



EUROPEAN CENTRAL BANK

# GUIDE TO CONSULTATION OF THE EUROPEAN CENTRAL BANK BY NATIONAL AUTHORITIES

REGARDING  
DRAFT  
LEGISLATIVE  
PROVISIONS

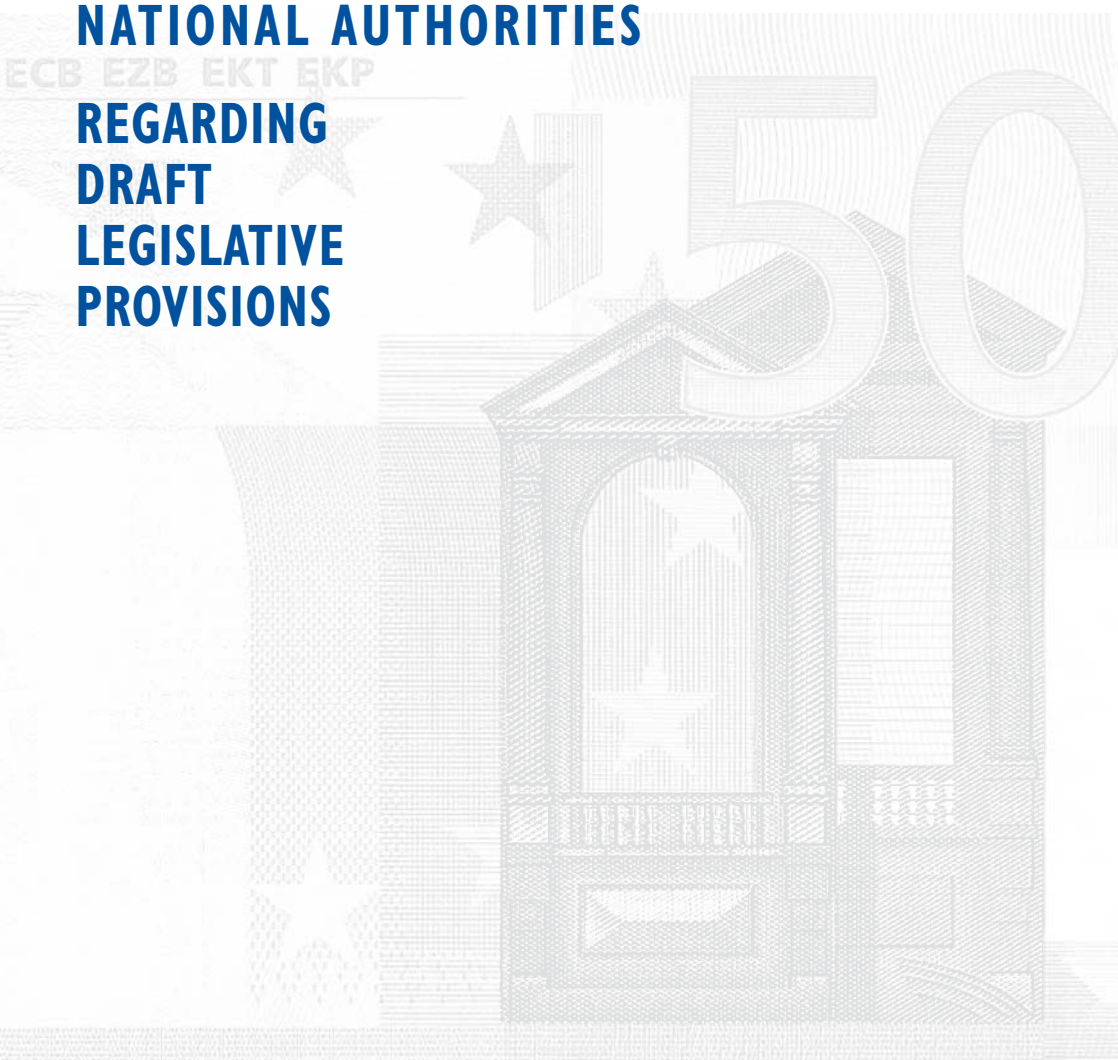


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ECB EZB EKT EKP

## REGARDING DRAFT LEGISLATIVE PROVISIONS



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**Address**

Kaiserstrasse 29  
60311 Frankfurt am Main  
Germany

**Postal address**

Postfach 16 03 19  
60066 Frankfurt am Main  
Germany

**Telephone**

+49 69 1344 0

**Website**

<http://www.ecb.int>

**Fax**

+49 69 1344 6000

**Telex**

411 144 ecb d

This Guide expresses the views of the ECB and is without prejudice to an assessment of Decision 98/415/EC by the Community institutions entrusted with ensuring the correct application of Community law.

This Guide is produced for information purposes. Only legislation published in the paper editions of the Official Journal of the European Union is deemed authentic.

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# CONTENTS

<b>FOREWORD</b>	<b>5</b>	7 Transmission of the opinion and its further consideration	<b>23</b>
<b>EXECUTIVE SUMMARY</b>	<b>6</b>	8 Publication	<b>23</b>
<b>I BACKGROUND TO THE ECB'S ADVISORY ROLE WITH REGARD TO DRAFT LEGISLATION</b>	<b>8</b>	<b>V COMPLIANCE WITH THE DUTY OF CONSULTATION</b>	<b>24</b>
<b>II THE OBJECTIVES OF DECISION 98/415/EC</b>	<b>10</b>	<b>VI LEGAL CONSEQUENCES OF NON-CONSULTATION</b>	<b>25</b>
<b>III THE SCOPE OF THE DUTY TO CONSULT THE ECB</b>	<b>12</b>	<b>ANNEXES</b>	<b>27</b>
1 The consulting authorities	<b>12</b>	1 Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (98/415/EC)	<b>28</b>
2 The draft legislative provisions covered	<b>13</b>	2 Overview of matters addressed in draft legislative provisions on which the ECB and previously the EMI have been consulted	<b>32</b>
3 The ECB's fields of competence	<b>14</b>		
4 Implementing legislation	<b>17</b>		
<b>IV THE CONSULTATION PROCEDURE</b>	<b>19</b>		
1 The appropriate time to consult the ECB	<b>19</b>		
2 The request for an opinion	<b>20</b>		
3 Time limits	<b>21</b>		
4 Acknowledgement of receipt	<b>22</b>		
5 Adoption of the opinion	<b>23</b>		
6 The language regime	<b>23</b>		



