I

(Resolutions, recommendations, guidelines and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 15 February 2007


(CON/2007/4)

(2007/C 39/01)

Introduction and legal basis

On 29 and 31 January 2007 the European Central Bank (ECB) received requests from the Council of the European Union for an opinion on eight proposals for directives (1) in the financial field (hereinafter ‘the proposals’) whose main objectives are to amend the comitology provisions of eight existing directives to incorporate provisions on a new comitology procedure (the ‘regulatory procedure with scrutiny’), following the adoption of Council Decision 2006/512/EC of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (2), and to repeal the provisions of the eight existing directives that provide for a time limit for the delegation of implementing powers to the Commission (the so-called ‘sunset clauses’). The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community. 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. Observations

1.1 The ECB welcomes the new agreement on comitology reached between the European Parliament, the Council and the Commission, which is of great importance for the continued functioning of the Lamfalussy process.


(2) OJ L 200, 22.7.2006, p. 11.
1.2 The ECB has no specific comments on the proposals which are in line with the joint statement of the European Parliament, the Council and the Commission on the introduction of the new 'regulatory procedure with scrutiny' into the comitology framework (3).

1.3 Having regard to the importance of the role played by implementing measures in EU legislation in the financial services field, the ECB takes this opportunity to underline the importance of its advisory role under Article 105(4) of the Treaty, which requires the ECB to be consulted 'on any proposed Community act in its fields of competence. As recently noted (4), 'the ECB considers that proposed Level 2 acts constitute “proposed Community acts” within the meaning of Article 105(4) of the Treaty’ (5). Therefore the Treaty provision which requires the ECB to be consulted on any proposed Community act in its field of competence includes an obligation for it to be consulted on these implementing acts (6).

Done at Frankfurt am Main, 15 February 2007.

The President of the ECB
Jean-Claude TRICHET


(5) Under the Lamfalussy framework the implementing acts are referred as 'Level 2 acts'.

(6) The lack of consultation between Community institutions has been the subject of several judgments by the Court of Justice. On the obligation to consult the European Parliament, see Case 138/79 Roquette Frères [1980] ECR 3333 and Case C-21/94 Parliament v Council [1995] ECR I-1827, paragraph 17. On the obligation of the High Authority to consult the Council and the Consultative Committee under the ECSC Treaty, see Case 1/54 France v High Authority [1954-56] ECR 1, at p 15 and Case 2/54 Italy v High Authority [1954-56] ECR 37, at p 52, which was confirmed by Case 6/54 Netherlands v High Authority [1954-56] ECR 103, at p 112. As far as Article 105(4) of the Treaty is concerned, in Case C-11/00 Commission v European Central Bank [2003] ECR I-7147, Advocate General Jacobs emphasised that: 'Consultation of the ECB on proposed measures in its field of competence is a procedural step, required by a provision of the Treaty, which is clearly capable of affecting the content of the measures adopted. Failure to comply with such requirement must, in my view, be capable of leading to the annulment of the measures adopted', Opinion of Advocate General Jacobs given on 3 October 2002, paragraph 131.