

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 11 March 2011

on a recommendation for a Council decision on the arrangements for the negotiation of a monetary agreement with the French Republic, acting for the benefit of the French overseas collectivity of Saint-Barthélemy

(CON/2011/22)

(2011/C 213/06)

Introduction and legal basis

On 10 March 2011, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a recommendation for a Council decision on the arrangements for the negotiation of a monetary agreement with the French Republic, acting for the benefit of the French overseas collectivity of Saint-Barthélemy ⁽¹⁾ (hereinafter 'the draft decision').

The ECB's competence to deliver an opinion is based on Article 219(3) of the Treaty on the Functioning of the European Union. 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.

General observations

1. Although the final responsibility for decisions on the conclusion of monetary agreements with third countries lies with the EU Council, the ECB would not encourage the overseas countries and territories (OCTs) associated with euro area Member States to introduce the euro as their official currency. In the case of Saint-Barthélemy, the ECB has no objections to the draft decision, given that Saint-Barthélemy, which is part of France, has been using the euro since 1999. In order to accommodate France's intention that the euro be maintained in Saint-Barthélemy after 1 January 2012, when this collectivity will cease to be part of the territory of the EU ⁽²⁾, a solution addressing the changed circumstances is necessary under EU law. Against this background, the conclusion of a monetary agreement with the French Republic, acting for the benefit of Saint-Barthélemy, is a satisfactory solution, because it would enable France to continue to apply to Saint-Barthélemy the necessary EU law provisions needed for the use of the single currency in the following areas: monetary, banking and financial legislation; measures necessary for the use of the euro; the prevention of money laundering and the prevention of fraud and counterfeiting of cash and non-cash means of payment; rules on medals and tokens and on statistical reporting requirements.
2. From the scope of the mandate for negotiations set out in the draft decision, the ECB understands that, unlike the agreements concluded with third countries such as the Principality of Monaco, the

⁽¹⁾ SEC(2011) 249 final.

⁽²⁾ Article 3 of European Council Decision of 29 October 2010 amending the status with regard to the European Union of the island of Saint-Barthélemy, OJ L 325, 9.12.2010, p. 4.

Principality of Andorra, the Republic of San Marino and the Vatican City State, this monetary agreement does not authorise Saint-Barthélemy to issue its own euro coins. Whilst the ECB welcomes this approach, this should be made explicit for reasons of legal certainty and transparency, at least in the preamble of the draft decision.

3. The ECB reiterates that any transfers, including specific financial assistance for banks and other financial institutions, which are needed to maintain or restore financial stability in Saint-Barthélemy, shall be borne by the Treasury of the French Republic.
4. The ECB understands that all the tasks falling within the Eurosystem's competence, including monetary policy operations and the collection of statistics, will be carried out by the Banque de France via the Institut d'Émission des Départements D'Outre-mer (IEDOM).
5. The ECB also understands that the monetary agreement does not intend financial institutions located in Saint-Barthélemy to have direct access to payment and settlement systems within the euro area and that any such connection will continue to be made via the respective French authorities.
6. The ECB is of the firm view that its role in negotiating monetary agreements with an OCT should be precisely the same as its role negotiating monetary agreements with third countries. Against this background, the text of the draft decision should clearly and unambiguously provide that the ECB's agreement is required on issues falling within its field of competence.
7. The ECB notes that several important issues are not covered by the draft decision and these should be addressed as follows:
 - 7.1. In other monetary agreements, the Court of Justice of the European Union is the body in charge of settling disputes which may arise from such agreements. The draft decision should make it clear that the same arrangement applies in this case. The ECB considers that the Court of Justice's jurisdiction over this type of agreement is not obvious and it refers specifically to several Court opinions where the Court has drawn a clear distinction between agreements entered into by Member States and agreements entered into by Member States responsible for their dependent territories, i.e. not acting in their capacity as Member States ⁽¹⁾.
 - 7.2. One of the most important elements of this monetary agreement should be the need to guarantee the continuous application to Saint-Barthélemy of relevant present and future EU legal acts with immediate direct effect, e.g. regulations. The ECB understands that France intends to address this issue by means of amendments to the relevant French organic law.

The ECB notes that, unlike other monetary agreements, the draft decision does not provide for the creation of a joint committee responsible for assessing progress on legislative amendments. The ECB considers that the lack of any such body in which the EU, as one of the signatories to the agreement, participates and monitors the due application of the relevant EU acquis in the OCT, is unsatisfactory, particularly where a local banking system is using the euro. The ECB considers it vital for the specific application of a relevant EU law to be made in agreement with the Commission and the ECB ⁽²⁾, for example by including the relevant EU and ECB legal acts in an annex to the monetary agreement and publishing such annex and its amendments in the *Official Journal of the European Union*. Alternatively, the draft decision should require France to inform the ECB prior to the adoption of legal acts addressed to Saint-Barthélemy in case they fall within the ECB's fields of competence. In addition, there should be a right for EU institutions to request information on such legal acts from France.

