



EUROPEAN CENTRAL BANK

EUROSYSTEM

Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions

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Council Decision 98/415/EC of 29 June 1998 on the consultation of the
European Central Bank by national authorities regarding draft
legislative provisions

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Foreword

For many years the *Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions* has served as a useful tool for national authorities and the general public. The Treaty on the Functioning of the European Union requires Member States to seek the advice of the European Central Bank (ECB) on draft legislative provisions falling within the ECB's fields of competence. The Guide gives detailed information on the process by which national authorities consult the ECB on draft legislative provisions that deal with matters falling within the ECB's fields of competence. It has become necessary to update the Guide, which was first published in 2005 and updated in 2015, to reflect the latest experience of the ECB with such consultations, also with the benefit of a decade's experience since the establishment of the Single Supervisory Mechanism (SSM) in 2014. As with all other ECB publications, this Guide expresses the ECB's commitment to the principles of openness and transparency and contributes to making the ECB's aims and activities more widely known.

The ECB has therefore updated this Guide to inform and assist national authorities concerning the obligation to consult the ECB, based on the ECB's most recent practice. To this end, the Guide explains the objectives and the scope of the obligation to consult the ECB and clarifies the procedure to be followed. The Guide cannot, however, provide an answer to all possible scenarios with absolute certainty, and so it inevitably remains necessary to assess the need to consult the ECB on a case-by-case basis, drawing on guidance from this Guide.

I trust that this updated Guide will continue both to raise awareness of the rights and obligations of all parties concerned and lead to an even better understanding of the ECB's advisory function. In this regard, the Guide is also intended to encourage greater use of the consultation procedure for matters falling within the ECB's fields of competence and hence to contribute to the harmonisation of the relevant Member States' legislation.

Finally, I would like to emphasise the continued importance of ensuring close cooperation between the national authorities involved in the legislative process and the European System of Central Banks/Eurosystem. I am confident that this publication will continue to support such close cooperation in the mutual interest of all parties involved.

Frankfurt am Main, April 2025

Frank Elderson
Member of the ECB Executive Board

1 Background to the ECB's advisory function with regard to draft legislative provisions

The Treaty on the Functioning of the European Union (the 'Treaty') confers on the ECB an advisory function with regard to proposed legal acts of the Union and draft legislative provisions of the Member States within its fields of competence. Article 127(4) and Article 282(5) of the Treaty, which are reproduced in Article 4 of the Statute of the European System of Central Banks and of the European Central Bank (the 'Statute of the ESCB'), form in this regard the main legal basis for the ECB's advisory function.

The framework for the consultation of the ECB by national authorities is set out in Council Decision 98/415/EC¹ ('Decision 98/415/EC'), which has been in force since 1 January 1999 and applies to all Member States. Until 2004, the ECB adopted an average of 30 opinions per year in response to consultations by national authorities. The number of Member States increased in 2004, 2007 and 2013 and the number of ECB opinions on draft national legislative provisions fluctuated from 2004 to 2007, with an overall rising trend in the number of opinions adopted: 30 opinions in 2004, 48 opinions in 2005, 52 opinions in 2006, and 35 opinions in 2007. Due to the turmoil in the financial markets from 2008, the number of ECB opinions on draft national legislative provisions grew substantially from 2008 to 2014, reaching a peak of 95 in 2012.

Since 2015, the number of opinions on draft national legislative provisions has returned to its pre-financial crisis level, ranging from 52 opinions in 2015 to 35 opinions in 2023 and 38 opinions in 2024. Also, in 2015 the ECB took an important strategic decision which influences the number of opinions on draft legislative provisions that it adopts: it decided that no opinion should be adopted in response to a consultation on draft national legislation where the ECB is of the view that the draft legislative provisions only touch marginally on its fields of competence. As a result of this decision, between 2016 and 2024 the number of occasions per year on which the ECB declined to issue an opinion in response to national consultations breaks down as follows: 2016 (25), 2017 (20), 2018 (4), 2019 (12), 2020 (12), 2021 (24), 2022 (15), 2023 (21), 2024 (19). It is important to highlight, however, that the obligation to consult the ECB under Decision 98/415/EC remains in place and unchanged, even if the draft legislative provisions may appear only to touch marginally on the ECB's fields of competence. Consultation of the ECB is a two-stage process. The first stage constitutes the initial obligation to consult the ECB where the proposed legal acts of the Union or draft legislative provisions of the Member States (even marginally) touch on the ECB's fields of competence. The

¹ Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42). The text of Decision 98/415/EC is reproduced in the Annex to this Guide.

second stage constitutes an assessment by the ECB which can lead to the adoption of an opinion – or to a non-adoption letter when the draft legislative provisions only touch marginally on the ECB's fields of competence, without substantially impacting on them, including when their exclusive purpose is the transposition of Union legislation, as described in Section 5.1 of this Guide.

Article 127(4) of the Treaty:

'4. The European Central Bank shall be consulted:

- on any proposed Union act in its fields of competence,
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 129(4).

The European Central Bank may submit opinions to the appropriate Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.'

Article 282(5) of the Treaty:

'5. Within the areas falling within its responsibilities, the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.'

Article 4 of the Statute of the ESCB:

'In accordance with Article 127(4) of the Treaty on the Functioning of the European Union:

(a) the ECB shall be consulted:

- on any proposed Union act in its fields of competence;
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41;

(b) the ECB may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.'

Article 25.1 of the Statute of the ESCB:

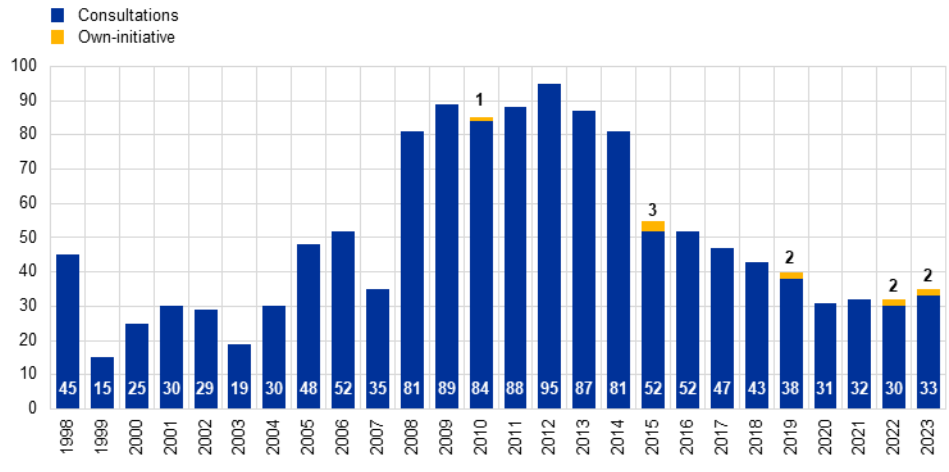
'The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.'

Decision 98/415/EC is drafted in quite general terms and, in order to ensure that it is fully effective, national authorities need to have a thorough understanding of: (a) its objectives; (b) the scope of the obligation to consult the ECB; (c) the procedure to be

followed; and (d) the effect that a failure to consult the ECB might have on the legality of the national legislation in question. Drawing on the experience of applying Decision 98/415/EC since 1999, this Guide aims to inform all national authorities involved in the preparation of legislative provisions about these four aspects so that they are fully aware of their rights and obligations. This Guide also contains a number of recommendations to ensure the efficiency of the consultation procedure. The Guide, however, cannot provide an answer to all possible scenarios with absolute certainty, and so it is crucial to assess the need to consult the ECB on a case-by-case basis, drawing on guidance from this Guide. For the purpose of conducting such case-by-case assessments, the ECB encourages the authorities to review the list of recently adopted opinions and non-adoption letters (see section 6.8.1) on EUR-Lex.

Chart 1

Number of ECB opinions in response to consultations by national authorities, including the own initiative opinions (marked in a different colour).



Source: ECB, data from EUR-Lex.

2 The objectives of Decision 98/415/EC

In the *OLAF* judgment², the Court of Justice of the European Union (the ‘Court’) clarified the objectives of Article 127(4) of the Treaty in terms of the obligation to consult the ECB on any proposed Union legal act within its fields of competence. According to the Court, this obligation is intended ‘essentially to ensure that the legislature adopts the act only when the body has been heard, which, by virtue of the specific functions that it exercises in the Community framework in the area concerned and by virtue of the high degree of expertise that it enjoys, is particularly well placed to play a useful role in the legislative process envisaged’.