## FOREWORD

It is with great pleasure that I introduce this publication: *Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions*. Similarly to all other ECB publications it clearly expresses the ECB's commitment to the principles of openness and transparency and further contributes to making the ECB's aims and activities more widely known.

The EC Treaty requires Member States to seek the ECB's advice on draft legislative provisions falling within the ECB's fields of competence. Following the historic milestone of EU enlargement the number of actors involved in this consultation process has substantially increased. The ECB has therefore prepared this Guide to inform and provide assistance to national authorities, especially in the new Member States, in respect of this duty. To this end, the Guide explains the objectives and scope of consulting the ECB and clarifies the procedure to be followed.

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

Finally, I would like to emphasise the 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 support such close cooperation in the mutual interest of all parties involved.

Frankfurt am Main, June 2005

A handwritten signature in blue ink, appearing to read 'J. Trichet', is written over a stylized blue graphic element that resembles a signature or a logo.

Jean-Claude Trichet

## EXECUTIVE SUMMARY

National authorities are under a duty to consult the European Central Bank (ECB) about draft legislative provisions falling within the ECB's fields of competence. This duty stems from Article 105(4) of the Treaty establishing the European Community and a breach thereof could lead to infringement proceedings before the Court of Justice of the European Communities.

The ECB's advisory role is designed to ensure that national authorities benefit from the ECB's expertise, thereby: contributing to the general objectives of the European Union (EU); ensuring that national legislation is compatible with the legal framework of the European System of Central Banks (ESCB) and in line with ECB policies; and promoting information-sharing and communication between the ECB and the public.

The duty of consultation applies to all EU Member States except the United Kingdom. Details of the procedure governing consultation of the ECB are found in Council Decision 98/415/EC.

Although it is often a national minister who requests an opinion from the ECB, a wide range of national authorities (such as parliaments and bodies with regulatory powers) may consult the ECB. The consulting authority need not be the one that initiates (or adopts) the legislation.

The duty of consultation only applies to provisions that will become legally binding and be generally applicable in the Member State concerned. This duty is not limited to legislation which is destined to be adopted by a parliament, but equally there is no need to consult the ECB on secondary legislation which implements primary legislation unless its impact is different from the latter. Member States do not usually consult the ECB on the transposition of Community directives, although the ECB has on occasion encouraged them to do so for directives of particular interest to the ESCB and for which harmonisation is particularly important. The ECB should be reconsulted if there are substantive amendments to draft legislative provisions on which an ECB opinion has already been requested.

The matters falling within the ECB's fields of competence include the basic ESCB tasks under the Treaty, in particular those listed in Article 105(2) of the Treaty. Council Decision 98/415/EC contains a non-exhaustive list of categories of matters on which the ECB must be consulted.

The ECB must be consulted at an appropriate stage in the legislative process, i.e. at a time which enables the ECB to adopt its opinion in all required language versions and which enables the authority initiating the legislative provision to take the ECB's opinion into account before it decides on the substance. National authorities may set a time limit for the ECB's opinion, and the minimum period is one month. A deadline of less than one month is only permitted in cases of extreme urgency; in such cases the reasons for the urgency must be specified.

The process for adoption of the legislative provision is suspended during the period of consultation, although certain steps in the national legislative process can still be taken. After the expiry of any time limit this suspension lapses, but the relevant authorities should still take the ECB's opinion into account, provided that it is received before the legislative provision is finally adopted. In all cases, the consulting authority should bring the ECB's opinion to the attention of the adopting authority, if this is a different body.

ECB opinions on draft legislative provisions are generally published on the ECB website immediately after their adoption and transmission to the consulting authority (unless there are specific grounds to delay, in which case the opinion will be published at the latest six months after adoption).



# I BACKGROUND TO THE ECB'S ADVISORY ROLE WITH REGARD TO DRAFT LEGISLATION

The Treaty establishing the European Community (the 'Treaty') confers on the ECB an advisory function with regard to proposed Community acts and draft national legislative provisions within its fields of competence. Article 105(4) of the Treaty, which is reproduced in Article 4 of the Statute of the European System of Central Banks and of the European Central Bank (the 'Statute'), is the basis for the ECB's advisory function. The framework for consultation of the ECB by national authorities is set out in Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions<sup>1</sup> ('Decision 98/415/EC'), which has been applicable since 1 January 1999. It applies to all Member States except the United Kingdom, which is exempted from the obligation to consult the ECB by the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, annexed to the Treaty. Since its establishment the ECB has issued 173 opinions in response to consultations by national authorities (see Chart 1).

## Box 1

### Article 105(4) of the Treaty:

*The ECB shall be consulted:*

- on any proposed Community 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 107(6).

