

# EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 1 April 2004

**at the request of the Council of the European Union on a recommendation by the Commission of the European Communities for a Council decision on the position to be taken by the Community regarding an agreement concerning the monetary relations with the Principality of Andorra (SEC(2004) 204 final)**

(CON/2004/12)

(2004/C 88/09)

1. On 27 February 2004 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a recommendation by the Commission of the European Communities for a Council decision on the position to be taken by the Community regarding an agreement concerning the monetary relations with the Principality of Andorra (SEC(2004) 204 final) (hereinafter the 'recommendation').

supervision of the institutions concerned, and also of all relevant Community legislation on the prevention of money laundering, on the prevention of fraud and counterfeiting of non-cash means of payment and on statistical reporting requirements; and
2. The ECB's competence to deliver an opinion on the recommendation is based on Article 111(3) 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.

(e) examining the possibility of granting financial institutions located in Andorra access to payment and settlement systems within the euro area subject to appropriate conditions determined in agreement with the ECB and laid down in the Agreement.
3. The recommendation proposes a draft Council decision (hereinafter the 'draft decision') defining the Community's position in the negotiation of a monetary agreement (hereinafter the 'Agreement') between the Community and the Principality of Andorra (hereinafter 'Andorra') concerning the following:

It is not intended, however, that the Agreement will provide for the possibility of financial institutions located in Andorra having access to Eurosystem monetary policy operations.

  - (a) the use of the euro as Andorra's official currency; and
  - (b) a prohibition on Andorra issuing any banknotes, coins or monetary surrogates without the Community's agreement to the conditions of such issuance; and
  - (c) the requirement for Andorra to conform with Community rules regarding euro banknotes and coins, including cooperating with the Community on measures to protect euro banknotes and coins against fraud and counterfeiting and adopting rules implementing Community legal acts in the latter domain; and
  - (d) the adoption by Andorra of all appropriate measures ensuring the application in Andorra of all relevant Community banking and financial legislation, in particular legislation relating to the activities and
4. The ECB acknowledges that it would be in the Community's interest to open negotiations on a monetary agreement with Andorra. In determining the scope of such an agreement, the historical bonds between Andorra, Spain and France deserve special attention. The ECB considers that an agreement between the Community and Andorra will clarify the legal status of the euro in Andorra. Prior to the introduction of the single currency, Andorra used the French franc and the Spanish peseta. Andorra on 11 October 2000 unilaterally adopted the Law on measures guaranteeing the transition to the euro in the Principality of Andorra <sup>(1)</sup> to which certain Council Regulations on the introduction of the euro <sup>(2)</sup> were annexed. The ECB considers that a third country should only introduce the euro following agreement with the Community.

<sup>(1)</sup> Llei reguladora de les mesures per garantir la transició cap a l'euro al Principat d'Andorra, Butlletí Oficial, 8 November 2000.

<sup>(2)</sup> Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ L 162, 19.6.1997, p. 1. Regulation as amended by Regulation (EC) No 2595/2000 (OJ L 300, 29.11.2000, p. 1)), Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1. Regulation as amended by Regulation (EC) No 2596/2000 (OJ L 300, 29.11.2000, p. 2)) and 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 (OJ L 359, 31.12.1998, p. 1. Regulation as amended by Regulation (EC) No 1478/2000 (OJ L 167, 7.7.2000, p. 1)).

5. The ECB notes that Article 3 of the draft decision provides the basis for Andorra to be authorised to use the euro as its official currency and to grant legal tender status to euro banknotes and coins. A logical consequence of this is that Andorra should undertake to conform with Community rules on euro banknotes and coins, as provided for in Article 5(1) of the draft decision.
6. The ECB concurs with the proposal to impose an obligation on Andorra to cooperate closely with the Community in the fight against counterfeiting and fraud involving euro banknotes and coins as laid down in Article 5(2) of the draft decision. As to placing Andorra under an obligation to adopt rules implementing Community legal acts in this domain, this should not be limited to Community legal acts adopted under the first pillar but also cover legal acts adopted under the third pillar, such as Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro <sup>(1)</sup>.
7. The ECB welcomes Article 6(1) of the draft decision, the objective of which is also to apply the legal framework applying to financial institutions located in the Community to financial institutions located in Andorra, thereby both protecting the single currency and ensuring a level playing field. In view of the importance of legislation regarding the prevention of systemic risks in payment and securities clearing and settlement systems, the ECB recommends explicitly mentioning this area in the list of relevant Community legislation to be applied by Andorra.
8. The ECB equally welcomes the fact that under Article 6(1) of the draft decision, Andorra will undertake to adopt all appropriate measures to apply all relevant Community legislation on statistical reporting requirements. The ECB's statistical framework is sufficiently flexible to be applied by third countries, and statistical information provided by these countries may provide useful information for the conduct of the ESCB's tasks.
9. Article 6(2) of the draft decision provides that the Agreement may grant financial institutions located in Andorra access to payment and settlement systems within the euro area subject to the ECB's consent. In the ECB's opinion, this would only be possible on condition that the Andorran financial system develops significantly. The appropriate conditions for granting such access will need to be laid down in the Agreement itself.
10. The ECB welcomes the fact that negotiations on behalf of the Community will be conducted by the Commission with full association of Spain and France and association of the ECB in all aspects of the negotiations falling within its fields of competence.
11. Finally, the ECB would like to emphasise that the opening of negotiations with Andorra on a monetary agreement should in no way be seen as setting a precedent for opening negotiations on monetary agreements between the Community and other third countries in the future. In this context the ECB notes that the absence to date of formal monetary arrangements between Andorra and any Member State reflects the fact that, unlike the Republic of San Marino, the Vatican City and the Principality of Monaco, Andorra did not become a sovereign State until 1993. This could also explain why Andorra was not included in Declaration No 6 on monetary relations with the Republic of San Marino, the Vatican City and the Principality of Monaco annexed to the Treaty on European Union <sup>(2)</sup>.

Done at Frankfurt am Main, 1 April 2004.

*The President of the ECB*

Jean-Claude TRICHET

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<sup>(1)</sup> OJ L 140, 14.6.2000, p. 1.

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<sup>(2)</sup> OJ C 191, 29.7.1992, p. 99.