Although the *OLAF* judgment relates to the obligation of the Union institutions to consult the ECB on proposed Union legal acts, it also helps to clarify the obligation of Member States to consult the ECB on their draft legislative provisions. One can extrapolate from the *OLAF* judgment that the principal objective of Decision 98/415/EC is to enable the ECB to provide national legislators, at an appropriate time, with expert advice on draft legislative provisions concerning matters within the ECB’s fields of competence. This advice is intended to ensure that the national legal framework: (a) contributes to the achievement of the objectives of the ECB and/or the Eurosystem/the European System of Central Banks (ESCB); (b) is compatible with the legal framework of the Eurosystem/ESCB and/or of the ECB; and (c) is in line with Eurosystem/ESCB and/or ECB policies.

The obligation to consult the ECB under Decision 98/415/EC is designed to operate as a preventive system and to forestall problems with potentially incompatible or inconsistent national legislation. The consultation must therefore take place when the legislative provision is still at a draft stage, and more particularly at a stage when the ECB’s opinion can usefully be taken into consideration by the national authorities involved in the preparation and adoption of the legislation concerned.

In practice, the obligation to consult the ECB has enabled Member States to ensure that national legislation, including the statutes of their national central banks (NCBs), remains compatible with the Treaty and the Statute of the ESCB, as provided for in Article 131 of the Treaty and Article 14.1 of the Statute of the ESCB.

The consultation procedure established by Decision 98/415/EC has a number of further advantages. It is valuable for promoting the sharing of information and expertise. Consultations are an important means of keeping the ECB informed about legislative developments in the Member States within the ECB’s fields of competence. The expertise that the ECB gains by examining the draft legislative provisions on which it is consulted is an asset for the formulation of the ECB’s own position, for instance in Union or international fora where similar matters are

² Case C-11/00, *Commission of the European Communities v European Central Bank*, ECLI:EU:C:2003:395, in particular paragraphs 110 and 111 of the judgment. In that case, the Court upheld the Commission’s action and annulled Decision ECB/1999/5 of the European Central Bank of 7 October 1999 on fraud prevention (OJ L 291, 13.11.1999, p. 36). The judgment is significant for its clarification of the ECB’s advisory function since the Court, in response to a request by the ECB, examined the objectives of Article 127(4) of the Treaty for the first time.

discussed. Furthermore, while acknowledging the particular features of national legislation, ECB opinions foster harmonisation of Member States' legislation within the ECB's fields of competence and contribute to enhancing the quality of national legislation, since its opinions are based on the expertise that the ECB has acquired in the exercise of its tasks³. ECB opinions may also constitute a source which the Court can take into account in proceedings related to the compatibility with the Treaty of the legislative provisions concerned, and national courts can take ECB opinions into account in proceedings on the interpretation or validity of the national legislative provisions concerned.

In common with the opinions of other Union institutions, ECB opinions have no binding force, as stipulated by Article 288, fifth paragraph, of the Treaty. In other words, national legislators are not obliged to follow the ECB's opinion. However, the system established by Decision 98/415/EC is designed to ensure that national legislation is adopted only after due consideration of the ECB's opinion. This system has proved to be effective and national legislators have generally agreed to amend or even withdraw draft legislative provisions rather than adopt legislation that conflicts with the ECB's position.

Finally, the obligation to consult the ECB contributes to the ECB's external communication with the general public and the markets. It is general ECB policy to encourage transparency and, to this end, opinions in response to consultations by national authorities are as a rule published in EUR-Lex immediately after their adoption and subsequent transmission to the consulting authority.

³ See paragraph 140 of the Advocate-General's Opinion in Case C-11/00, which was endorsed in paragraph 110 of the Court's judgment in Case C-11/00.

3 The scope of the obligation to consult the ECB

3.1 The consulting authorities

Article 2(1) and (2) of Decision 98/415/EC:

‘1. The authorities of the Member States shall consult the ECB on any draft legislative provision within its field of competence pursuant to the Treaty [...].

2. In addition, the authorities of Member States other than participating Member States shall consult the ECB on any draft legislative provisions on the instruments of monetary policy.’

3.1.1 The range of authorities covered

Article 2(1) of Decision 98/415/EC makes it clear that the obligation to consult the ECB on draft national legislative provisions within its fields of competence is incumbent on ‘the authorities of the Member States’. As Decision 98/415/EC applies to all Member States, the authorities concerned are not only those of the Member States whose currency is the euro (‘euro area Member States’), but also those of the Member States whose currency is not the euro (‘non-euro area Member States’).

Authorities of the Member States are ‘[t]he authorities [...] preparing a legislative provision’, as set out in Article 3(1) of Decision 98/415/EC. In addition, it follows from Article 4 of Decision 98/415/EC that the consulting authority can be different not only from the ‘adopting authority’, but also from the ‘authority initiating the draft legislative provision’.

In practice, the ECB is consulted by a wide variety of authorities. In the case of legislation going through a national parliament, the ECB has generally been consulted by the minister responsible for preparing draft legislation falling within the ECB’s fields of competence. When the legislation is initiated by a member of a national parliament rather than by the government, the obligation to consult the ECB lies with the parliament as detailed in Section 3.1.2 of this Guide. Sometimes such consultations are channelled through NCBs acting on behalf of the consulting authority. NCBs and national competent authorities (NCAs) also consult the ECB in their capacity as an authority with its own regulatory powers or, occasionally, with its own right of legislative initiative.

In the case of legislation adopted by some other procedure, the ECB is generally consulted by the authority that is competent to adopt the act concerned, for instance a member of the national government.

Finally, the ECB has also been consulted by national authorities which were de jure or de facto involved in the adoption process, for example NCBs, supervisory authorities, competition authorities, anti-money laundering authorities and specific bodies such as euro changeover boards. In these cases, the ECB has taken the view that the consultation is valid if it is apparent that such authorities are acting on behalf of the initiating or adopting authority.

3.1.2 The role of national parliaments

National parliaments can also be authorities 'preparing a legislative provision' for the purposes of Decision 98/415/EC when they debate draft legislative provisions within the ECB's fields of competence which have been proposed by one or more of their members⁴. National parliaments have to decide on the basis of their own rules of procedure how to comply with the obligation to submit, for the ECB's prior opinion, draft legislative provisions which have been proposed by one or more of their members and which fall within the ECB's fields of competence, in order to ensure both that such consultations reach the ECB after they have been included in the legislative agenda of the national parliament and that the ECB is given sufficient time for the adoption of its opinion. Given that it is the national parliament, rather than its individual members, that qualifies as a 'national authority' within the meaning of Article 127(4) of the Treaty and Article 4 of the Statute of the ESCB, and as an 'authority of a Member State' within the meaning of Decision 98/415/EC, the ECB declines to adopt opinions in response to a consultation by one or more members of a national parliament where it is apparent that this consultation has not been authorised by the national parliament in accordance with its own rules of procedure.

It is also acceptable for the ECB to be consulted by a national government, acting on its own initiative, on draft legislative provisions proposed by members of its national parliament in accordance with national law.

3.2 The draft legislative provisions covered

Article 1(1) of Decision 98/415/EC:

'1. For the purpose of this Decision:

[...]

'draft legislative provisions' shall mean any such provisions which, once they become legally binding and of general applicability in the territory of a Member State, lay down rules for an indefinite number of cases and are addressed to an indefinite number of natural or legal persons.'

⁴ This also applies to cases where members of parliament propose amendments to draft legislative provisions proposed by the government which have the potential effect of bringing the draft legislation within the ECB's fields of competence.

According to Article 2(1) of Decision 98/415/EC, the authorities of the Member States are obliged to consult the ECB on 'any draft legislative provisions' within the ECB's fields of competence. Article 1(1) of Decision 98/415/EC defines the concept of 'draft legislative provisions'. This definition refers to provisions which, once they become legally binding and of general applicability in the whole (or a geographically distinct territory) of the Member State concerned, lay down rules which will be applicable in 'an indefinite number of cases and are addressed to an indefinite number of natural or legal persons'. This includes draft legislative provisions prepared by the government, the adoption of which turns them into effective legal provisions regardless of the duration of such effectiveness.