*The ECB may submit opinions to the appropriate Community institutions or bodies or to national authorities on matters in its fields of competence.*

### Article 4 of the Statute:

*In accordance with Article 105(4) of this Treaty:*

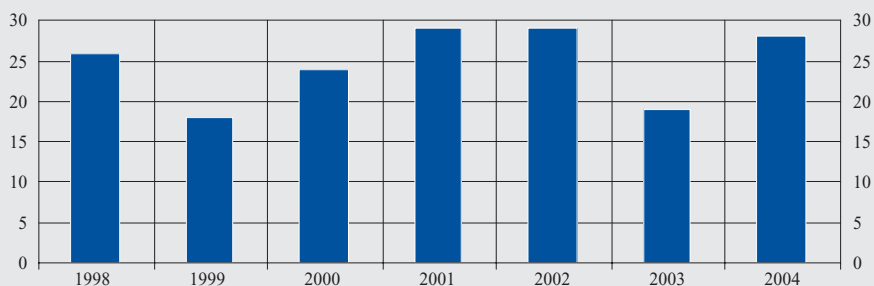
*(a) the ECB shall be consulted:*

- on any proposed Community 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 42;

*(b) the ECB may submit opinions to the appropriate Community institutions or bodies or to national authorities on matters in its fields of competence.*

<sup>1</sup> OJ L 189, 3.7.1998, p. 42. The text of Decision 98/415/EC is reproduced in Annex 1.

**Chart I Number of ECB opinions in response to consultations by national authorities**



Prior to the establishment of the ECB, the European Monetary Institute (EMI) also had a consultative role<sup>2</sup>. Certain subjects are still of considerable interest to the new EU Member States, for example EMI opinions concerning the integration of national central banks (NCBs) into the ESCB and the introduction of the euro as the currency in many of the Member States, subjects that are also of considerable interest to all Member States. The EMI adopted 68 opinions in response to consultations by national authorities on a wide variety of draft legislative provisions falling within its fields of competence.

Decision 98/415/EC is drafted in quite general terms, and in order to ensure that it is fully effective national legislators need to have a thorough understanding of: (a) its objectives; (b) the scope of the duty of consultation; (c) the procedure to be followed; and (d) the effect that a failure to consult might have on the legality of the relevant legislation. This guide therefore aims to inform all national authorities involved in the preparation of national 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.

<sup>2</sup> See Article 117(6) and (8) of the Treaty and Council Decision 93/717/EC of 22 November 1993 on the consultation of the European Monetary Institute by the authorities of the Member States on draft legislative provisions (OJ L 332, 31.12.1993, p. 14).

## II THE OBJECTIVES OF DECISION 98/415/EC

In the *OLAF* judgment<sup>3</sup>, the Court of Justice of the European Communities (the ‘Court’) clarified the objectives of Article 105(4) of the Treaty in terms of the obligation to consult the ECB on any proposed Community 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 duty of the Community institutions to consult the ECB on proposed Community acts, it also helps to clarify the duty of Member States to consult on draft national 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 ESCB’s objectives, as laid down in Article 105(1) of the Treaty; (b) is compatible with the legal framework of the ESCB; and (c) is in line with ESCB policies. The duty of consultation under Decision 98/415/EC is designed to operate as a preventive system 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 where the ECB opinion can usefully be taken into consideration by the national authorities involved in the preparation and adoption of the legislation concerned.

In this regard, the duty of consultation has, in practice, enabled Member States to ensure that national legislation, including the statutes of NCBs, remain compatible with the Treaty and the Statute, pursuant to Article 109 of the Treaty.

The consultation procedure established by Decision 98/415/EC has a number of further advantages. It is valuable as a vehicle for sharing 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 Community or international fora where similar matters are discussed. Furthermore, ECB opinions foster harmonisation of Member States’ legislation within the ECB’s fields of

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3 Case C-11/00 *Commission of the European Communities v European Central Bank* [2003] ECR I-7147, 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 7 October 1999 on fraud prevention. The judgment is significant for its clarification of the ECB’s advisory role since the Court, in response to a request by the ECB, examined the objectives of Article 105(4) of the Treaty for the first time.

competence and contribute to enhancing the quality of national legislation, since they are based on the expertise that the ECB has acquired in the exercise of its tasks<sup>4</sup>. ECB opinions may also constitute a source which the Court (in proceedings related to the compatibility with the Treaty of the legislative provisions concerned) or national courts (in proceedings on the interpretation or validity of the legislative provisions concerned) can take into account.

In common with the opinions of other Community institutions, ECB opinions have no binding force. In other words, national legislators need not 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 proven to be effective and national legislators have generally agreed to amend or even withdraw envisaged legislative provisions rather than adopt legislation that conflicts with the ECB's position.

Finally, the duty of consultation 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 on the ECB's website immediately after their adoption and subsequent transmission to the consulting authority.

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<sup>4</sup> 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.

## III THE SCOPE OF THE DUTY TO CONSULT THE ECB

### Box 2

#### 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 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.*

## I THE CONSULTING AUTHORITIES

### I.1 THE RANGE OF AUTHORITIES COVERED

Article 2(1) of Decision 98/415/EC makes clear that the duty to consult the ECB on 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 except the United Kingdom, the authorities concerned are not only those of the Member States which have adopted the euro (‘participating Member States’) but also those of the Member States which have not yet adopted the euro (‘non-participating Member States’), other than the UK authorities.

Article 3(1) of Decision 98/415/EC clarifies that the authorities of the Member States are ‘[t]he authorities ... preparing a legislative provision’. 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 has been consulted by a wide variety of authorities. In the case of legislation going through the national parliament, the ECB has generally been consulted by the relevant member of the national government, usually the minister of finance or the minister of justice. Occasionally consultations have been channelled through NCBs.

In the case of other legislation, the ECB has generally been consulted by the authority which is competent to adopt the act concerned, for instance the relevant member of the national government or an NCB having regulatory powers. Finally, the ECB has also been consulted by national authorities (NCBs, supervisory authorities or specific bodies such as, for instance, a national euro changeover board) which had no formal power to initiate or adopt the draft legislative provision concerned, but which were de jure or de facto involved in the adoption process. In these cases, the ECB has taken the view that the consultation is valid if it is apparent that the authorities concerned are acting on behalf of the initiating or adopting authority.

