

OPINION OF THE EUROPEAN CENTRAL BANK

of 31 March 2004

at the request of the Council of the European Union regarding a proposal for a Council regulation on the conversion rates between the euro and the currencies of the Member States adopting the euro (codified version)

(CON/2004/10)

(2004/C 88/10)

1. On 2 February 2004, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Council regulation on the conversion rates between the euro and the currencies of the Member States adopting the euro (hereinafter the 'proposal for a regulation').
2. The ECB is competent to deliver an opinion since the proposal for a regulation is based on the third sentence of Article 123(4) of the Treaty establishing the European Community, which provides for the consultation of the ECB. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council of the ECB has adopted this opinion.
3. With the aim of clarifying and simplifying Community legislative acts that have been amended, the proposal for a regulation codifies in one single text, without any changes of substance, 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 ⁽¹⁾ and the instrument amending it. Regulation (EC) No 2866/98 irrevocably fixed the conversion rates between the euro and the currencies of the 11 Member States adopting the euro on 1 January 1999 and was amended by Regulation (EC) No 1478/2000 in order to include the conversion rate between the euro and the Greek drachma. The ECB delivered Opinions CON/98/61 ⁽²⁾ and CON/00/12 ⁽³⁾ on Regulations (EC) Nos 2866/98 and 1478/2000, respectively.
4. The ECB generally welcomes codification of the *acquis communautaire*, and in particular in the field of economic and monetary union, which contributes to a clear, effective and workable legal framework.
5. The ECB is also pleased to note that the proposal for a regulation does not change the substance of Regulations (EC) Nos 2866/98 and 1478/2000. Considering that Regulation (EC) No 2866/98 has only been amended once to include the conversion rate of the Greek drachma, the ECB proposes deleting the word 'substantially' in recital 1 of the proposal for a regulation.
6. The ECB further notes that Regulations (EC) Nos 2866/98 and 1478/2000 were adopted with unanimity on the basis of the first sentence of Article 123(4) and Article 123(5) of the Treaty, respectively. In contrast, the proposal for a regulation is intended to be adopted on the basis of the third sentence of Article 123(4) of the Treaty. This provides that the Council, acting by a qualified majority, shall take the **other** measures necessary for the rapid introduction of the euro as a single currency. The ECB considers that these 'other measures' do not include measures on the conversion rates.
7. The ECB notes that codification is a procedure whereby the acts to be codified are repealed and formally replaced by a new single legal act ⁽⁴⁾. The ECB considers that the fact that codification is not intended to change the substance of the acts does not prevent the codifying act from being adopted on the legal basis required by the contents of the act. In view of paragraph 6 regarding the scope of the measures referred to in the third sentence of Article 123(4) of the Treaty, the ECB raises the question whether this provision constitutes an appropriate legal basis for codifying regulations on conversion rates, such as Regulations (EC) Nos 2866/98 and 1478/2000. Considering that Regulation (EC) No 2866/98 has only been amended once, an alternative solution might be to codify Regulations (EC) Nos 2866/98 and 1478/2000 when the next Council regulation is adopted on the basis of Article 123(5) of the Treaty, i.e. if and when the derogation of a non-euro area Member State is abrogated. If, for whatever (policy) reason, an immediate codification is required, then a more appropriate basis for adopting the codified regulation might be the first sentence of Article 123(4) of the Treaty, preferably in conjunction with Article 123(5) of the Treaty.

Done at Frankfurt am Main, 31 March 2004.

The President of the ECB

Jean-Claude TRICHET

⁽¹⁾ 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).

⁽²⁾ OJ C 412, 31.12.1998, p. 1.

⁽³⁾ OJ C 177, 27.6.2000, p. 11.

⁽⁴⁾ See Interinstitutional Agreement of 20 December 1994, paragraph 1 (OJ C 102, 4.4.1996, p. 2).