The definition does not, however, include draft legislative provisions the exclusive purpose of which is the transposition of Union directives into the law of Member States, as stipulated in Article 1(2) of Decision 98/415/EC. The ECB is of the opinion that this exclusion would not apply to transposition cases in which the national legislator uses a margin of discretion in the transposition and substantially affects the ECB's fields of competence, in particular the role and tasks of the ECB/Eurosystem, notably by conferring a new task upon an NCB or substantially amending an existing NCB task⁵.

In addition, Article 25.1 of the Statute of the ESCB clarifies that the ECB may offer advice to and be consulted by the competent authorities of the Member States on the implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

The ECB will pay due attention to whether the draft legislative provisions which it is being consulted on are indeed draft legislative provisions as defined in Article 1(1) of Decision 98/415/EC and will generally not issue an opinion if this is not the case.

3.2.1 Legally binding provisions

The obligation to consult the ECB is not limited to draft legislative provisions which are to be adopted by a parliament. Decision 98/415/EC covers all types of legally binding provisions, including decree-laws and secondary legislation.

Decree-laws

For the purposes of this Guide 'decree-laws' are provisions adopted and made fully effective by a government as a matter of urgency or extraordinary need. Such decree-laws are subject to subsequent ratification and/or amendment by parliament, which can take place shortly or many months after adoption. Draft decree-laws are

⁵ See Section 3.4 of this Guide.

thus 'draft legislative provisions' on which the ECB must be consulted prior to their adoption by the Government, irrespective of the urgency or extraordinary need⁶.

Secondary legislation

The ECB does not have to be consulted on all secondary legislation, including legal acts of NCBs or supervisory authorities of general applicability, which implements primary legislation falling within the ECB's fields of competence. Given the objectives of Decision 98/415/EC, the ECB's opinion on draft secondary legislation should only be sought if the subject matter is closely related to the ECB's tasks and if the impact on areas within the ECB's fields of competence is different from that resulting from the primary legislation itself.

3.2.2 Amendments to the draft legislative provisions

The obligation to consult the ECB on amendments to draft legislative provisions which have already been submitted to the ECB for an opinion applies to substantive amendments which affect the essence of the draft legislation. It is useful to distinguish between two different scenarios. The first is where substantive amendments are proposed at a stage when the ECB has not yet adopted its opinion. In such situations the ECB expects the consulting authority to submit the amended draft legislative provision to it as soon as possible, so that the opinion can be based on the most recent text. The second scenario is where substantive new provisions are proposed after the ECB opinion has been adopted. In the latter situation, by analogy to the Court's case-law on the requirement to reconsult Union institutions on amended draft legislation⁷, the ECB should be reconsulted in relation to those amendments in exceptional cases where the draft legislation has undergone substantial changes of a non-technical nature as compared to the version on which the ECB has been previously consulted. However, no further consultation is required if the amendments in essence aim to accommodate the view expressed by the ECB in its opinion. The ECB nevertheless welcomes being kept informed about the response to its opinions and receiving details of such amendments for information purposes.

⁶ It is noted that given the urgency and extraordinary need inherent in the adoption of decree-laws pursuant to Article 3(2) of Decision 98/415/EC (see section 6.3 of this Guide), the consulting authority may set a time limit – which, under ordinary circumstances, should not be less than one month – for the ECB to deliver its opinion. The consulting authority must, however, state the reasons for the urgency.

⁷ See Case 41/69 *ACF Chemiefarma v Commission*, ECLI:EU:C:1970:71, paragraph 3; Case 817/79 *Buyl v Commission*, ECLI:EU:C:1982:36, paragraph 1; Case C-392/95 *Parliament v Council*, ECLI:EU:C:1997:289, paragraph 15; Case C-408/95 *Eurotunnel and Others v SeaFrance*, ECLI:EU:C:1997:532, paragraph 46; Case 58/01 *Océ van der Grinten NV v Commissioners of Inland Revenue*, ECLI:EU:C:2003:495, paragraphs 100 and 102.

3.3 The ECB's fields of competence

Article 2(1) of Decision 98/415/EC requires that national authorities must consult the ECB on any draft legislative provision 'within its field of competence pursuant to the Treaty'. This obviously includes draft legislative provisions affecting the basic tasks to be carried out through the ESCB pursuant to Article 127(2) of the Treaty (i.e. the definition and implementation of the monetary policy of the Union, the conduct of foreign exchange operations, the holding and management of the official foreign reserves of the Member States and the promotion of the smooth operation of payment systems) and the tasks under Article 128(1) of the Treaty (i.e. the issuance of euro banknotes). It also includes draft legislative provisions affecting a variety of other tasks attributed to the ESCB pursuant to the Treaty, most notably (1) the specific tasks concerning policies relating to the prudential supervision of credit institutions within the SSM conferred upon the ECB pursuant to Article 127(6) of the Treaty; and (2) the collection by the ECB, assisted by the NCBs, of the necessary statistical information in order to undertake the tasks of the ESCB, and contributing to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence pursuant to Article 5 of the Statute of the ESCB.

Article 2(1) of Decision 98/415/EC lists a number of categories of matters which are explicitly considered to be within the ECB's fields of competence. The ECB must be consulted by national authorities on draft legislative provisions relating to these matters, even if the draft national legislative provisions only touch marginally on the ECB's fields of competence, without substantially impacting on them, with the consequence that the ECB would decide not to adopt an opinion⁸.

Article 2(1) of Decision 98/415/EC:

'1. The authorities of the Member States shall consult the ECB on any draft legislative provision within its field of competence pursuant to the Treaty and in particular on:

- currency matters,
- means of payment,
- national central banks,
- the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics,
- payment and settlement systems,
- rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.'

⁸ See Section 5 of this Guide.

Non-exhaustive overview of the ECB's fields of competence

The wording of Article 2(1) and recital 3 of Decision 98/415/EC makes it clear that the list in Article 2(1) of Decision 98/415/EC is not exhaustive.

Furthermore, and as discussed in greater detail in the next paragraph, Article 2(2) of Decision 98/415/EC states that the authorities of non-euro area Member States must consult the ECB on any draft legislative provisions concerning the instruments of monetary policy.

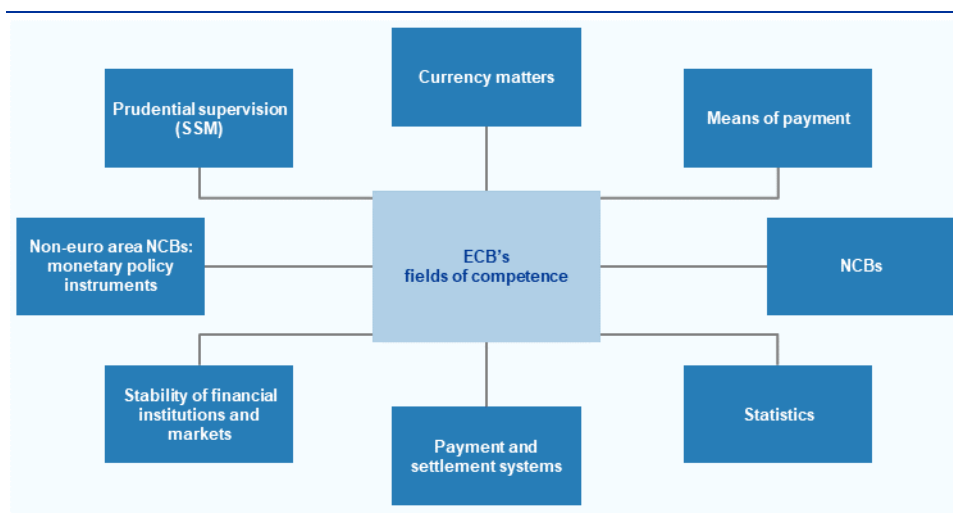
Article 2(2) of Decision 98/415/EC:

'2. In addition, the authorities of Member States other than participating Member States shall consult the ECB on any draft legislative provisions on the instruments of monetary policy.'

The reason why Decision 98/415/EC differentiates between euro area and non-euro area Member States in this way is that the instruments of monetary policy (for example, the minimum reserve system) are no longer decided by national authorities in euro area Member States. However, recital 5 of Decision 98/415/EC clarifies that the obligation to consult the ECB does not include decisions taken by the authorities of non-euro area Member States in the context of the implementation of their monetary policy (for example, decisions setting interest rates).

Figure 1

Non-exhaustive overview of the ECB's fields of competence



Source: ECB.