## 1.2 THE ROLE OF NATIONAL PARLIAMENTS

National parliaments are authorities ‘preparing ... legislative provision[s]’ for the purposes of Decision 98/415/EC in cases where they debate draft legislative provisions within the ECB’s fields of competence which have been proposed by one or more of their members<sup>5</sup>. National parliaments have to decide on the basis of their own rules of procedure how 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 one case, the ECB was consulted by a national government, acting on its own initiative, on draft legislative provisions which were proposed by members of a national parliament in accordance with national law.

## 2 THE DRAFT LEGISLATIVE PROVISIONS COVERED

### Box 3

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

*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.*

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

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<sup>5</sup> 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.

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 persons. The definition does not include draft legislative provisions the exclusive purpose of which is the transposition of Community directives into national law (see section III(4)).

The duty of consultation is not limited to draft legislative provisions which are destined to be adopted by a parliament. Decision 98/415/EC covers all types of legally binding provisions, including secondary legislation, as well as binding acts of general applicability of NCBs or supervisory authorities (where these bodies have regulatory powers). However, this does not mean that the ECB should be consulted on all secondary legislation which implements primary legislation falling within the ECB’s fields of competence. Given the objectives of Decision 98/415/EC, it is clear that an opinion should only be sought from the ECB on such draft secondary legislation 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. Examples of matters on which Member States are as a rule not obliged to consult the ECB are issues connected with procedure or sanctions.

The duty 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 situation is where substantive new provisions are proposed after adoption of the ECB opinion. In the latter situation, the ECB should be consulted in relation to those amendments. 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.

### **3 THE ECB’S FIELDS OF COMPETENCE**

Article 2(1) of Decision 98/415/EC requires that national authorities 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 105(2) of the Treaty (i.e. the definition and implementation of the monetary policy of the Community, 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). It also includes draft legislative provisions affecting a variety of other tasks attributed to the ESCB pursuant to the Treaty.

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 about draft legislative provisions relating to these matters, namely: currency matters; means of payment; NCBs; the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics; payment and settlement systems; and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. Decision 98/415/EC makes clear that the list of matters in Article 2(1) is not exhaustive.

Furthermore, Article 2(2) of Decision 98/415/EC states that the authorities of non-participating Member States (other than the UK) must consult the ECB on any draft legislative provisions concerning the instruments of monetary policy. The reason why Decision 98/415/EC differentiates in this way between participating and non-participating Member States is that the instruments of monetary policy (for example, the minimum reserve system) are no longer decided by national authorities in participating Member States. However, recital 5 of Decision 98/415/EC clarifies that the duty of consultation does not include decisions taken by the authorities of non-participating Member States in the context of implementation of their monetary policy (for example, decisions setting interest rates).

Annex 2 gives a non-exhaustive overview of issues addressed in draft national provisions on which the ECB and previously the EMI have been consulted. It is hoped that this overview will provide useful guidance in cases of doubt as to whether or not a draft national provision comes within the scope of the duty of consultation laid down in Decision 98/415/EC.

### **3.1 CURRENCY MATTERS AND MEANS OF PAYMENT**

ECB/EMI opinions in this category of matters have included draft legislative provisions concerning a variety of topics. Some notable examples are: measures related to the introduction of the euro (redenomination of the national currency, redenomination of public and private debt, dual pricing, rounding rules, the replacement of national reference rates, etc.), legal tender, issuance of legal tender commemorative coins, copyright in relation to banknotes and coins, counterfeiting, recycling of banknotes and coins, and issuance of electronic money.

### **3.2 NATIONAL CENTRAL BANKS**

A large number of ECB/EMI opinions fall within this category. They concern legislative provisions which affect the status of NCBs or their board members, in particular their independence. Several opinions also concern the tasks and monetary policies of NCBs, including compliance with the prohibition on monetary financing contained in Article 101 of the Treaty, NCBs' foreign reserves and the minimum reserve requirements of NCBs of non-participating Member States. The ECB/EMI have 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 objectives and tasks of the ESCB<sup>6</sup>.

### **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. Article 4 of Council Regulation (EC) No 2533/98 of 23 November 1998 on the collection of statistical information by the European Central Bank<sup>7</sup> requires that all Member States 'organise themselves in the field of statistics and ... fully cooperate with the ESCB in order to ensure the fulfilment of the 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 which are of a general nature and which are intended to draw attention to aspects that could be made more explicit in the draft legislative provision.

### **3.4 PAYMENT AND SETTLEMENT SYSTEMS**

Past consultations within this category have concerned draft legislative provisions related to several aspects of the functioning of payment and settlement systems, such as their oversight, the net or real time gross settlement basis, netting and collateral aspects and the zero-hour rule.

### **3.5 RULES APPLICABLE TO FINANCIAL INSTITUTIONS INsofar AS THEY MATERIALLY INFLUENCE THE STABILITY OF FINANCIAL INSTITUTIONS AND MARKETS**

Recital 3 of Decision 98/415/EC makes clear that this category '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'. This category should also be considered in conjunction with Article 25.1 of the Statute, which provides that the competent authorities of Member States 'may' consult the ECB on 'the implementation of Community legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.' However, by virtue of Article 2(1) of Decision 98/415/EC, Member States 'shall' consult the ECB when the proposed legislative provisions 'materially influence' financial stability, unless, as

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

7 OJ L 318, 27.11.1998, p. 8.

stated in Article 1(2), the provisions are exclusively intended to transpose Community directives.

