



EUROPEAN MONETARY INSTITUTE

## OPINION OF THE EUROPEAN MONETARY INSTITUTE

**at the request of the French Ministry of Finance concerning various articles of a draft law on the issuance and putting into circulation of banknotes and coins in the territorial collectivities of Mayotte and Saint-Pierre-et-Miquelon, and on the protection of payment and securities settlement systems**

(CON/98/09)

1. On 4 February 1998, the EMI received a request for an opinion concerning various articles of a draft law on the issuance and putting into circulation of banknotes and coins in the overseas territories of Mayotte and Saint-Pierre-et-Miquelon, and on the protection of payment and securities settlement systems from the French Ministry of Finance. An explanatory memorandum was also submitted for each article to the EMI. This opinion is based on an English translation of the official draft submitted to the EMI by the consulting authority.
2. The EMI's competence to deliver an opinion is based on Article 1.1, first, second and fourth indents, of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions.
3. The EMI takes note, without any objections, of the proposed provisions of Article 19 of the draft law relating to the changeover to the euro in connection with the financial markets, payment systems and securities settlement systems, implementing some provisions of Article 8(4) of the draft EU Council regulation on the introduction of the euro.
4. With reference to Article 20 of the draft law, the EMI welcomes the proposal to extend to the securities settlement systems the provisions already applying under French law to payment systems prohibiting the bankruptcy administrator or liquidator from challenging the payments made by a participant on the day of the opening of such proceedings by a court and on such grounds. Although the provisions of the second paragraph of Article 93-1 are already protective, it could be considered whether the wording of the first paragraph of Article 93-1 is precise enough to indicate that in the framework of securities settlement systems, not only the payment but also the transfer of financial instruments cannot be challenged. The EMI also welcomes the legislative proposal to apply such provisions to the payment and deliveries orders once they have become irrevocable within a payment system or securities settlement system. The EMI feels

that these provisions as well as the introduction of Article 93-2 will improve the smooth and efficient functioning of payment systems and securities settlement systems.

5. The EMI welcomes the proposed wording of Article 20 of the draft law, paragraph III, of the draft law granting supervisory powers to the Conseil des Marchés Financiers over central securities depositories and over the safekeeping and administration of financial instruments. It also welcomes that the competencies vested in the Conseil des Marchés Financiers with regard to the general organisation and operating rules of the securities settlement systems is without prejudice to the powers of the Banque de France concerning payment systems. However, the EMI considers convenient that a reference to Article 22 of the Statute of the European System of Central Banks and of the European Central Bank is included in the new paragraph 16 of the Financial Activity Modernisation Law no 96-597 of 2 July 1996.
6. The EMI welcomes the provisions of Article 21 of the draft law aiming at enabling intra-day repurchase agreements in the system RGV (Relit Grande Vitesse) and defining in connection therewith the moment of transfer of ownership; this will improve and secure the functioning of such system.
7. With regard to the provisions of Article 34 of the draft law concerning Mayotte and Saint-Pierre et Miquelon, and taking into consideration the explanatory memorandum relating to this Article, the EMI draws the attention of the consulting authority to the following points:
  - (a) As from 1 January 1999, the currency of the Member States participating in EMU will be the euro and the definition and implementation of the monetary policy within the euro area will be transferred to the European System of Central Banks (ESCB). The French overseas departments will be part of the euro area and the EU Council regulation on the introduction of the euro will apply to these territories. The IEDOM is the public institution of the Republic of France responsible for putting in circulation banknotes and coins and supplying liquidity to entities and persons in the French overseas departments. However, the IEDOM is not an NCB nor is it vested with the requirements that the Treaty requires for NCBs. Therefore, a first issue which will need to be clarified concerns the compatibility of the current institutional framework for monetary matters in the overseas departments with the principle of singleness of the monetary policy throughout the euro, should France adopt the single currency. The EMI cannot fail to signal this issue when considering a draft law that extends the jurisdiction of the IEDOM to Mayotte.
  - (b) The territorial collectivities of Mayotte and Saint-Pierre et Miquelon are not “French overseas departments” and thus the EU Council regulation on the introduction of the euro will not apply to them. The draft French law modifies the geographic scope of the draft EU Council

regulation on the introduction of the euro by extending its effects outside the Community. It is questionable whether this pertains to the competencies of a single Member State or whether this need to be authorised by the Community, as recipient of the monetary powers of the participating Member States. It is noted that Article 109(3) of the Treaty would not be suited for the purpose of establishing a monetary regime for those territories, which are neither sovereign States nor have a currency of their own. It is also noted that Protocol (No 13) does not apply to Mayotte and Saint-Pierre et Miquelon. There is, therefore, a normative *lacuna* in the Treaty for the specific situation of these two territorial collectivities, for the solution of which the EMI is deprived of appropriate competencies.

The EMI has no objection to this opinion being made public by the consulting authority.

19 February 1998