3.3.1 Currency matters and means of payment

ECB opinions on currency matters and means of payment cover draft legislative provisions on a variety of topics. These include, for example, measures related to the introduction of the euro (redenomination of the national currency, redenomination of public and private debt, dual pricing, rounding rules, including the rounding rules of

cash payments (for example, for payments in one and two cent amounts), the replacement of national reference rates, etc.); legal tender; limitations on cash payments, both generally above certain thresholds, or more specifically (for example, in respect of public social insurance contributions, real estate transactions); ensuring minimum levels of cash services by credit institutions and the availability of cash in society more generally; tax disincentives as to the use of cash; commemorative coins; copyright in relation to banknotes and coins; the prevention of counterfeiting; denominations; technical specifications; recycling; authenticity and fitness checking of banknotes and coins; the promotion of digital means of payment; and the issuance of electronic money.

3.3.2 National central banks

A large number of ECB opinions are adopted in respect of draft legislative provisions related to NCBs. These opinions concern legislative provisions which affect the status of NCBs or their board members, in particular linked to the various aspects of central bank independence. A number of adopted opinions concern NCBs' pension schemes and restrictions, the salaries of NCBs' staff and of the members of NCBs' decision-making bodies, as well as the appointment criteria for Governors and members of NCBs' decision-making bodies. Several adopted opinions also concern the NCBs' tasks and monetary policies, including compliance with the prohibition of monetary financing under Article 123 of the Treaty, NCBs' foreign reserves, the collateralisation of NCBs' credit operations and the minimum reserve requirements of the NCBs of non-euro area Member States. Other opinions have, for example, dealt with institutional changes to NCBs and their statutes, their accounting, dividend payments, recapitalisation, reporting and auditing, participation in international monetary institutions, privileged access, professional secrecy and other aspects of the regulation of NCBs' activities that is covered in the statutes of the NCBs (for example, the provision of emergency liquidity assistance). The ECB has also frequently been asked to issue opinions on draft legislative provisions covering non-ESCB-related NCB tasks, particularly with a view to assessing whether these tasks are compatible with the prohibition of monetary financing and/or the objectives and tasks of the ESCB⁹.

3.3.3 Collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics

The ECB's powers in relation to the collection of statistical information are set out in Article 5 of the Statute of the ESCB. Article 4 of Council Regulation (EC) No 2533/98¹⁰ requires all Member States to 'organise themselves in the field of statistics and [...] fully cooperate with the ESCB in order to ensure the fulfilment of the

⁹ Under Article 14.4 of the Statute of the ESCB, NCBs are permitted to perform functions other than those specified in the Statute of the ESCB, unless the Governing Council finds that these interfere with the objectives and tasks of the ESCB.

¹⁰ Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

obligations arising out of Article 5 of the Statute'. The ECB is aware that reporting provisions differ between Member States. As a result, when the ECB is consulted on draft national reporting provisions it tends to make comments that are of a general nature and are intended to draw attention to aspects that could be made more explicit in the draft legislative provision. Relevant consultations have concerned, for example, the balance of payments statistics, the transmission of statistical data between the ECB and the ESCB and non-euro area NCBs, national statistical reporting requirements on various financial instruments and investment positions, the scope of data contained in the credit register, the reporting of certain data for financial stability purposes, access to central credit registers, the AnaCredit Regulation¹¹, and the role of non-euro area NCBs in the collection of statistical data.

3.3.4 Payment and settlement systems

Past consultations on payment and settlement systems have concerned draft legislative provisions related to several aspects of the functioning of payment and settlement systems, such as their oversight, central counterparties, settlement finality, the net or real-time gross settlement basis, netting and collateral aspects, the dematerialisation and/or digitalisation of securities, and the impact of cybersecurity requirements for market infrastructures.

3.3.5 Rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets

Article 2(1), sixth indent, of Decision 98/415/EC refers to 'rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets'. By virtue of Article 2(1), sixth indent, of Decision 98/415/EC, Member States 'shall' consult the ECB when the proposed legislative provisions 'materially influence' financial stability, unless, as stated in Article 1(2) of Decision 98/415/EC, the exclusive purpose of the provisions is the transposition of Union directives¹². In addition, Article 2(1), sixth indent, of Decision 98/415/EC should be considered in conjunction with Article 25.1 of the Statute of the ESCB, which provides that the competent authorities of Member States 'may' consult the ECB on the 'implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system'.

A substantial number of opinions are adopted by the ECB pursuant to Article 2(1), sixth indent, of Decision 98/415/EC. The ECB has adopted several opinions in response to consultations on proposed amendments to the institutional structure of supervision in the Member States. It has also regularly been consulted on major amendments to the supervisory regime for credit institutions and financial institutions, as well as on rules to combat money laundering and terrorist financing,

¹¹ Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13) (OJ L 144, 1.6.2016, p. 44).

¹² For the latter, see Section 3.4 of this Guide.

and the resolution, reorganisation and winding-up of credit and financial institutions. The ECB has frequently been consulted on draft legislation that could potentially have an important impact on the markets, for example legislation concerning financial collateral arrangements, securitisation and covered bond regimes, and the dematerialisation of securities.

The ECB has also adopted a number of opinions in the context of the financial markets crisis, where national legislative provisions aimed at enhancing deposit guarantee schemes or ensuring or strengthening the stability of the financial market.

Finally, the ECB has been consulted on various draft legislative provisions potentially affecting the free movement of capital, exchange rate policy (for example, taxing financial transactions), special levies or taxes imposed on credit and/or financial institutions, legislation restructuring the terms and conditions of mortgage and other private loans, and other draft legislative provisions of economic or financial importance.

3.3.6 Prudential supervision of credit institutions

As regards the legal basis for consultation of the ECB on SSM-related draft national provisions, the wording of Article 2(1), sixth indent, of Decision 98/415/EC and, in particular, the reference to rules which 'materially influence' the stability of financial institutions and markets, should not be considered to restrict the obligation to consult the ECB. As mentioned above, the wording of recital 3 and of Article 2(1) of Decision 98/415/EC make it clear that the list of areas included in the latter provision is not exhaustive. With the establishment of the SSM, prudential supervisory tasks are now also included in the fields of competence of the ECB for the purposes of its advisory function pursuant to Article 127(4) of the Treaty.

Consultations by national authorities on draft legislation relating to the prudential supervision of credit institutions cover the powers and tasks of the NCAs; the institutional structure and governance of the NCAs, including with respect to their participation in the SSM; the exchange of information; the procedural aspects of the supervision of credit institutions, such as 'fit and proper' assessment of board members of credit institutions; supervisory fees; the assessment of significance credit institutions; and close cooperation with Member States which have not adopted the euro.

3.4 Implementing legislation

Article 1(2) of Decision 98/415/EC:

'2. Draft legislative provisions shall not include draft provisions the exclusive purpose of which is the transposition of Community directives into the law of Member States.'

As stated above, pursuant to Article 1(2) of Decision 98/415/EC, Member States do not have to consult the ECB on draft national legislative provisions where the

exclusive purpose is the transposition of Union directives into national law. The rationale for this exemption is that the ECB should already have been consulted on the proposed Union legal act pursuant to Articles 127(4) and 282(5) of the Treaty and it is therefore unnecessary to extend the ECB's advisory function to draft legislative provisions which purely transpose that Union legal act. Furthermore, it is not the responsibility of the Commission or of the ECB to assess the compatibility of national transposition measures with Union directives.

The ECB is of the opinion that the same exemption applies to draft national legislative provisions aimed at implementing Union regulations, facilitating their application, or implementing options provided for in them, provided that such draft national legislative provisions do not have an impact on matters falling within the ECB's fields of competence which is different from the impact of the regulation itself (on which the ECB should have been consulted by the Union institutions).