Pursuant to the last indent of Article 2(1) of Decision 98/415/EC, the ECB has adopted several opinions in response to consultations concerning proposed amendments to the institutional supervisory structure in Member States. It has also been regularly consulted about major amendments to the supervisory regime for credit institutions and financial institutions, as well as about rules to combat money laundering. The ECB has frequently been consulted about draft legislation which could potentially have an important impact on the markets, for example legislation concerning securitisation regimes and the dematerialisation of securities, as well as legislation affecting both financial markets and the ECB's primary goal of price stability (for example, provisions concerning inflation-indexed loans).

Finally, the ECB has been consulted on various draft legislative provisions potentially affecting the free movement of capital, exchange-rate policy (for example, a proposed 'Tobin tax') and other draft legislative provisions of economic importance.

## 4 IMPLEMENTING LEGISLATION

### Box 4

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

*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 the transposition of Community directives into national law. The rationale for this exemption is that the ECB will, in accordance with Article 105(4) of the Treaty, already have been consulted on the proposed Community act and it is therefore unnecessary to extend the ECB's advisory role to draft national provisions which purely transpose that Community act. By the same token, the ECB is of the opinion that draft national legislative provisions aiming to implement Community regulations also benefit from this exemption, provided that these 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 will have been consulted by Community institutions).

The ECB has on a very limited number of occasions encouraged national authorities to consult the ECB on draft legislative provisions transposing Community directives which are of particular interest to the ESCB. This was for instance done in the case of

the Settlement Finality Directive<sup>8</sup> and the Collateral Directive<sup>9</sup>. The ECB's opinions resulting from the large number of consultations on draft provisions aiming to transpose both directives into national law were useful contributions to reinforcing the legal framework for the Eurosystem's operations, as well as the stability of the financial system.

Member States sometimes consult the ECB on their own initiative about draft provisions aiming to transpose directives, even though they are not obliged or encouraged to do so, for instance in areas where they consider that the ECB has specific expertise. In such cases, the ECB is generally happy to deliver an opinion if the draft provisions warrant specific comment in relation to the tasks and policies of the ESCB/ECB.

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8 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.

9 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.

## IV THE CONSULTATION PROCEDURE

### Box 5

#### Article 4 of Decision 98/415/EC:

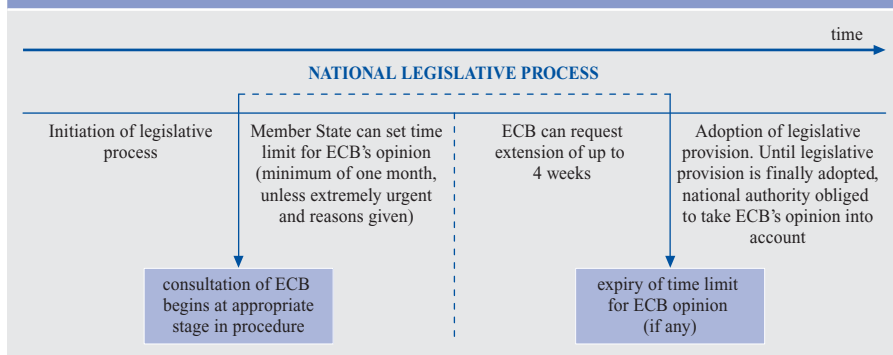
*Each Member State shall take the measures necessary to ensure effective compliance with this Decision. To that end, it shall ensure that the ECB is consulted at an appropriate stage enabling the authority initiating the draft legislative provision to take into consideration the ECB's opinion before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

### I THE APPROPRIATE TIME TO CONSULT THE ECB

The second sentence of Article 4 of Decision 98/415/EC states that the ECB must be consulted 'at an appropriate stage' in the legislative process. This implies that the consultation should take 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, and which also enables the relevant national authorities to take the ECB's opinion into consideration before the provisions are adopted. Where draft legislative provisions are prepared by an authority other than the adopting authority, Article 4 of Decision 98/415/EC seems to indicate that consultation on such provisions must take place at a time which enables the authority initiating the draft legislative provisions to consider whether they should be amended in order to accommodate the ECB's opinion, i.e. before transmission of the provisions to the adopting authority. The timetable should also factor in a reasonable period for the ECB to examine the consultation dossier and deliver its opinion. It is noted that Article 4 does not appear to 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 submission 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. Rather it means that the adopting authority has to have the opportunity meaningfully to deliberate the ECB's opinion prior to taking its decision on the substance. If a time limit has been set for submission of the ECB opinion (see section IV(3)) and this time limit has expired, the national authority concerned may restart the adoption process. But 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.

**Chart 2 Timetable**



## 2 THE REQUEST FOR AN OPINION

A request for an opinion must be addressed to the ECB's President in writing. The receipt by the ECB's President of the request for an opinion marks the beginning of the procedure for the adoption of an ECB opinion. The request should contain a copy of the draft legislative provisions. The ECB recommends that the consulting authority also encloses a short explanatory memorandum describing the following: the subject matter and the main objectives pursued; the stage that it has reached in the national legislative process; and the name and details of a contact person.

**Chart 3 Documentation requirements**

All documents may be submitted in the official language of the Member State concerned (or in one of the official languages if there is more than one).

Required:	Recommended:	Optional:
<ul style="list-style-type: none"> <li>– <b>Written request for an opinion</b> to ECB's President.</li> <li>– Copy of <b>draft legislative provisions</b>.</li> </ul>	<ul style="list-style-type: none"> <li>– Short <b>explanatory memorandum</b> stating:                             <ul style="list-style-type: none"> <li>– subject matter and main objectives of legislation;</li> <li>– stage in national legislative process; and</li> <li>– details of a contact person.</li> </ul> </li> <li>– If draft national legislation is long/complicated, an indication of the <b>draft provisions</b> on which ECB comments are particularly sought.</li> <li>– If request is made as matter of extreme urgency, an <b>English translation</b> of the explanatory memorandum and the main draft provisions submitted for consultation is desirable.</li> </ul>	<ul style="list-style-type: none"> <li>– Indication of <b>time limit</b> for ECB to deliver its opinion.</li> </ul>

In the case of draft legislation containing a large number of provisions addressing a variety of matters, the ECB further recommends that the consulting authority indicates the draft provisions on which ECB comments are particularly sought. The consulting authority may also indicate a time limit for the ECB to issue its opinion (see section IV(3)).