⁽¹⁾ Opinion 1/78, paragraph 62 and Opinion 1/94 paragraph 17: 'the territories in question, in so far as they remain outside the ambit of the EEC Treaty, are, as regards the Community, in the same situation as non-member countries. Consequently, it is in their capacity as the States responsible for the international relations of their dependent territories which are outside the scope of Community law, and not as Member States of the Community, that the States responsible for those territories are called upon to participate in the agreement.'

⁽²⁾ See also Opinion at the request of the Council of the European Union under Article 109l(4) of the Treaty establishing the European Community on a proposal for a Council decision concerning the monetary arrangements in the French territorial communities of Saint-Pierre-et-Miquelon and Mayotte, OJ C 127, 7.5.1999, p. 5.

- 7.3. The ECB understands that, upon Saint-Barthélemy's change of status on 1 January 2012, it will no longer be covered by otherwise directly applicable provisions of EU law enabling the relevant EU bodies, such as Europol, to act in the fight against the counterfeiting of euro banknotes. This issue also needs to be addressed in the monetary agreement, hence the draft decision should mandate the EU to include such a provision in the monetary agreement.

Where the ECB recommends that the proposed decision is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 11 March 2011.

The President of the ECB
Jean-Claude TRICHET

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
Amendment 1	
Recital 6	
<p>(6) A monetary agreement should therefore be negotiated between the European Union and the French Republic, acting for the benefit of the French overseas collectivity of Saint-Barthélemy, with a view to ensuring the continuous application to Saint-Barthélemy of the relevant EU legislations.'</p>	<p>(6) A monetary agreement should therefore be negotiated between the European Union and the French Republic, acting for the benefit of the French overseas collectivity of Saint-Barthélemy, with a view to ensuring the continuous application to Saint-Barthélemy of the relevant EU legislations. The ECB should be associated to this negotiation and its agreement is required on issues falling within its fields of competence.'</p>
<i>Explanation</i>	
<p>See explanations to amendment 5.</p>	
Amendment 2	
Recital 7	
<p>New recital.</p>	<p>(7) The negotiation mandate does not seek to allow or in any way grant the overseas collectivity of Saint-Barthélemy the right to mint or issue its own euro coins. The current situation, in this respect, will be maintained as regards use of euro coins.'</p>
<i>Explanation</i>	
<p>See paragraph 2 of this opinion. The ECB considers that legal certainty and transparency with regard to this matter are particularly important given that this is the first monetary agreement covering an OCT territory and the agreement may therefore set a precedent.</p>	
Amendment 3	
Article 1(d)	
<p>New provision.</p>	<p>(d) The French Republic shall be under an obligation to ensure correct and full application of otherwise directly applicable EU and ECB legal acts to Saint-Barthélemy, and supervision of their application will remain the responsibility of the French authorities, who shall keep the Commission and the ECB fully informed at the same time.'</p>
<i>Explanation</i>	
<p>See paragraph 7.2 of this opinion.</p>	
Amendment 4	
Article 1(e)	
<p>New provision.</p>	<p>(e) The monetary agreement shall extend the application of Council Decision of 6 April 2009 establishing the European Police Office (Europol) (*) to Saint-Barthélemy as regards euro banknote counterfeiting.</p> <p>(*) OJ L 121, 15.5.2009, p. 37.'</p>

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
<i>Explanation</i>	
<i>See paragraph 7.3 of this opinion. The ECB considers that France may not unilaterally extend the geographic scope of Europol's tasks and competences protecting the integrity of euro banknotes.</i>	
Amendment 5	
Article 2	
<p>'The Commission shall conduct the negotiation with the French Republic, acting for the benefit of the French overseas collectivity of Saint-Barthélemy. The ECB shall be fully associated with the negotiations and agree on issues falling within in its field of competence.'</p>	<p>'The Commission shall conduct the negotiation with the French Republic, acting for the benefit of the French overseas collectivity of Saint-Barthélemy. The ECB shall be fully associated with the negotiations and its agreement shall be required on issues falling within in its field of competence.'</p>
<i>Explanation</i>	
<i>This clear and unambiguous wording regarding the ECB's role has been used in several Council decisions on negotiation mandates and within monetary agreements themselves. The most recent example is Article 3 of Council Decision on the arrangements for the renegotiation of the Monetary Agreement between the Government of the French Republic, on behalf of the European Community, and the Government of His Serene Highness the Prince of Monaco (not yet published in the Official Journal).</i>	
Amendment 6	
New Article 3	
No provision.	<p>'The Court of Justice of the European Union shall be designated in the monetary agreement as having jurisdiction to settle disputes which may arise in the interpretation and application of the agreement.'</p>
<i>Explanation</i>	
<i>See paragraph 7.1 of this opinion.</i>	
<p>⁽¹⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.</p>	