However, the requirement to consult the ECB cannot be excluded *per se* in cases where the draft national legislative provisions aim at transposing directives (or implementing or applying regulations) and where the national legislator uses a margin of discretion in the transposition (or implementation) beyond that clearly stipulated by the directive or the regulation. Where that margin of discretion substantially touches on the ECB's fields of competence, in particular the role and tasks of the ECB/Eurosystem/ESCB, notably by conferring a new task upon an NCB or substantially amending an existing NCB task, the obligation to consult prevails (as Article 2(1), third indent, of Decision 98/415/EC refers to NCBs). The independence of the ECB and/or the NCBs and compliance with the prohibition of monetary financing as per the relevant Treaty provisions remain a strong component of any assessment, including the assessment of new NCB tasks (or substantial amendments of existing NCB tasks) derived from directives or regulations. In these cases, the ECB should be consulted and may adopt an opinion. In addition, Member States have consulted the ECB on the transposition of the Capital Requirements Directive¹³, and the ECB has occasionally adopted opinions in this area based on its prudential supervisory competences (for example, on draft legislative provisions relating to the assessments of the acquisition of qualifying holdings in credit institutions and fit and proper assessments in relation to appointees in credit institutions). Member States have also consulted the ECB on the transposition of the Bank Recovery and Resolution Directive¹⁴, and the ECB has adopted opinions, in particular, on legislation in which a resolution role was granted to an NCB, for example by appointing the NCB as resolution authority or by providing for credit lines by the NCB to the deposit guarantee scheme.

On a limited number of occasions, the ECB has encouraged national authorities to consult it on draft legislative provisions transposing Union directives which are of

¹³ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

¹⁴ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

particular interest to the ESCB. For instance, this was the case with the Settlement Finality Directive¹⁵ and the Collateral Directive¹⁶ as well as their subsequent amendments¹⁷. The ECB's opinions resulting from the large number of consultations on draft provisions aimed at transposing both directives into national law have been useful contributions to reinforcing the legal framework for the Eurosystem's operations, as well as the stability of the financial system.

The ECB has also issued an own-initiative opinion on the ratification or implementation of a Postal Payment Services Agreement, and it has encouraged national authorities to consult the ECB if specific draft national legislative provisions go beyond the mere ratification of the Agreement.

Member States sometimes consult the ECB on their own initiative about draft provisions for the transposition of directives even though they are not obliged or encouraged to do so, for instance in areas where they consider the ECB to have specific expertise. In such cases, the ECB generally stands ready to respond to any formal or informal voluntary national consultation and offer guidance on the draft transposition measures prepared – even if there is no formal obligation to consult the ECB – but only to the extent the draft provisions warrant specific comments in relation to the ECB's fields of competence.

The European Systemic Risk Board (ESRB) was established in December 2010 as a new body mandated to oversee risk in the financial system as a whole. It can issue, inter alia, recommendations in its fields of competence and, pursuant to Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council¹⁸, it monitors the follow-up to its recommendations. In view of the ESRB's role in such matters, the ECB does not need to be consulted on draft legislative provisions implementing recommendations of the ESRB, without prejudice to the Member States' general obligation to consult the ECB under Decision 98/415/EC as explained in this Guide.

¹⁵ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

¹⁶ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

¹⁷ In particular by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims (OJ L 146, 10.6.2009, p. 37). Further (smaller) amendments were adopted in the following years.

¹⁸ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

4 Cases where the ECB declines to adopt opinions in response to requests for consultation

4.1 Non-adoption letters

The ECB is not obliged to adopt an opinion and will therefore not automatically do so in response to each consultation. This, however, is without prejudice to the Member States' obligation to consult the ECB where the draft legislative provisions in question only touch marginally on the ECB's fields of competence.

The ECB will not adopt an opinion when the draft legislative provisions only touch marginally on the ECB's fields of competence, without substantially impacting on them. Mere references in the draft national legislation to any of the topics listed in the Decision 98/415/EC or purely formal or administrative changes to the relevant legal framework should not necessarily trigger an ECB opinion.

The ECB will not adopt an opinion when the draft legislative provisions involve the transposition of Union legislation, unless in this transposition the national legislator uses a margin of discretion and substantially affects the ECB's fields of competence, in particular the role and tasks of the ECB/Eurosystem/ESCB, notably by conferring a new role on an NCB or substantially amending an existing NCB task.

The ECB has revisited the need to adopt an opinion if the draft legislative provisions confer a new task upon an NCB or substantially amend an existing NCB task, taking into account the principles laid down in the *Banka Slovenije* judgment¹⁹. In the light of the *Banka Slovenije* judgment, the ECB does not automatically adopt an opinion on national legislation on account of the fact that it confers a new task upon an NCB or substantially amends an existing NCB task, unless the new task impairs the NCB's independence or breaches the monetary financing prohibition, or is otherwise of non-marginal importance to the ECB's fields of competence.

Where the ECB has been formally consulted on a draft legislative provision and decides not to adopt an opinion, it will formally reply by a letter of non-adoption addressed to the consulting authority. The non-adoption letter details the reasons why the ECB is not adopting an opinion in the specific consultation and may refer the consulting authority to previously adopted opinions which are relevant²⁰. All such letters are available on EUR-Lex.

¹⁹ Case C-45/21, *Banka Slovenije*, ECLI:EU:C:2022:670.

²⁰ See, for example, LET/2024/01251 and LET/2024/05161.

4.2 Possibility of an informal request

Informal contact between the national authorities and the relevant NCB on the one hand and ECB staff on the other hand may take place ahead of the submission of formal consultations to the ECB, if the consulting authority wishes to receive informal guidance from the ECB regarding the need to consult the ECB in a particular case. Contact with the ECB regarding such informal requests for guidance can be arranged via the relevant NCB or by submitting requests to: LegalActs.Team@ecb.europa.eu.

Such informal requests may help to avoid consultations in cases in which it is not entirely clear to the consulting authority whether the adoption of an ECB opinion is warranted. An informal request would need to be accompanied by the draft legislative measures or by a sufficiently detailed description of the intended measures.

5 The consultation procedure

Article 4 of Decision 98/415/EC:

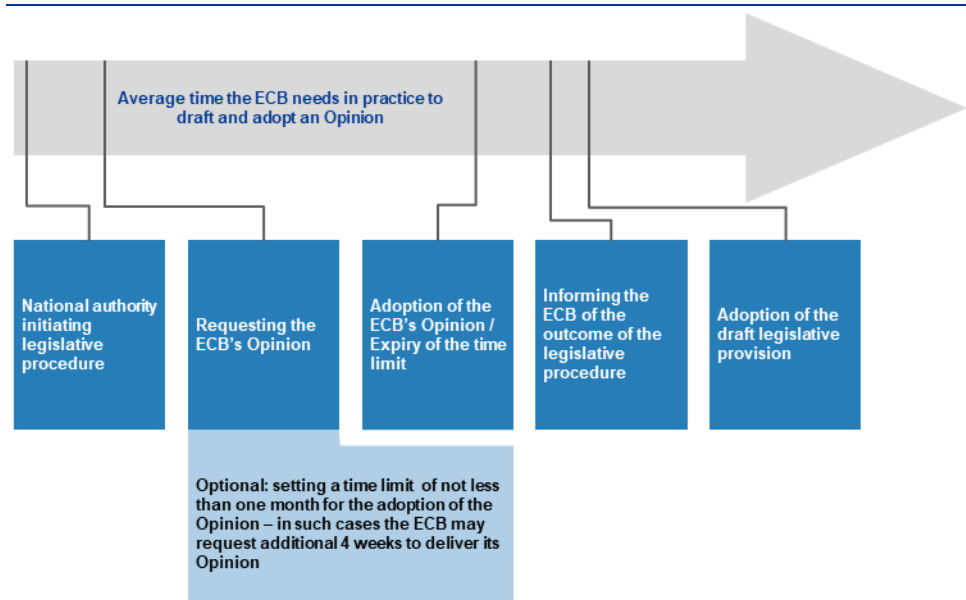
‘Each Member State shall take the measures necessary to ensure effective compliance with this Decision. To that end, it shall ensure that the ECB is consulted at an appropriate stage enabling the authority initiating the draft legislative provision to take into consideration the ECB’s opinion before taking its decision on the substance and that the opinion received from the ECB is brought to the knowledge of the adopting authority if the latter is an authority other than that which has prepared the legislative provisions concerned.’

5.1 The appropriate time to consult the ECB

According to Article 4 of Decision 98/415/EC, the ECB must be consulted ‘at an appropriate stage’ in the legislative process. This implies that national procedures should ensure that the consultation takes place at a point in the legislative process which affords the ECB sufficient time to examine the draft legislative provisions (and, where necessary, translate them) and to adopt its opinion in all required language versions. This also enables the relevant national authorities to take the ECB’s opinion into consideration before the provisions are adopted.

Figure 2

Process of consultation on draft legislative provisions



Source: ECB.