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 cases where the request is made as a matter of extreme urgency (see section IV(3)), the ECB would appreciate also receiving an English translation of the explanatory memorandum and the main draft provisions submitted for consultation. This allows the ECB to start working on the opinion immediately without having to wait for translations. However, the request for an ECB opinion should not be delayed by the lack of such a translation.

### 3 TIME LIMITS

#### Box 6

##### **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.*

Experience has shown that the standard period for adoption of an ECB opinion is six weeks, although the process can take longer. The period that is actually required for the adoption of a specific 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, the authorities of the Member States preparing a legislative provision may, if they consider it necessary, set a time limit for submission of the ECB's opinion. However, this time limit may not be less than one month from the date of receipt of the notification.

Experience has shown that Member States sometimes interpret this one-month time limit as the rule rather than the minimum period. Given the time required for preparation and adoption of ECB opinions, a one-month time limit has in practice proved to be extremely short. The minimum period should therefore be restricted to cases where there is a pressing need for the ECB to adopt its opinion within one month.

Under Article 3(2) of Decision 98/415/EC, in cases of extreme urgency the time limit may be reduced. In these highly exceptional cases, the consulting authority must expressly state the reasons for the urgency of the matter. In addition, as indicated above, the ECB would in such cases appreciate also receiving an English translation of the explanatory memorandum and of the main draft 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 in due time 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 'Upon 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 adoption of the draft legislation, which was suspended pending the ECB consultation. However, for as long as the legislation has not been finally adopted, the consulting authority continues to be obliged to take into consideration the ECB's opinion (and bring it to the attention of the adopting authority, if the latter is a different body).

#### **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 consultation request. In cases where the Member State is consulting the ECB without clearly being obliged to do so, this will be stated in the acknowledgement together with an indication whether the ECB nevertheless has specific comments which will be channelled via an ECB opinion.

The accompanying documents and the English translation are sent to the members of the Governing Council and the General Council of the ECB. This enables them to familiarise themselves with the consultation dossier from the start and be in a position to comment promptly when the draft opinion is submitted to them for comments.

## **5 ADOPTION OF THE OPINION**

Following its endorsement by the Executive Board, the draft opinion is submitted to the Governing Council for adoption. An opinion is a legal instrument of the ECB and is, as a rule, adopted by the Governing Council.

The members of the General Council are also involved in the decision-making process. While the Governing Council is the decision-making body responsible for the adoption of ECB opinions, the General Council contributes to the ECB's advisory tasks.

## **6 THE LANGUAGE REGIME**

Opinions requested by a national authority are adopted in the official language of the respective Member State (or in the same language as the consultation request if there is more than one official language) and in English.

## **7 TRANSMISSION OF THE OPINION AND ITS FURTHER CONSIDERATION**

Following adoption, the opinion is transmitted to the consulting authority with a letter from the ECB's President or Vice-President in the official language of the respective Member State (or in the same language as the consultation request if there is more than one official language).

Article 4 of Decision 98/415/EC states that the initiating authority has to take the ECB's opinion into consideration before taking its decision on the substance. The ECB opinion should be brought to the attention of the adopting authority if the latter is an authority other than that which has prepared the legislative provisions.

Following completion of the decision-making process, the ECB appreciates receiving a copy of the legislative provisions, as finally adopted.

## **8 PUBLICATION**

The Governing Council has gradually extended its policy of transparency with regard to national consultations. Initially, opinions issued within the framework of Decision 98/415/EC were not published by the ECB. In the final paragraph of each opinion the ECB stated that it would not object to the opinion being made public by the consulting national authority, but left this to the discretion of the authority in question. Between September 2002 and January 2005, opinions issued within the framework of Decision 98/415/EC were published six months after their adoption, except for opinions of policy importance, which were published immediately on the ECB's website. Since January 2005, all ECB opinions have been published on the ECB's website immediately after being transmitted to the consulting authority, unless there are specific grounds to refrain from immediate publication. If there are such specific grounds, the opinion is published at the latest six months after its adoption.



## V COMPLIANCE WITH THE DUTY OF CONSULTATION

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 the Decision. The ESCB closely monitors domestic legislative developments on draft national legislation pertaining to the ECB’s field of competence and NCBS and the ECB report internally on compliance with the obligation to consult the ECB on draft legislative provisions by national authorities in the fields of competence of the ECB.

## VI LEGAL CONSEQUENCES OF NON-CONSULTATION

A failure to consult the ECB on a draft national 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 would be brought by the European Commission against the Member State concerned under Article 226 of the Treaty<sup>10</sup>. The duty of consultation under Decision 98/415/EC is also precise and unconditional, which means that individuals can rely on it before national courts. As far as the ECB is aware, national courts have not to date been asked to rule on the validity or enforceability of a national provision adopted without consultation of the ECB, and no request for a preliminary ruling on this aspect has hitherto been addressed to the Court. However, the Court has repeatedly been asked to rule on the enforceability of a national provision adopted without prior notification to the European Commission, as required by specific Community acts<sup>11</sup>.

In these cases the Court has held that a national provision adopted in breach of a substantial procedural requirement is unenforceable against individuals. It is also well-established case-law of the Court that all remedies normally available under national law must be open to litigants seeking to enforce claims under Community law<sup>12</sup>. In those Member States in which individuals have the right to initiate proceedings in order to annul a national legislative provision on the grounds of a serious procedural defect, individuals should also have the right to seek to annul national legislative provisions adopted in breach of an essential procedural requirement of Community law, such as the prior consultation of the ECB. Member States should be aware of the risk that the case-law of the Court might lead individuals to start proceedings before a national court with the objective of obtaining a court order affecting the validity or enforceability of a national legislative provision adopted in breach of the duty of consultation under Decision 98/415/EC.

