



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 20 April 2004

at the request of the French Ministry of Economic Affairs, Finance and Industry
on a draft decree concerning negotiable debt securities

(CON/2004/15)

1. On 15 March 2004 the European Central Bank (ECB) received a request from the French Ministry of Economic Affairs, Finance and Industry for an opinion on a draft decree concerning negotiable debt securities (hereinafter the 'draft decree').
2. The ECB's competence to deliver an opinion is based on the third, fourth and sixth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft decree concerns a national central bank, statistics and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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.
3. Article 36 of the French Law No 2003-706 of 1 August 2003 on financial security² (hereinafter the 'Law') amended Articles L. 213-3 and L. 213-4 of the Monetary and Financial Code (hereinafter the 'Code') which concern the regime applicable to the issue of negotiable debt securities (*titres de créances négociables*, TCN). The draft decree implements these two articles of the Code and amends Decree No 92-137 of 13 February 1992 on negotiable debt instruments³ (hereinafter the 'Decree'). In its opinion of December 2002 on a draft version of the Law⁴, the ECB welcomed the French authorities' aim of modernising and simplifying some of the rules applicable to the TCN market. For instance, the obligation imposed on TCN corporate issuers to prove that they had existed for two years was repealed while the applicable language regime for issuers when submitting the financial documentation was relaxed. Furthermore, the Law extended the capacity to issue TCN to, *inter alia*, local authorities, States, certain types of associations and securitisation funds.

1 OJ L 189, 3.7.1998, p. 42.

2 *Official Journal of the French Republic*, No 177, 2 August 2003.

3 *Official Journal of the French Republic*, No 32, 14 February 1992.

4 CON/2002/32, 18 December 2002.

4. The draft decree is intended to further clarify the conditions of application of Articles L. 213-3 and L. 213-4 of the Code as well as the responsibilities of the Banque de France concerning the TCN market. TCN must have a value per unit of at least EUR 150 000⁵. Under the terms of Article 4(c) of the 'COB' Regulation No°98-08 regarding public offerings of financial instruments⁶, there is no obligation to produce a simplified prospectus for public offerings of financial instruments when their value is at least 150 000 EUR. However, according to the proposed amendment to Article 8 of the Decree, TCN issuers must submit financial documentation to the Banque de France (which contains, *inter alia*, an information memorandum). The ECB also notes that non-supervised entities (i.e. entities which are not credit institutions, investment firms or insurance companies) the securities of which are not admitted to trading on a regulated market must provide a rating of their issue programme or be guaranteed by a guarantor benefiting from such a rating (proposed amendment to Article 6 of the Decree). These arrangements do not give rise to any specific remarks from the ECB.
5. As regards the language regime, the financial documentation may be submitted in English provided that it is accompanied by a summary in French for which the issuer is responsible when the TCN are privately placed with qualified investors, or when they may only be subscribed to or acquired for at least the equivalent of EUR 50 000 (proposed amendment to Article 12 of the Decree). The requirement of submitting the relevant financial information according to French accounting standards has been abolished by the draft decree. The ECB also notes that the information memoranda (including any summary) will be made available on the Banque de France's website (proposed amendment to Article 14 of the Decree). The ECB welcomes these provisions. The ECB also understands that these provisions aim to enlarge the investor base and increase the transparency of the TCN market. In addition, these amendments correspond to some of the recommendations contained in the final report of the Euribor-ACI Short-Term European Paper Task Force⁷ aimed at encouraging the convergence of the heterogeneous market standards and practices that currently prevail in the segmented European short-term markets.
6. The proposed amendment to Article 8 of the Decree provides that the Banque de France may request additional information from a TCN issuer where a particular situation so justifies. The proposed amendment to Article 16 of the Decree further provides that TCN issuers shall provide the Banque de France with statistical information concerning their securities under conditions determined by a ministerial order. The Ministerial Order of 31 December 1998 indicates in this respect that TCN issuers shall provide the Banque de France with information on the characteristics of each issue as well as on the daily outstanding value of the securities issued. The ECB is of the

⁵ See the Ministerial Order of 31 December 1998 laying down the conditions which must be fulfilled by issuers of negotiable debt securities, *Official Journal of the French Republic*, No 2, 3 January 1999.

⁶ *Official Journal of the French Republic*, No 51, 2 March 1999.

⁷ The ACI-Financial Markets Association released the final report of the Euribor-ACI Short-Term European Paper Task Force on 10 March 2004. This report is available at www.aciforex.com.

view that the allocation of ISIN⁸ codes to securities issued and references to MFI⁹ codes if securities are issued by credit institutions constitute useful information for statistical purposes. It should be added that Article 15 of the Decree provides that TCN may be issued in a foreign currency and that the Banque de France may however decide to temporarily suspend issue of securities denominated in a given foreign currency for ‘monetary regulation reasons’. The ECB notes that this reference to ‘monetary regulation reasons’ dates back to 1992, i.e. a time when the Eurosystem did not exist and competencies concerning monetary matters had not yet been transferred to the ECB. However, since such a reference may now, after the establishment of the Eurosystem and the introduction of the euro, raise questions as to its meaning, the ECB would recommend replacing the expression ‘*for monetary regulation reasons*’ with ‘*if the circumstances so justify*’.

7. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB’s website six months after the date of its adoption.

Done at Frankfurt am Main on 20 April 2004.

The President of the ECB

Jean-Claude TRICHET

⁸ International securities identification number.

⁹ Monetary financial institution.