Where draft legislative provisions are prepared by an authority other than the adopting authority, Article 4 of Decision 98/415/EC requires that the consultation on

such provisions takes place at a time which enables the authority initiating the draft legislative provisions to consider whether the draft legislative provisions should be amended in order to accommodate the ECB's opinion, i.e. before transmitting the provisions to the adopting authority. At the same time, Article 4 of Decision 98/415/EC does not preclude national authorities from taking steps in accordance with their legislative procedures that do not affect the substance of the draft legislative provisions.

It follows from the wording of Article 3(4) of Decision 98/415/EC that Member States are obliged to suspend the process for adoption of the draft legislative provision pending receipt of the ECB's opinion. This does not mean that the whole national legislative process (for example, preparatory work of parliamentary standing committees, discussion of other opinions submitted by national authorities etc.) should be suspended pending delivery of the ECB's opinion. Instead, it means that the adopting authority has to have the opportunity to meaningfully deliberate on the ECB's opinion prior to taking its decision on the substance. If a time limit has been set for submission of the ECB's opinion²¹ and that time limit has expired, the national authority concerned may continue with the adoption process. However, even in such a case, and as long as the legislation has not yet been adopted, the national authorities continue to be obliged to take the ECB's opinion into consideration.

In October 2011, the President of the ECB sent a letter to all national consulting authorities reminding them that they 'should take the measures necessary to ensure effective compliance with Decision 98/415/EC, pursuant to Article 4 thereof, by duly consulting the ECB on draft legislative provisions falling within its field of competence²² at an appropriate stage of the legislative process'. The President of the ECB also recommended 'putting in place appropriate internal procedures to ensure that consultation of the ECB takes place at an appropriate stage, which enables the consulting and/or adopting authority to take into consideration the ECB's Opinion before the legislative provision in question is adopted. Re-consultation is necessary if the draft provisions are substantially amended during the legislative procedure.'

5.2 The request for an opinion

5.2.1 The form of the request and accompanying documents

A formal request for an opinion must be addressed to the President of the ECB in writing²³, as reflected in Article 3(1) of Decision 98/415/EC. The receipt by the President of the ECB of the request for an opinion marks the beginning of the

²¹ See Section 5.3 of this Guide.

²² This also includes provisions that are not subject to parliamentary approval. Only those draft legislative provisions which exclusively serve to transpose Union law are excluded from the consultation obligation.

²³ The ECB also stands ready to receive requests for an opinion, duly signed and addressed as a scanned attachment, by e-mail to office.president@ecb.europa.eu.

procedure for the adoption of an ECB opinion. The ECB welcomes any informal communication at staff level between the national consulting authorities and the ECB's Legal Services. However, the formal consultation procedure only starts upon receipt of the formal request for an opinion by the President of the ECB.

The request should contain a version of the draft legislative provisions which is stable enough for the ECB to give an opinion on. If the draft legislation contains a large number of provisions on a variety of matters, the ECB recommends that the consulting authority should indicate the provisions on which the ECB's comments are particularly sought. This is especially relevant when the draft legislative provisions primarily aim at transposing or giving effect to Union legislation, but also include additional provisions which go beyond mere transposition and fall within the ECB's fields of competence.

The ECB recommends that the consulting authority should enclose a short explanatory memorandum describing the subject matter and the main objectives pursued by the draft legislative provisions, the stage reached in the national legislative process and the name and details of the contact persons available to clarify any questions about the draft legislative provisions which may arise during the ECB's drafting of its opinion. The ECB recommends that the consulting authority should indicate a time limit for the ECB to issue its opinion²⁴.

Documentation requirements for national consultations:

Required	Recommended
<p>A written request for an opinion to the President of the ECB</p> <p>A copy of the draft legislative provisions</p>	<p>An indication of a time limit for the ECB to deliver its opinion.</p> <p>A short explanatory memorandum stating:</p> <ul style="list-style-type: none"> the subject matter and main objectives of the draft legislative provisions; the stage reached in the national legislative process; and details of contact persons. If the draft national legislation is long/complicated, an indication of the draft provisions on which ECB comments are particularly sought. If a request is made as matter of extreme urgency, an English translation of the explanatory memorandum and the main draft provisions submitted for consultation would significantly facilitate the process.

5.2.2 The language of the request

The request for an opinion and the accompanying documents may be submitted in the official language of the Member State concerned (or in one of the official languages of the Member State if there is more than one). In particular when a request is made as a matter of extreme urgency²⁵, the ECB appreciates receiving an English translation of the explanatory memorandum and the main draft legislative provisions submitted for consultation, to ensure a smooth consultation procedure. This takes account of English being the working language of the ECB, as well as the language for the adoption of the ECB's opinions by the Governing Council together with contribution from the General Council. It also allows the ECB to start working on

²⁴ See Section 5.3 of this Guide.

²⁵ See Section 5.3 of this Guide.

opinions immediately after having received the request for an opinion, without having to wait for translations. However, the request for an ECB opinion should not be delayed by the lack of such a translation.

5.3 Time limits

Article 3 of Decision 98/415/EC:

1. 'The authorities of the Member States preparing a legislative provision may, if they consider it necessary, set the ECB a time limit for the submission of its opinion which may not be less than one month from the date on which the President of the ECB receives notification to this effect.
2. In case of extreme urgency, the time limit may be reduced. In this case, the consulting authority shall state the reasons for the urgency.
3. The ECB may request in due time an extension of the time limit for up to an additional four weeks. This request shall not be unreasonably declined by the consulting authority.
4. Upon expiry of the time limit, the absence of an opinion shall not prevent further action by the consulting national authority. Should the opinion of the ECB be received after the time limit, Member States shall, nevertheless, ensure that it is brought to the knowledge of the authorities referred to in Article 4.'

While Decision 98/415/EC does not lay down a time limit for the adoption of an ECB opinion, experience has shown that the average time taken is around six weeks. However, the process may take longer²⁶ and the time actually required for the adoption of an opinion will obviously vary according to the nature, complexity and sensitivity of the draft legislative provisions concerned.

Pursuant to Article 3(1) of Decision 98/415/EC, '[t]he authorities of the Member States preparing a legislative provision may, if they consider it necessary, set the ECB a time limit for the submission of its opinion'. However, this time limit 'may not be less than one month' from the date on which the President of the ECB receives the notification.

Experience has shown that Member States sometimes misinterpret this one-month minimum time limit as a standard maximum time limit. In most cases, the preparation and adoption of ECB opinions requires time for preparing the English version of the draft legislative provisions, coordinating the work of the ECB's competent business areas involved in drafting the opinion, and receiving and taking account of the comments and observations of NCB Governors in the written procedure. A number of opinions pertaining to the supervisory realm also involve the consultation of the Supervisory Board, prior to the submission of the draft opinion to the Governing Council for final adoption.

²⁶ See further below in this section.

In practice, a one-month time limit has proven to be rather short. The possibility for consulting authorities to set a time limit should therefore be restricted to cases where there is a pressing need for the national authorities to receive the ECB's opinion within one month. As the ECB often reiterates in its opinions, the fact that the national legislative process has reached an advanced stage is not a sufficient ground for the consulting authorities to require the urgent adoption of the ECB's opinion.

Under Article 3(2) of Decision 98/415/EC, the time limit may be reduced in cases of extreme urgency. In these highly exceptional cases, the consulting authority must expressly state the reasons for the urgency of the matter. Consulting authorities are encouraged to follow the guidance in recital 6 of Decision 98/415/EC to the effect that dialogue between the consulting authorities and the ECB should enable the ECB to deliver its opinion in a timely manner in urgent cases without prejudice to it being able to examine the draft legislative provisions with the required care. As noted in Sections 5.2.1 and 5.2.2 of this Guide, the ECB also appreciates receiving an English translation of the explanatory memorandum and of the main draft legislative provisions submitted for consultation. However, the request for an ECB opinion should not be delayed by the lack of such a translation.

Pursuant to Article 3(3) of Decision 98/415/EC, where a time limit has been set by the consulting authority, the ECB may request an extension of this time limit of up to four additional weeks. Article 3(3) states that this request shall not be unreasonably declined by the consulting authority.

Article 3(4) of Decision 98/415/EC states that '[u]pon expiry of the time limit, the absence of an opinion shall not prevent further action by the consulting national authority'. This means that, once the time limit has expired, the relevant authorities can continue the procedure for adopting the draft legislation, which has been suspended during the ECB consultation. However, as long as the legislation has not been finally adopted, the consulting authority continues to be obliged to take the ECB's opinion into consideration (and bring it to the attention of the adopting authority, if the latter is a different body).