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10 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 237(d) of the Treaty and Article 35.6 of the Statute.

11 See, *inter alia*: Case 174/84 *Bulk Oil* [1986] ECR 559; Case 380/87 *Enichem Base* [1989] ECR 2491; Case C-194/94 *CIA Security International* [1996] ECR I-2201; Case C-226/97 *Lemmens* [1998] ECR I-3711; Case C-235/95 *AGS Assedic Pas-de-Calais* [1998] ECR I-4531; Case C-443/98 *Unilever* [2000] ECR I-7535; Case C-159/00 *Sapod Audic* [2002] I-5031.

12 See, for instance Case 158/80 *Rewe* [1981] ECR 1805.



## **ANNEXES**

## **I COUNCIL DECISION OF 29 JUNE 1998 ON THE CONSULTATION OF THE EUROPEAN CENTRAL BANK BY NATIONAL AUTHORITIES REGARDING DRAFT LEGISLATIVE PROVISIONS (98/415/EC)<sup>13</sup>**

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 Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the European Monetary Institute <sup>(3)</sup>,

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

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<sup>13</sup> OJ L 189, 3.7.1998, p. 42.

(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/EC (4) and Article 109I(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.

### **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

(<sup>1</sup>) OJ C 118, 17.4.1998, p. 11.

(<sup>2</sup>) OJ C 195, 22.6.1998.

(<sup>3</sup>) Opinion delivered on 6 April 1998 (not yet published in the Official Journal).

(<sup>4</sup>) OJ L 332, 31.12.1993, p. 14.



## 2 OVERVIEW OF MATTERS ADDRESSED IN DRAFT LEGISLATIVE PROVISIONS ON WHICH THE ECB AND PREVIOUSLY THE EMI HAVE BEEN CONSULTED<sup>14</sup>

	<i>Number of Opinion</i>
<b>Currency matters and means of payment</b>	
<b>E-commerce</b>	
– electronic payments and e-money instruments	CON/2000/11
– issuance of electronic money	CON/2002/1
<b>Euro banknotes and coins</b>	
	CON/2004/28, CON/2004/17, CON/2003/29, CON/2001/1, CON/1997/4, CON/1994/1
– circulation/distribution of banknotes and coins	CON/2004/28, CON/1999/14
– commemorative coins in circulation	CON/2002/12, CON/2000/13, CON/1999/12, CON/1999/10, CON/1998/18
– commercial reproduction of banknotes	CON/1996/13
– frontloading of euro banknotes and coins	CON/2001/21, CON/2001/14
– issuance of banknotes and coins	CON/2002/7, CON/2000/14, CON/1999/10, CON/1999/3, CON/1997/18
– overseas departments	CON/1998/9
<b>Introduction of euro</b>	CON/2001/37, CON/2001/29, CON/2001/19, CON/2001/9, CON/2001/1, CON/2000/25, CON/2000/22, CON/2000/21, CON/2000/15, CON/1999/10, CON/1999/2, CON/1998/48, CON/1998/42, CON/1998/36, CON/1998/31, CON/1998/23, CON/1998/19, CON/1998/18, CON/1998/11, CON/1998/9, CON/1998/8, CON/1998/6, CON/1998/2, CON/1998/1, CON/1997/30, CON/1997/24, CON/1997/18, CON/1997/17

<sup>14</sup> Annex 2 gives a non-exhaustive overview of issues addressed in draft national provisions on which the ECB (and previously the EMI) have been consulted.

	<i>Number of Opinion</i>
– ancillary measures for introduction of euro	CON/1998/8, CON/1998/1
– banknotes and coins denominated in national currency	CON/2002/31, CON/2002/15, CON/2002/6, CON/2001/26, CON/2001/20, CON/2001/1
– base and reference interest rates	CON/1998/59
– cash changeover	CON/2001/26, CON/2001/15, CON/2001/7, CON/2001/1
– dematerialisation of shares during euro changeover	CON/1999/4
– discount rate	CON/1997/24
– dual pricing	CON/1998/8
– exchange rate of euro	CON/1997/12
– foreign exchange operations	CON/2004/34, CON/2003/29
– legal tender	CON/2004/17, CON/2003/29, CON/2002/31, CON/2002/12, CON/2002/6, CON/2001/20, CON/2001/1, CON/2000/29, CON/2000/17
– redenomination of company shares	CON/1998/11
– redenomination of financial instruments	CON/1997/17
– redenomination of national currency	CON/2002/31, CON/2001/1, CON/1998/18
– redenomination of public and private debt	CON/1998/19, CON/1998/11
– rounding rules	CON/2002/15, CON/1998/48, CON/1998/19, CON/1998/1
– technical specification of euro coins	CON/2000/29, CON/2000/13
<b>Protection of the euro</b>	
– copyright	CON/2002/26, CON/1999/12, CON/1998/18

## *Number of Opinion*

- counterfeiting CON/2003/29, CON/2002/26, CON/2002/17, CON/2001/40, CON/2001/22, CON/2001/16, CON/2000/16, CON/1999/10
- recycling of euro banknotes and coins CON/2004/8

## **National central banks**

### **Accounting, reporting and auditing**

- accounting regime CON/2002/7, CON/1998/62
- annual accounts CON/1998/62, CON/1998/35
- national audit CON/2002/22

### **Board members**

- professional secrecy CON/2003/3, CON/2000/26, CON/1998/6, CON/1997/26, CON/1997/25, CON/1996/5
- security of tenure CON/1997/26, CON/1997/25
- terms of office CON/2004/16, CON/1997/15, CON/1997/10
- voting rights CON/1997/25

