



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 17 February 2000

**at the request of the French Ministry of Economics, Finance and Industry on two draft laws on the statute and role of the Institut d'Émission des Départements d'Outre-Mer (IEDOM)
(CON/99/20)**

1. On 24 November 1999 the European Central Bank (ECB) received a request from the French Ministry of Economics, Finance and Industry for an ECB Opinion on two draft laws entitled the “Decree fixing the methods of application of Order No. 99 of 1999 relating to the status and activities of the Institut d'Émission des Départements d'Outre-Mer (IEDOM)” and “Order No. 99 ... of 1999 relating to the status and activities of the Institut d'Émission des Départements d'Outre-Mer”. Following informal comments made by the ECB, the French Ministry of Economics, Finance and Industry submitted two revised draft laws with a request for an ECB Opinion.
2. The ECB's competence to deliver an opinion is based on Article 105 (4) of the Treaty establishing the European Community (hereinafter referred to as the “Treaty”) and on Article 2 (1), in particular the first and third indents, of Council Decision (EC) No. 98/415 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, as the draft laws deal with currency matters and the national central bank. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, this ECB Opinion has been adopted by the Governing Council of the ECB. This ECB Opinion is based on an unofficial English translation of the official French proposal.
3. The draft laws are intended to revise the regulations regarding the functioning and organisation of the Institut d'Émission des Départements d'Outre-Mer (IEDOM) in order to reflect the transfer of national monetary powers to the ECB which came into force on 1 January 1999. The proposed modifications to the Statute of the IEDOM refer in particular to the relationship between the IEDOM and the Banque de France following the integration of the latter into the European System of Central Banks (ESCB), the composition of the Supervisory Board and the

management of the IEDOM, the holding of accounts and the flow of payments between the Banque de France and the IEDOM concerning the latter's profits and possible losses. Since 1 January 1999 the IEDOM has been conducting monetary policy operations of the ESCB in the French overseas departments of Guadeloupe, Guyana, Martinique and Réunion and the French territorial communities of Saint-Pierre-et-Miquelon and Mayotte (hereinafter referred to as "the geographical zone of activity"), with the latter two representing an integral part of France, but not forming part of the European Community and therefore not being subject to Community law. According to the proposed reform, it is fully recognised that the implementation of ESCB tasks in the geographical zone of activity pertains to the Banque de France under Chapter 1 of Law No. 93-980 of 4 August 1993, while the IEDOM becomes an agency of the Banque de France to carry out those tasks in the name of and on behalf of the Banque de France, with the exclusion of the holding and management of foreign reserve assets. For the purposes of carrying out these tasks, credit institutions established as branches or based in the geographical zone of activity have to open accounts at the Banque de France. These accounts are to be held by the IEDOM as an agent acting in the name of and on behalf of the Banque de France. At the same time, the IEDOM will also carry out its own tasks in the geographical zone of activity, such as putting coins into circulation and other tasks of general interest entrusted to it by the State.

4. The ECB welcomes the intention of France to reform the IEDOM. The Statute of the European System of Central Banks and of the European Central Bank does not allow for ESCB tasks to be carried out by bodies other than the ECB and the 15 national central banks forming the ESCB, so in that respect the current situation needed to be amended. The ECB notes that a special regime may be admitted for the French overseas departments under Article 299.2 of the Treaty, based on their remoteness, insularity, small size, difficult topography and climate and economic dependence on few products, as is also reflected in Declaration No. 26 on the outermost regions of the Community, annexed to the Final Act of the Treaty on European Union (the "Maastricht Treaty"). However, it is also noted that the draft laws are not based on any specific decision of the Council under that Article. By applying the proposed agency status it can be ensured that it will be the Banque de France as an integral part of the ESCB and not the IEDOM which will perform ESCB-related monetary policy operations in the geographical zone of activity. The role of the IEDOM will become purely instrumental and will consist in putting its organisation at the disposal of the Banque de France in the relevant territories. All corresponding regulatory and contractual arrangements with counterparties located in the geographical zone of activity will be entered into exclusively with the Banque de France and will be identical to those applied to counterparties located in metropolitan France. The counterparties will open accounts in the books of the Banque de France and, therefore, all ESCB-related financial transactions will be

recorded immediately in the accounts and in the financial statements of the Banque de France. Consequently, as far as ESCB-related tasks are concerned, the ECB has been ensured by the Banque de France that Articles 6 to 8 of the draft Government Order will not apply as this would otherwise be inconsistent with the agency status of the IEDOM. These provisions deal with the settlement of losses and profits, the legal nature of the operations entered into by the IEDOM on its own account, the methods for the presentation and settlement of accounts of the IEDOM and their consolidation with the accounts of the Banque de France, and are linked to the IEDOM's own tasks.

5. The ECB welcomes the fact that the new draft laws provide for a clear allocation of competences between the Supervisory Board and the Director General, which take into account the special status of the IEDOM as agent of the Banque de France. The Supervisory Board is only vested with decision-making powers for the IEDOM's own tasks (Article 1-VII of the draft Decree amending Article 12 of the Decree of 18 October 1986). As far as the IEDOM's activities as an agent of the Banque de France are concerned, it is the Director General who will manage the IEDOM and who will represent the IEDOM externally (Article 1-VIII of the draft Decree amending Article 13 of the Decree of 18 October 1986). The ECB understands that the reference in Article 1-VIII of the draft Decree to the Director General acting under the control of the Supervisory Board only applies to the management of the IEDOM's own tasks and that, as far as the IEDOM's activities as an agent of the Banque de France are concerned, the Director General will act under the instructions of the Governor of the Banque de France.
6. The ECB understands that the IEDOM will not carry out any tasks related to the collection of statistics related to Monetary Financial Institutions necessary for the ESCB to undertake its tasks, as in the geographical zone of activity these activities will be performed within the framework for reporting of statistics to the French Banking Commission.
7. The ECB takes the view that its responsibility for ensuring the integrity of the ESCB requires it to consider the agency status of the IEDOM as a situation which is acceptable only exceptionally, owing to the particular nature of the IEDOM, especially its former status as a central bank in the geographical zone of activity. A permanent IEDOM-based structure would require the approval of the Council in accordance with the procedure laid down in Article 299.2 of the Treaty. The ECB stresses that the particular nature of the IEDOM does not warrant consideration of its status as agent of the Banque de France as a precedent for any future cases.

8. The ECB understands that, should the Banque de France and the IEDOM prepare a joint agreement laying down the details of the operational mechanisms for the implementation of the single monetary policy in the geographical zone of activity, the ECB will be consulted accordingly.
9. The ECB finally notes that the two draft laws do not provide for an application of those parts of Community law including all ECB legal acts which are or will be necessary for the functioning of Economic and Monetary Union in Saint-Pierre-et-Miquelon and Mayotte. The ECB urges France to prepare for the application of such legislation without further delay in order to comply with Article 4 of the Council Decision (EC) No. 1999/95/EC of 31 December 1998 concerning the monetary arrangements in the French territorial communities of Saint-Pierre-et-Miquelon and Mayotte (hereinafter referred to as the Council Decision), which requires that such is made in agreement with the Commission of the European Communities and the ECB.
10. 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 17 February 2000.

The President of the ECB

[signed]

Willem F. Duisenberg