5.4 Acknowledgement of receipt

Once the request for an opinion has been received, an acknowledgment of receipt is sent to the consulting authority in the same language as the request for an opinion.

The accompanying documents and the English translation are sent to the members of the Governing Council and the General Council of the ECB at the time of circulation of the draft opinion.

5.5 Preparation and adoption of the ECB's opinion

After receiving the request for an opinion, the ECB establishes a panel to draft an opinion. This panel includes experts from the business areas relevant to the topic of

consultation. Depending on factors like the nature, complexity and length of the draft legislative provisions, as well as their availability in English, the time required for drafting varies from a few days to an average of around six weeks. Justified reasons for requesting an (extremely) urgent adoption of the opinion are also taken into account when preparing the ECB's opinion.

An opinion is a legal instrument of the ECB and, as a rule, the Governing Council is the decision-making body responsible for the adoption of ECB opinions. The members of the General Council are also involved in this decision-making process in order to contribute to the ECB's advisory function. Therefore, after the drafting is completed and following its endorsement by the Executive Board, the draft opinion is submitted to the Governing Council for comments and to the members of the General Council for observations. This is a written procedure that normally takes around one week.

For ECB opinions to be adopted in relation to the prudential supervision of credit institutions, the Governing Council may also consult the Supervisory Board.

Upon receiving comments and/or observations, the draft opinion is revised by the ECB and referred for any further comments or observations by another written procedure of a few working days. However, the time limit for making comments and observations in this second written procedure may vary, depending on the nature of the consultation and the number and complexity of comments received in the first written procedure. In the second written procedure, the General and Governing Council members will usually only provide comments or observations on the amendments introduced in the revised draft opinion.

The consulting authorities are invited to take into account the complexity of the consultation process when setting time limits for the submission of an ECB opinion.

5.6 The language regime

Opinions requested by a national authority are adopted in the official language of the Member State in question (or in the same language as the request for an opinion if the Member State has more than one official language) and in English.

5.7 Transmission of the opinion and its further consideration

Following adoption, the opinion is transmitted to the consulting authority. Article 4 of Decision 98/415/EC states that the consulting authority must 'take into consideration the ECB's opinion before taking its decision on the substance' and also provides that it should bring the ECB's opinion to the attention of the adopting authority if the latter is an authority other than the consulting authority.

Following completion of the legislative process, the ECB appreciates receiving a copy of the legislative provisions as finally adopted. The ECB recommends that, where draft legislative provisions have been subject to consultation with the ECB, a

copy of or a reference to the adopted legislative provisions should be sent to the ECB's Secretariat by the consulting authority.

5.8 Publication

The Governing Council has gradually extended its policy of transparency with regard to national consultations. Since June 2020, all ECB opinions, together with letters declining to adopt ECB opinions in response to requests for consultation or identifying cases of non-compliance by the national authorities with their duty to consult the ECB on draft national legislation, are published on EUR-Lex. Upon request of the consulting authority and provided there are specific grounds for refraining from immediate publication, the opinion is published at the latest six months after its adoption. Delayed publication of opinions is, in practice, very rare.

5.8.1 The ECB section on EUR-Lex

The [ECB section](#) on EUR-Lex provides quick and easy access to all ECB opinions in the relevant languages. From there, the user can browse by topics according to the ECB's fields of competence. An overview window displays the most recently published legal acts, and a complete list of legal acts sorted by date is also available, providing the option to filter out ECB opinions. Interactive infographics display statistics related to ECB opinions and provide easy access to compilations by type of acts, topics and over time. The search functionalities available enable searching for ECB opinions using keywords, the document number, the year or other criteria. It is possible to access the English as well as the national language version of each opinion, to see its relationship to other documents and the procedure that led to each opinion's adoption. The ECB website also contains helpful information and guidance on using EUR-Lex.

Figure 3
The ECB section on the EUR-Lex landing page

European Central Bank

Q
Advanced search

The European Central Bank (ECB) is an EU institution operating under clearly defined rules which can be found in primary and secondary EU law. In carrying out its tasks, the ECB can adopt legal acts and also provide and publish opinions on proposed legislation within its fields of competence. In this section you will find all ECB legal acts – including amendments, corrigenda and consolidated versions – in all relevant official EU languages, as well as case law of relevance to the ECB.

To learn more about the ECB, visit the [ECB website](#).

Browse by topic

- Legal framework of the ESCB
- + ECB institutional provisions**
- + Monetary policy and Operations**
- + Payment and settlement systems**
- + Banknotes and coins, means of payment and currency matters**
- + Foreign exchange and Foreign reserves**
- + Statistics**
- Financial market stability
- + Banking supervision**

Visual navigation

Category	Count
Opinions on proposals for EU legislation	243
Opinions on draft national legislation	1347
Recommendations	141

▶ Play ○ ○ ○ ● ○

Find an ECB document

Q

Find a court case relevant to the ECB

Q

Figure 4
All ECB opinions and letters may be found in the ECB section on EUR-Lex.

Find an ECB document

Q

- All
- Regulation
- Decision
- Guideline
- Opinion
- Recommendation
- Letter
- Memorandum of understanding
- Agreement

Figure 5

Legal acts may be narrowed down according to their features (type of act shown here) by using the filters on the left side of the results page

<p>∨ By type of act</p> <ul style="list-style-type: none">Opinion on draft national legislation (1380)Opinion (273)Own-initiative opinion (17)Own-initiative opinion on draft national legislation (15)Corrigendum (5)	
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6 Compliance with the obligation to consult the ECB

In order to ensure that the obligation to consult the ECB is fulfilled, Article 4 of Decision 98/415/EC requires Member States to take the necessary measures ‘to ensure effective compliance’ with Decision 98/415/EC. The ESCB closely monitors domestic legislative developments in draft legislation pertaining to the ECB’s fields of competence. The ESCB also regularly monitors and reports on compliance by national authorities with the obligation to consult the ECB on such draft legislative provisions. Furthermore, having established that the obligation to consult the ECB on draft legislative provisions falling within its fields of competence has been breached, the ECB notifies the respective competent national authority, copying the Governor of the NCB of the Member State concerned and the Commission.

Cases where it is clear that the failure to comply with the obligation to consult the ECB is important or repetitive should also be included in the ECB’s Annual Report. Such non-compliance cases are ‘clear’ where objectively there is no legal doubt that the ECB should have been consulted. Cases of non-compliance with the obligation to consult the ECB are ‘important’ (a) where, if the consultation had properly taken place, the ECB would have made significant critical comments on the substance of the legislative proposal, or (b) where the non-compliance is of general significance to the ESCB. For this purpose, cases of non-consultation concerning draft national legislative provisions that confer a new task upon an NCB or amend substantially an existing NCB task are considered to be of general significance to the ESCB. This view regarding general significance underlines that it is important that national authorities are still, in principle, required to consult the ECB where such a conferral or amendment occurs (as Article 2(1), third indent, of Decision 98/415/EC refers to NCBs), notwithstanding the principles outlined in Section 4 of this Guide in respect of the non-adoption of ECB opinions. Finally, a case is ‘repetitive’ where the same Member State has failed to consult the ECB on at least three occasions within two consecutive years, with at least one such occasion of non-consultation falling in the most recent year under consideration.

Finally, the ECB welcomes being kept informed about the response to its opinions and receiving details of such amendments for information purposes.

7 Legal consequences of non-compliance with the obligation to consult the ECB

Non-compliance with the obligation to consult the ECB on a draft legislative provision within its fields of competence is an infringement of Decision 98/415/EC and could lead to infringement proceedings before the Court. Such proceedings can be brought by the Commission against the Member State concerned under Article 258 of the Treaty²⁷ or by another Member State under Article 259 of the Treaty. The obligation to consult the ECB under Decision 98/415/EC is precise, clear and unconditional, which means that individuals can rely on it before national courts. Therefore, national courts can be asked to rule on the validity or enforceability of a national provision adopted without consulting the ECB²⁸. Finally, national courts may refer a question to the Court, under Article 267 of the Treaty, for a preliminary ruling on whether a national provision adopted without consulting the ECB is valid and enforceable. Therefore, it is ultimately for the Court to determine the legal consequences under Union law of non-compliance by a Member State with the duty to consult the ECB on national legislation.

