

OPINION OF THE EUROPEAN CENTRAL BANK

at the request of the Minister of Finance of the Netherlands under Articles 109 l(2) and 109 f(6) of the Treaty establishing the European Community (hereinafter referred to as the “Treaty”) and Article 5.3 of the Statute of the European Monetary Institute (hereinafter referred to as the EMI) on a draft legislative proposal to amend the Dutch Central Bank Act 1998.

(CON/98/38)

1. On 27 July 1998 the European Central Bank (hereinafter referred to as the “ECB”) received a request from the Minister of Finance of the Netherlands for an opinion on a draft legislative proposal to amend the Dutch Central Bank Act 1998 (hereinafter referred to as the “draft Act”).
2. In accordance with Article 109 l(2) of the Treaty, the ECB has taken over the advisory functions of the EMI, which went into liquidation upon the establishment of the ECB on 1 June 1998. The ECB’s competence to deliver an opinion is based on Article 1.1, second indent, of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions, as the draft Act contains provisions concerning De Nederlandsche Bank and its Governor. In accordance with Articles 12.4 and 47.1 of the ESCB Statute, this opinion has been adopted by the Governing Council with the contribution of the General Council.
3. The ECB notes with satisfaction that the draft Act follows up on issues raised in the EMI’s March 1998 report prepared under Article 109 j of the Treaty (hereinafter referred to as the “Convergence Report”). In this Report (in particular pages 333 and 334), the EMI mentioned that Article 3, section 1, introduction and paragraph (a) of the Central Bank Act 1998 contained an imperfection. This Article states that the “Bank co-defines” (and executes) the ESCB’s monetary policy rather than its Governor whose unique position in this respect has to rather implicitly be derived from references to the Bank’s integration in the ESCB (in the Central Bank Act 1998) and to the Governor’s dual capacity as Governor and as member of the ECB’s Governing Council and General Council (in the Bank’s Articles of Association). The draft Act corrects this situation through an amendment of Article 3 and an addition to Article 12. Article 3 (draft) now states that the “Bank contributes (in Dutch: “draagt bij”) in the framework of the ESCB to the definition” (in

Dutch: “het bepalen”) (and execution) of the ESBC’s monetary policy. The addition to Article 12 states that the Bank’s Board of Directors with regard to the performance of ESCB-related tasks shall “respect” (in Dutch: “in acht nemen”) the capacity of its Governor as member of the Governing Council and the General Council of the ECB. This drafting accommodates the concerns raised in the EMI’s Convergence Report with regard to Article 3 of the Central Bank Act 1998, it being understood that the competence for monetary policy in the ESCB rests exclusively with the Governing Council of the ECB.

4. Finally, the draft Act also introduces, in Article 19, an obligation for the Bank’s Governor to appear in Second Chamber and/or the Senate if so requested. In accordance with the EMI’s Convergence Report, such dialogue between NCBs and their respective political authorities, even when based on statutory obligations to provide information and exchange views, is not incompatible with the Treaty and the ECB Statute provided that:
- this does not result in interference with the independence of the members of the decision-making bodies of NCBs;
 - the ECB’s competences and accountability as well as the special status of a governor in his/her capacity as a member of its decision-making bodies are respected; and
 - confidentiality requirements resulting from Statute provisions are observed

The first concern is met through an explicit reference in Article 19 of the draft Act to Article 107 of the Treaty, the second concern through an explicit recognition in Article 1, section 2, of the Central Bank Act 1998 of the Bank’s and its Governor’s integration in the ESCB, and the third concern through an explicit reference in Article 19 of the draft Act to Articles 10.4 and 38 of the ECB Statute.

6. The ECB confirms that it has no objection to this opinion being made public by the competent Dutch authorities at their discretion.

Done at Frankfurt am Main on 20.08.1998

The President of the ECB

[signed]

Willem F. Duisenberg