



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 November 1999

**at the request of the Ministry of Finance of the Grand Duchy of Luxembourg
on a draft legislative proposal concerning the contractual obligations of the financial sector
which are due on 31 December 1999**

(CON/99/17)

1. On 26 October 1999 the European Central Bank (ECB) received a request from the Ministry of Finance of the Grand Duchy of Luxembourg for an ECB Opinion on a draft legislative proposal concerning the contractual obligations of the financial sector which are due on 31 December 1999.
2. The ECB's competence to deliver an opinion is based on Article 105 (4), second indent, of the Treaty establishing the European Community and Article 2 (1), fifth and sixth indents, of the Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (98/415/EC), as the legislative proposal deals with payment and settlement systems, as well as with the stability of financial institutions and markets. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, this ECB Opinion has been adopted by the Governing Council of the ECB.
3. Following the conclusions of the informal meeting of the ECOFIN Council on 16 to 18 April 1999 on ways of dealing with possible problems during the changeover to the year 2000, the Ministry of Finance has prepared a draft legislative proposal. The purpose of this draft legislative proposal is to facilitate the transition to the year 2000 for the financial sector. The scope of application of the draft legislative proposal is broadly defined. The obligations covered by the draft legislative proposal include obligations of the financial sector, as well as of other obligors which use financial intermediaries, falling due on 31 December 1999. The draft legislative proposal takes into consideration the fact that TARGET will be closed on 31 December 1999 in order to facilitate the end-of-year activities of the financial sector in relation to the transition to the year 2000.

4. In order to address these legal consequences, the draft legislative proposal stipulates that principal and accessory contractual obligations of the financial sector falling due on 31 December 1999 shall be performed on 30 December 1999. In addition, Article 1, section 2, of the draft legislative proposal clarifies that other obligors whose contractual obligations are performed by means of a financial institution shall not be in breach of contract because such obligations cannot be performed on 31 December 1999. Such obligors may discharge their responsibilities on the first working day after 31 December 1999. This protection means, for transactions subject to the legislation of Luxembourg, that neither the clients, the credit institutions nor other financial intermediaries shall be liable for possible losses suffered by creditors on account of this late performance. Contractual parties are, however, free to agree on other solutions *inter se*. First, the draft legislative proposal declares valid those contracts concluded by counterparties to execute performances due on 31 December 1999 on a day other than 30 December 1999. Second, counterparties may, after the introduction of the legislative proposal, opt to maintain 31 December 1999 as a performance day, provided that the financial intermediary which is to be used consents to such performance.

5. The ECB welcomes the effort made by the authorities of the Grand Duchy of Luxembourg to reduce the legal uncertainty which might result, under the legislation of Luxembourg, from the closure of payment and securities settlement systems on 31 December 1999. The legislative proposal takes into account the “Communiqué of the central bank governors, endorsed by ECOFIN Ministers at their informal meeting”, issued after the informal meeting in Dresden on 17 April 1999, which urged the Member States to take appropriate measures to ensure that the performance of any contractual obligations of credit institutions or other agents in the financial markets shall neither become due nor be enforceable on 31 December 1999. The ECB also notes that by shifting the performance of the said obligations to 30 December 1999, the draft legislative proposal limits the number of transactions in the first week of the year 2000. This is in line with international advice. In doing so, the ECB finds that the draft legislative proposal could contribute to maintaining the stability of financial institutions and markets during the changeover to the year 2000.

6. Banque centrale du Luxembourg has one comment suggesting that with respect to overnight credits the settlement date be postponed until 3 January 2000. The ECB has no objection to that suggestion.

7. The ECB confirms that it has no objection to this ECB Opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 25 November 1999.

The President of the ECB
[signed by C. Noyer]

Willem F. Duisenberg