### **ESCB tasks**

CON/2003/27, CON/2002/16, CON/2000/7, CON/1998/5, CON/1997/18, CON/1997/8, CON/1996/10, CON/1994/1

### **Independence**

- relations with government CON/2004/1, CON/2003/27, CON/2003/22, CON/2002/14, CON/2001/28, CON/2001/17, CON/1999/16, CON/1998/38, CON/1998/13, CON/1998/6, CON/1997/32, CON/1997/8
- relations with government CON/2002/7, CON/1997/25, CON/1997/8, CON/1996/10, CON/1995/11

	<i>Number of Opinion</i>
– relations with parliament	CON/2001/17, CON/1998/6, CON/1997/26, CON/1996/5, CON/1996/4
– state account with an NCB	CON/1994/6
<b>Minimum reserves</b>	CON/1998/62, CON/1998/47, CON/1998/43, CON/1998/41, CON/1995/2, CON/1994/5
<b>Monetary policy</b>	CON/2002/21
<b>Non-ESCB tasks</b>	CON/1997/3, CON/1997/2, CON/1996/16
<b>Participation in international monetary institutions</b>	CON/1997/16, CON/1997/10
<b>Price stability</b>	CON/2002/27, CON/1998/5, CON/1997/30, CON/1997/20, CON/1997/10, CON/1995/11
<b>Prohibition of monetary financing</b>	CON/1998/45, CON/1995/14
<b>Prudential supervision</b>	CON/2003/23, CON/2003/7, CON/1995/15, CON/1994/11
<b>Reserves in foreign currency and reserves in gold</b>	CON/2004/6, CON/2000/17, CON/1998/22, CON/1996/16
<b>Statute of NCBs</b>	CON/2003/29, CON/2003/15, CON/2003/4, CON/2002/7, CON/2000/15, CON/2000/7, CON/1998/25, CON/1999/18, CON/1998/13, CON/1998/12, CON/1998/7, CON/1994/1
– budget law provisions	CON/2002/31, CON/2002/30, CON/2001/17, CON/1997/26
– functioning and organisation of overseas departments	CON/1999/20
<b>Uncollateralised intra-day credit to government</b>	CON/1997/8

## *Number of Opinion*

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

#### **Balance of payments statistics**

CON/2003/8, CON/2002/29,  
CON/2002/21, CON/1998/45

#### **General statistics**

##### – collection of statistics

CON/2004/24, CON/2002/29,  
CON/2002/21, CON/2000/28,  
CON/1999/22, CON/1998/30,  
CON/1998/28, CON/1995/6

##### – publication of interest terms

CON/2002/28

#### **Money and banking statistics**

CON/2004/2, CON/1998/30

#### **Reporting obligations**

CON/2003/1, CON/2002/29,  
CON/2002/2

#### **Statistical functions of an NCB**

CON/2003/8, CON/2002/28,  
CON/1998/45, CON/1997/12,  
CON/1996/5, CON/1996/4,  
CON/1995/11

### **Payment and settlement systems**

#### **Collateral, netting, repos**

CON/2004/27, CON/1998/42,  
CON/1998/29, CON/1998/25,  
CON/1996/5, CON/1995/13,  
CON/1995/12

#### **Insolvency procedures**

##### – zero-hour rule

CON/1998/9, CON/1998/3,  
CON/1996/4

#### **Lien on securities**

CON/1995/12

#### **Oversight of payment systems**

CON/2003/15, CON/1998/3,  
CON/1996/10, CON/1996/4

#### **Payment systems – general**

CON/2003/15, CON/2003/14,  
CON/2002/1, CON/1998/9,  
CON/1998/3, CON/1997/4

	<i>Number of Opinion</i>
<b>Securities settlement systems – general</b>	CON/1998/42, CON/1998/9, CON/1998/3
<b>TARGET</b>	CON/2001/5, CON/2000/5, CON/1999/19, CON/1999/13, CON/1999/9
– RTGS system	CON/1995/12
<b>Transferable securities</b>	CON/2004/22
<b>Rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets</b>	
<b>Credit institutions</b>	CON/2003/25, CON/2001/35, CON/1998/25
<b>Financial intermediaries</b>	CON/2003/25, CON/2001/35
<b>Financial collateral arrangements</b>	CON/2004/27, CON/2003/11, CON/2003/2, CON/2002/8, CON/1998/26, CON/1997/6, CON/1996/15
<b>Financial Services Ombudsman</b>	CON/2003/24
<b>Inflation-indexed loans from credit institutions</b>	CON/2004/20
<b>Money laundering and terrorist financing</b>	CON/2003/25, CON/2002/24, CON/2002/5, CON/2002/4, CON/1997/4
<b>Principle of free movement of capital</b>	CON/1995/15
– tax on foreign exchange transactions	CON/2004/34
<b>Stability of financial markets</b>	CON/2002/1, CON/2001/35, CON/1998/42, CON/1997/4, CON/1997/2, CON/1997/3, CON/1994/11
– off-exchange markets	CON/2003/7
<b>Stock exchanges</b>	CON/1999/4, CON/1997/21, CON/1994/11

*Number of Opinion*

**Supervision of credit and financial institutions** CON/2004/21, CON/2003/24,  
CON/2003/19, CON/2002/18,  
CON/2001/35, CON/1997/2

**Instruments of monetary policy**

**Instruments of monetary policy of  
non-participating Member States** CON/1995/17, CON/1997/27

- central bank’s information system and method  
and time limits for data supply CON/2004/33
- e-money institutions CON/2004/25
- minimum reserve requirements CON/2004/29
- programme of statistical surveys CON/2004/36
- supervision of the financial markets CON/2004/31

