the scheme, the ECB considers as a desirable objective that the funds received against the issuance of electronic money be covered in principle by the deposit guarantee scheme. The ECB was informed by the Banque de France that such is already the case, according to the texts presently applicable in France.

As a general assessment, the ECB welcomes the new measures of intervention in cases of credit institutions or investment firms experiencing financial difficulties. Such measures are likely to prove helpful in facilitating orderly market exits of financial institutions. To the extent that the Law relates to the implementation of EU Directives, the ECB has not investigated the compatibility of the draft provisions with such Directives.

4. The ECB confirms that it has no objection to this ECB Opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 16 October 1998.

The President of the ECB

[signed]

Willem F. Duisenberg