



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 14 February 2008**

**at the request of the French Ministry for Economic Affairs, Finance and Employment  
on a draft order on the application of the Monetary and Financial Code to Saint-Martin and Saint-  
Barthélemy  
(CON/2008/8)**

### **Introduction and legal basis**

On 18 December 2007, the European Central Bank (ECB) received a request from the French Ministry for Economic Affairs, Finance and Employment for an opinion on a draft order issued pursuant to Article 19 of Law No 2007-224 of 21 February 2007 on statutory and institutional measures for overseas (hereinafter the 'draft order').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the first and third 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 provisions<sup>1</sup>, as the draft order relates to currency matters and 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 has adopted this opinion.

### **1. Purpose of the draft order**

A French organic law<sup>2</sup> (hereinafter the 'Organic Law') has transformed Saint-Barthélemy and Saint-Martin, previously two municipalities of the French overseas department of Guadeloupe<sup>3</sup>, into 'overseas collectivities'<sup>4</sup> (hereinafter the 'two collectivities'). The draft order introduces the legislative measures required to adapt the French Monetary and Financial Code (hereinafter the 'Code') following this change of status. The draft order inserts a reference to the two collectivities in the provisions of the Code which previously only referred to overseas departments. In particular, the provision of the Code concerning the territorial scope of issue of euro banknotes<sup>5</sup> is amended so as to allow the Banque de France to issue euro

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> Organic Law No 2007-223 of 21 February 2007 (hereinafter the 'Organic Law').

<sup>3</sup> The department of Guadeloupe is governed by Article 73 of the French Constitution.

<sup>4</sup> Governed by Article 74 of the French Constitution.

<sup>5</sup> Article L.141-5 of the Code, as amended.

banknotes as legal tender in the two collectivities. In addition, another amendment of the Code<sup>6</sup> aims at confirming that the monetary regime for the two collectivities remains unchanged and that the Banque de France remains competent in the two collectivities to carry out the tasks entrusted to it by virtue of its membership of the European System of Central Banks. The Institut d'Émission des Départements d'Outre-Mer continues to act in the two collectivities in the name, on behalf of and under the authority of the Banque de France.

## **2. General observations**

- 2.1 The explanatory memorandum to the draft order<sup>7</sup> states that ‘in the absence of a decision by the European authorities to include [the two collectivities] in the OCTs [i.e. overseas countries and territories enjoying a special ‘association’ status<sup>8</sup>], they continue to be governed by Community law.’ The ECB also understands that the two collectivities, despite their change of status under French law and as long as they do not become OCTs, will continue to be an integral part of the Community. Thus, they will continue to be governed by Community law, including directly applicable Community legal acts such as Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro<sup>9</sup>. Moreover, the ECB is aware that following the change to the status of the two collectivities, French law, and in particular the Code and its provisions transposing Community legislation, continues to apply automatically<sup>10</sup> in the two collectivities<sup>11</sup>. The ECB therefore understands that the change to the status of the two collectivities under French law does not affect the monetary regime applicable to them.
- 2.2 The ECB notes in this context that the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, which was signed on 13 December 2007, replaces the words ‘the French overseas departments’ currently used in Article 299(2) of the Treaty by ‘Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin’<sup>12</sup>. The ECB welcomes this clarification, which confirms that the two collectivities will remain subject to Union law<sup>13</sup> once the Treaty of Lisbon has entered into force following its ratification.
- 2.3 It cannot be excluded that in future either or both of the two collectivities will ask for a change of status under French and Union law in order to obtain OCT status. The ECB understands that, to this date, such a change of status is foreseen in the Organic Law only for Saint-Barthélemy and that no formal step has been taken in this direction so far. Such change of status under Union law will be

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<sup>6</sup> Article L.711-1 of the Code, as amended.

<sup>7</sup> Explanatory memorandum to the draft order, p. 1.

<sup>8</sup> Provided for under Part Four of the Treaty.

<sup>9</sup> OJ L 139, 11.5.1998, p. 1.

<sup>10</sup> Pursuant to Articles LO 6213-1 and LO 6313-1 of the French General Code for Regional and Local Authorities, respectively.

<sup>11</sup> As was the case when the two collectivities were part of Guadeloupe.

<sup>12</sup> New Article 311a of the Treaty on the Functioning of the European Union.

<sup>13</sup> Under the Treaty of Lisbon, the Community ceases to exist, hence the use of the expression ‘Union law’.

facilitated by the Treaty of Lisbon, once it enters into force following its ratification, as a new provision is added, pursuant to which ‘the European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union, of a Danish, French or Netherlands country or territory<sup>14</sup>.’ The ECB emphasises that, should OCT status be considered in future for either or both of the two collectivities, the issue of the applicable monetary regime would have to be addressed. In particular, the need for a specific decision regarding the monetary regime would have to be considered in view of the fact that the collectivity in question would cease to belong to the Union and to be subject to its laws.

Done at Frankfurt am Main, 14 February 2008.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<sup>14</sup> The European Council shall act unanimously after consulting the Commission; new Article 311a of the Treaty on the Functioning of the European Union.