The Court has repeatedly been asked to rule on the enforceability of national provisions adopted without prior notification to the Commission, as required by specific Union acts²⁹. In some of these cases, all concerning the procedure for the provision of information in the field of technical regulations (now laid down in Directive (EU) 2015/1535 of the European Parliament and of the Council³⁰, which repealed Directive 98/34/EC of the European Parliament and of the Council³¹), the Court has held that a national provision adopted without prior notification to the Commission is deemed to be adopted in breach of a substantial procedural requirement and, as such, is unenforceable against individuals³². It is also well-

²⁷ If an NCB endowed with regulatory powers fails to consult in accordance with Decision 98/415/EC, the ECB can itself commence infringement proceedings under Article 271, point (d), of the Treaty and Article 35.6 of the Statute of the ESCB.

²⁸ See, for example, the Cypriot Supreme Court judgment of 15 September 2015 in Joined Cases No 1551-1571/2011.

²⁹ See, inter alia, Case 174/84, *Bulk Oil v Sun International*, ECLI:EU:C:1986:60; Case C-194/94, *CIA Security International v Signalson and Securitel*, ECLI:EU:C:1996:172; Case C-226/97, *Lemmens*, ECLI:EU:C:1998:296; Case C-235/95, *AGS Assedic Pas-de-Calais*, ECLI:EU:C:1998:365; Case C-443/98, *Unilever*, ECLI:EU:C:2000:496; Case C-159/00, *Sapod Audic*, ECLI:EU:C:2002:343; Case C-303/04, *Lidl Italia*, ECLI:EU:C:2005:528.

³⁰ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (OJ L 241, 17.9.2015, p. 1).

³¹ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37).

³² See Case C-303/04, *Lidl Italia*, ECLI:EU:C:2005:528, which in turn refers to Case C-194/94, *CIA Security International v Signalson and Securitel*, ECLI:EU:C:1996:172; Case C-226/97, *Lemmens*, ECLI:EU:C:1998:296; see also Case C-443/98, *Unilever*, ECLI:EU:C:2000:496; and Case C-159/00, *Sapod Audic*, ECLI:EU:C:2002:343. In the Court's view, as regards technical standards and regulations introduced by national law, the obligation of prior notification to the Commission is designed to protect, by means of preventive control, the free movement of goods, which is one of the foundations of the Union: this obligation is therefore essential to prevent Member States from creating technical barriers and obstacles to free movement in the single market.

established case-law of the Court that all remedies normally available under national law must be open to litigants seeking to enforce claims under Union law³³. In those Member States in which individuals have the right to initiate proceedings to annul a national legislative provision on the grounds of a serious procedural defect, individuals may also have the right to seek to annul national legislative provisions adopted in breach of an essential procedural requirement of Union law, such as the prior consultation of the ECB.

³³ See, for instance, Case 158/80, *Rewe*, ECLI:EU:C:1981:163; Case C-228/98, *Dounias*, ECLI:EU:C:2000:65.

Annex

Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions³⁴

The Council of the European Union,

Having regard to the Treaty establishing the European Community and in particular Article 105(4) thereof and Article 4 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed thereto,

Having regard to the proposal from the Commission³⁵,

Having regard to the opinion of the European Parliament³⁶,

Having regard to the opinion of the European Monetary Institute³⁷,

Acting in accordance with the procedure provided for in Article 106(6) of the Treaty and in Article 42 of the said Protocol,

(1) Whereas the European Central Bank (ECB) will be established as soon as its Executive Board is appointed;

(2) Whereas the Treaty stipulates that national authorities shall consult the ECB regarding any draft legislative provision in its fields of competence; whereas it is for the Council to set out the limits and the conditions of such consultation;

(3) Whereas this obligation on the authorities of the Member States to consult the ECB must not prejudice the responsibility of these authorities for the matters which are the subject of such provision; whereas Member States must consult the ECB on any draft legislation in its fields of competence in accordance with Article 105(4) of the Treaty; whereas the list of particular areas included in Article 2 of this Decision is not exhaustive; whereas the sixth indent of Article 2 of this Decision is without prejudice to the present assignment of competences for policies relating to the prudential supervision of credit institutions and the stability of the financial system;

(4) Whereas the monetary functions and operations of the European System of Central Banks (ESCB) are defined in the Statute of the ESCB and of the ECB; whereas central banks of participating Member States are an integral part of the ESCB and must act in accordance with the guidelines and instructions of the ECB; whereas, in the third stage of Economic and Monetary Union (EMU), the authorities

³⁴ OJ L 189, 3.7.1998, p. 42.

³⁵ OJ C 118, 17.4.1998, p. 11.

³⁶ OJ C 195, 22.6.1998.

³⁷ Opinion delivered on 6 April 1998 (not published in the Official Journal).

of non-participating Member States must consult the ECB on draft legislative provisions on the instruments of monetary policy;

(5) Whereas as long as Member States do not participate in the monetary policy of the ESCB, this Decision does not concern decisions taken by authorities of these Member States in the context of the implementation of their monetary policy;

(6) Whereas consultation of the ECB must not unduly lengthen procedures for adopting legislative provisions in the Member States; whereas the time limits within which the ECB must deliver its opinion must, nevertheless, enable it to examine the texts referred to it with the required care; whereas, in duly justified cases of extreme urgency, for which the reasons will be stated, for example on account of market sensitivity, Member States may set a time limit which is less than one month and which reflects the urgency of the situation; whereas in these cases particularly, dialogue between the national authorities and the ECB should enable the interests of both to be taken into account;

(7) Whereas, in accordance with paragraphs 5 and 8 of Protocol No 11 annexed to the Treaty, this Decision shall not apply to the United Kingdom of Great Britain and Northern Ireland if and so long as that Member State does not move to the third stage of EMU;

(8) Whereas, from the date of the establishment of the ECB until the start of the third stage of EMU, national authorities have to consult the ECB, pursuant to Decision 93/717/EC³⁸ and Article 109(2) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

1. For the purpose of this Decision:

‘participating Member State’ shall mean a Member State which has adopted the single currency in accordance with the Treaty;

‘draft legislative provisions’ shall mean any such provisions which, once they become legally binding and of general applicability in the territory of a Member State, lay down rules for an indefinite number of cases and are addressed to an indefinite number of natural or legal persons.

2. Draft legislative provisions shall not include draft provisions the exclusive purpose of which is the transposition of Community directives into the law of Member States.

³⁸ OJ L 332, 31.12.1993, p. 14.

Article 2

1. The authorities of the Member States shall consult the ECB on any draft legislative provision within its field of competence pursuant to the Treaty and in particular on:
 - currency matters,
 - means of payment,
 - national central banks,
 - the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics,
 - payment and settlement systems,
 - rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.
2. In addition, the authorities of Member States other than participating Member States shall consult the ECB on any draft legislative provisions on the instruments of monetary policy.
3. The ECB shall, immediately on receipt of any draft legislative provision, notify the consulting authority whether, in its opinion, such provision is within its field of competence.

Article 3

1. The authorities of the Member States preparing a legislative provision may, if they consider it necessary, set the ECB a time limit for the submission of its opinion which may not be less than one month from the date on which the President of the ECB receives notification to this effect.
2. In case of extreme urgency, the time limit may be reduced. In this case, the consulting authority shall state the reasons for the urgency.
3. The ECB may request in due time an extension of the time limit for up to an additional four weeks. This request shall not be unreasonably declined by the consulting authority.
4. Upon expiry of the time limit, the absence of an opinion shall not prevent further action by the consulting national authority. Should the opinion of the ECB be received after the time limit, Member States shall, nevertheless, ensure that it is brought to the knowledge of the authorities referred to in Article 4.

Article 4

Each Member State shall take the measures necessary to ensure effective compliance with this Decision. To that end, it shall ensure that the ECB is consulted at an appropriate stage enabling the authority initiating the draft legislative provision

to take into consideration the ECB's opinion before taking its decision on the substance and that the opinion received from the ECB is brought to the knowledge of the adopting authority if the latter is an authority other than that which has prepared the legislative provisions concerned.

Article 5

1. This Decision shall apply from 1 January 1999.
2. Decision 93/717/EC shall be repealed with effect from 1 January 1999.

Article 6

This Decision is addressed to the Member States.

Done at Luxembourg, 29 June 1998.

For the Council

The President

R. COOK

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For specific terminology please refer to the [ECB glossary](#) (available in English only).

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