The ECB notes with concern that a Council Decision is being used to put in place an arrangement whereby the specific parts of Community law which it is, or will be, necessary to apply in Saint-Pierre-et-Miquelon and Mayotte in order for Economic and Monetary Union to function there are allowed to fall within the competence of France in accordance with Article 107 of the Treaty. The ECB understands that no obligation can be imposed on the ESCB to be carried out outside the Community is inconsistent with the independence of the ECB and the national central banks as laid down in Article 109(l) of the Treaty. The ECB notes that all those tasks which fall within the competence of France in order for Economic and Monetary Union to function in Saint-Pierre-et-Miquelon and Mayotte, circulate and have legal tender in these territories. As a measure necessary for the introduction of the euro in France, the draft Council Decision also aims to confer rights and impose obligations on the ECB and the national central banks, in particular the obligation to carry out monetary functions and operations of the European System of Central Banks (ESCB) in Saint-Pierre-et-Miquelon and Mayotte.

It may be questioned whether Article 109(l) of the Treaty provides a proper legal basis for extending the application of Community law relating to the introduction of the euro beyond the Community territory and for imposing obligations on the ECB and the national central banks to carry out functions and operations of the ESCB, as laid down in Chapter IV and Article 16 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the ‘Statute’), in Saint-Pierre-et-Miquelon and Mayotte. These territories are an integral part of France but do not form part of the Community. The Treaty, the Statute and secondary Community legislation do not apply immediately or directly in these territories. Article 105(2) of the Treaty, for example, confines the basic tasks of the ESCB, for example, to define and implement monetary policy, territorially to the Community. In addition, Article 109(l) creates obligations only in a part of the Community, namely the Member States having adopted the single currency. According to Community law, these overseas territories have a special status.

The ECB notes a clear contradiction between Article 6 and Article 3 of the draft Council Decision: while Article 6 points out that the Council Decision is addressed to France, Article 3 imposes obligations on the ECB and the national central banks. From a logical point of view, neither the ECB nor the national central banks can be bound by decisions addressed to France. From a legal point of view, a Council Decision addressed to the ESCB and the national central banks for the monetary functions and operations of the ESCB to be carried out outside the Community is inconsistent with the independence of the ECB and the national central banks as laid down in Article 107 of the Treaty. The ECB considers it vital for the specific application of the relevant Community law to be made in agreement with the ECB and the Commission of the European Communities.

The ECB notes that the Commission of the European Communities proposes to adopt the Council Decision without having a clear knowledge of the future status and role of the Institut d’Emission des Départements d’Outre-Mer (IEDOM), which France intends to reform, in time, in order to achieve compatibility with the tasks assigned to the ESCB by the Treaty and the Statute. The ECB notes that all those tasks which fall within the competence of the ESCB should be carried out exclusively through the ECB and the national central banks.

This very special case of the two French territorial communities should not create a precedent for other cases that may arise in the future.

This Opinion will be published in the Official Journal of the European Communities.

Done at Frankfurt on 30 December 1998.

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