

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 3 May 2001

at the request of the Council of the European Union on a Commission proposal for a Council regulation establishing a facility providing medium-term financial assistance for Member States' balances of payments

CON/2001/8

(2001/C 151/05)

1. On 29 March 2001 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 establishing a facility providing medium-term financial assistance for Member States' balances of payments (hereinafter referred to as the 'proposed Regulation'). The proposed Regulation would replace Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments⁽¹⁾.
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 Article 4(a) of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute') since the ECB is currently competent by virtue of Regulation (EEC) No 1969/88 and various Treaty provisions, as described below, to administer the loans which are the object of the proposed Regulation. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, this opinion has been adopted by the Governing Council of the ECB.
3. The ECB takes note of the reduction of the outstanding amount of loans to be granted under the facility from EUR 16 billion to EUR 12 billion in view of the reduced number of Member States eligible to benefit from such loans following the introduction of the single currency. The ECB assumes that in determining the amount of this reduction, the fact that a larger number of Member States will be in a position to benefit from the facility once current applicant countries have become members of the European Union has also been taken into account.
4. Article 11 of Regulation (EEC) No 1969/88 provides for the administration of the loans under the medium-term financial assistance facility by the European Monetary Cooperation Fund. Pursuant to Article 117(2) of the Treaty, upon the dissolution of the European Monetary Cooperation Fund at the start of the second stage of economic and monetary union, the tasks of the European Monetary Cooperation Fund, including the administration of the loans, were transferred to the European Monetary Institute (EMI). Pursuant to Article 123(2) of the Treaty, the ECB subsequently took over the administration of the loans from the EMI. The administration of such loans is in conformity with Article 21.2 of the Statute, which states that the ECB may act as a fiscal agent for specified entities, including Community institutions or bodies.
5. The ECB notes that the proposed Regulation would transfer the administration of these loans from the ECB to the European Commission. In this regard, the ECB would point out the following. First, administration of the medium-term financial assistance facility and previous facilities of this type has traditionally been carried out within the central bank framework. This has been the case since the introduction of the Community loan mechanism in 1975 (which was merged with the medium-term financial assistance mechanism into the single medium-term financial assistance facility for balance of payments support in 1988) and has served to emphasise the distinction between loans provided for balance of payments assistance and Community loans serving other purposes. Secondly, as indicated in Article 6 of the proposed Regulation, there is a direct link between the medium-term financial assistance facility and the very short-term financing facility of the ERM II Agreement in so far as loans under the medium-term financial assistance facility may be granted as a consolidation of support made available by the ECB under the very short-term financing facility.
6. In view of the above, the ECB considers that it would be appropriate for the ECB to continue the administration of loans under the medium-term financial assistance facility. If, however, the Council were to decide in favour of the proposal to transfer the administration of these loans to the Commission, the ECB would still need to be kept at all times fully informed as concerns payments carried out under the facility as well as the receipt and status of any requests for new loans. The need to be kept informed would arise in particular in the context of the granting of medium-term financial assistance as a consolidation of support given under the ERM II Agreement very short-term financing facility.

⁽¹⁾ OJ L 178, 8.7.1988, p. 1.

7. The ECB takes note of the possibility granted to the Commission in Article 1(2) *in fine* of the proposed Regulation to enter into debt and/or interest-rate swaps designed to transform the loans it may contract on the capital markets or with financial institutions to finance the loans granted under the medium-term financial assistance facility.

8. The second sentence of Article 11 of Regulation (EEC) No 1969/88 provides that 'The funds shall be paid only for the purposes indicated in Article 1'. The ECB notes that the equivalent Article (Article 10) of the proposed Regulation does not contain such a provision. With a view to ensuring maximum legal clarity, the ECB proposes to insert the text already used in Article 11 of Regulation (EEC) No 1969/88

by adding the following at the end of Article 10: 'The funds shall be paid only for the purposes indicated in Article 1'.

9. This opinion shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main on 3 May 2001.

The President of the ECB

Willem F. DUISENBERG
