



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK**of 13 February 2004****at the request of the French Ministry of Economic Affairs, Finance and Industry
on a draft article of a Finance Law****(CON/2004/6)**

1. On 29 December 2003 the European Central Bank (ECB) received a request from the French Ministry of Economic Affairs, Finance and Industry for an opinion on a draft article to be incorporated in a Finance Law (hereinafter the "draft article"). On 19 January 2004, the French authorities communicated the wording of the draft article to the ECB.
2. The ECB's competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty establishing the European Community, the second indent of Article 4(a) of the Statute of the European System of Central Banks and of the European Central Bank, and on the third indent 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 article concerns a guarantee in respect of exchange losses granted by the French State to the Banque de France. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.
3. In the context of managing the State's exchange reserves in gold and foreign currencies with which it is entrusted by Article L. 141-2 of the Monetary and Financial Code, the Banque de France enjoys a State guarantee in respect of the exchange losses it could suffer if the State's foreign currencies revaluation reserves and the State's gold revaluation reserves are insufficient. Article 2(2) of the Agreement of 31 March 1999 between the State and the Banque de France on the management and accounting of the State's exchange reserves, as amended (hereinafter the "Agreement"), expressly provides for this guarantee as follows: "in the event that the State's gold revaluation reserves are insufficient, the losses shall be covered by Treasury support before settlement of the Banque de France's accounts".
4. The draft article provides that "the State shall be authorised, within the meaning of Article 61 of Organic Law No 2001-692 of 1 August 2001 on Financial Acts, to cover exchange losses suffered by the Banque de France under the conditions laid down in Article L. 141-2 of the Monetary and Financial Code as provided by the Agreement of 31 March 1999 as amended between the State and

¹ OJ L 189, 3.7.1998, p. 42.

the Banque de France". The ECB understands that the concept of "exchange losses" in the draft article covers the first and second paragraphs of Article 2 of the Agreement which refer to reserves in foreign currencies and reserves in gold.

5. The ECB notes that the inventory of the guarantees to be expressly authorised by the French Parliament in a finance law, in accordance with Article 61 of the Organic Law, aims to raise the French Parliament's awareness of the State's obligations "off balance sheet" and to contribute to the desired increase in transparency of public finances. The ECB welcomes this legitimate objective of the French authorities. The EMI observed in its Opinion CON/98/12 of 13 March 1998 on the Statute of the Banque de France that "the Banque de France's activities (...) are governed by the Treaty and by the Statute as well as the legal acts adopted by the ECB in this respect. Whilst it is assumed that the above Agreement leaves the Bank every freedom not to accept any procedures which might infringe on ESCB-related obligations, references to national rules, which may hinder the Bank's independence and status as an integral part of the ESCB, must be deleted if the above procedures could have such an effect (...)". The ECB understands that the present arrangement will not raise any concern in this respect.
6. The ECB would appreciate receiving for prior examination any subsequent amendments to the draft article, and being informed of any substantial change to the Agreement.
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 13 February 2004.

[signed]

The President of the ECB

Jean-Claude TRICHET