



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 October 2005

at the request of the French Financial Markets Authority
on draft amendments to its General Regulation

(CON/2005/40)

1. On 22 September 2005 the European Central Bank (ECB) received a request from the *Autorité des marchés financiers* (AMF) (French Financial Markets Authority) for an opinion on draft amendments to its *Règlement Général* (General Regulation) (hereinafter the 'draft amendments'). The draft amendments will simplify the rules applicable to the transfer of ownership of financial instruments admitted to the operations of a central depository or settled through a settlement system.
2. The ECB's competence to deliver an opinion is based on the fifth 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 amendments relate to payment and settlement systems 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. The ECB was consulted in 2004 by the French Ministry of Economic Affairs, Finance and Industry² on a draft order which contained certain draft amendments to Articles L.431-2 and L.431-3 of the Monetary and Financial Code (hereinafter the 'Code') concerning rules on the transfer of ownership of financial instruments³. Article L.431-2 of the Code provides as a principle that 'the transfer of ownership of financial instruments ... occurs on its entry in the purchaser's account, on the date and subject to the conditions defined by the General Regulation of the AMF'. The draft amendments⁴, on which the ECB is now consulted, will define such conditions⁵.

¹ OJ L 189, 3.7.1998, p. 42.

² ECB Opinion CON/2004/22 of 15 June 2004 at the request of the French Ministry of Economic Affairs, Finance and Industry on certain provisions of a draft order reforming transferable securities issued by joint-stock companies.

³ Order No 2005-303 of 31 March 2005 (*Official Journal of the French Republic* No 76, 1 April 2005) amending Articles L.431-2 and L.431-3 of the Code was ratified by Law No 2005-811 of 20 July 2005 (*Official Journal of the French Republic*, No 168, 21 July 2005).

⁴ General Regulation, Book V on market infrastructures, Title VI. This Title is provisionally entitled 'Transfer of ownership of financial instruments - Date and conditions of the entry of financial instruments in the purchaser's account'.

⁵ In its opinion CON/2004/22 of 15 June 2004, the ECB stressed that 'the ECB may review its position ... once it has comprehensively assessed the implementing measures contained in the AMF's General Regulation'.

4. The ECB notes that, under the draft amendments, the entry in the purchaser's account will take place on the date of the actual finalisation of the trade, as indicated in the rules governing the functioning of the settlement and delivery system, when the account of the purchaser's custodian or of the custodian's agent is credited on the books of the central depository⁶. The ECB understands that, with the exception of certain situations expressly provided for in the General Regulation⁷, the date of the finalisation of the trade and, simultaneously, of the entry in the account will be three trading days following the date of execution of the orders.
5. As mentioned in its previous opinion, the ECB welcomes the French authorities' aim of simplifying the existing transfer of ownership regimes for financial instruments and the abolition of the distinction between transactions on and outside regulated markets thus avoiding a potential source of distortion. It is fundamental to the creation and functioning of a safe, efficient and integrated EU clearing and settlement infrastructure to have clear and harmonised rules on transfer of ownership, and in particular concerning the moment of transfer of financial instruments held with central securities depositories. Against this background, the ECB welcomes the fact that the draft amendments will further clarify the applicable rules in this field. In this respect, the ECB fully shares the view of the European Commission, which has identified the rules regarding the transfer of ownership of financial instruments as one of the core legal issues to be addressed by the newly established Legal Certainty group⁸.
6. The ECB notes that the objective of the French reform is to 'align systems of settlement of financial instruments with international standards' and 'to define a single regime for the transfer of property ... by providing that the transfer of property takes place at the time of finalisation of the operations, i.e. in practice three days after the trade'⁹. The rules laid down in the draft amendments are in line with the draft standards proposed by the European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR), which retain T+3 settlement as the current European 'minimum standard', implying that final settlement should occur no later than T+3¹⁰.
7. According to the draft Article 560-5 of the General Regulation, the rules governing the functioning of a market or a multilateral trading facility may provide that, for certain types of transactions, the date on which entries are to be made in the purchasers' accounts is 'other than three trading days following the transaction date'. The ECB understands that this provision is intended to cover settlement cycles shorter than three trading days. The ECB notes however that, as currently drafted, Article 560-5 could also cover settlement cycles longer than three trading days. It is noted in this

⁶ General Regulation, draft Article 560-1.

⁷ General Regulation, draft Articles 560-3 to 560-8 and Article 332-65.

⁸ Communication from the Commission to the Council and the European Parliament of 28 April 2004 entitled 'Clearing and Settlement in the European Union – The way forward', COM(2004) 312 final, p. 25.

⁹ Explanatory report to Order No 2005-303 of 31 March 2005 addressed to the President of the French Republic (*Official Journal of the French Republic*, No 76, 1 April 2005).

¹⁰ 'Standards for securities clearing and settlement in the European Union, September 2004 report'. Standard 3: Settlement cycles and operating times, pp. 11 and 23.

respect that the draft ESCB/CESR standards recommend further harmonisation of settlement cycles across markets in order to reduce fragmentation of the EU securities markets, and an evaluation of whether a settlement cycle shorter than T+3 is appropriate for certain securities. The ECB therefore suggests amending the above provision to state that the rules governing the functioning of a market or a multilateral trading facility may provide that, for certain types of transactions, the date on which entries are to be made in the purchasers' accounts is 'less than three trading days following the transaction date'.

8. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 28 October 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET