



E U R O P E A N C E N T R A L B A N K

OPINION OF THE EUROPEAN CENTRAL BANK

At the request of the Ministry of Finance of the Netherlands on a draft legislative proposal concerning the protection of credit institutions and other financial institutions against liabilities resulting from the closure of payment and security settlement systems on 31 December 1999

(CON/99/13)

1. On 23 August 1999 the European Central Bank (ECB) received a request from the Ministry of Finance of the Netherlands on a draft legislative proposal concerning the protection of credit institutions and other financial institutions against liabilities resulting from the closure of payment and security settlement systems on 31 December 1999.
2. The ECB's competence to deliver an opinion is based on Article 105 (4), second indent, of the Treaty establishing the European Community and Article 2 (1), fifth and sixth indents, of Council Decision (EC) No. 98/415 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, as the legislative proposal deals with payment systems and settlement systems, as well as with the stability of financial institutions and markets. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, this opinion has been adopted by the Governing Council of the ECB.
3. Following the conclusions of the informal meeting of the ECOFIN Council of Ministers on 16 to 18 April 1999 on ways of dealing with possible problems during the changeover to the year 2000, the Ministry of Finance of the Netherlands has prepared a draft legislative decree. This draft takes as given that the TARGET payment system of the ESCB and TOP, the national giro gross payment system of De Nederlandsche Bank N.V., will be closed on 31 December 1999. Other payment systems and security settlement systems linked to TARGET and TOP will also be closed on 31 December 1999. These closures might have legal consequences for credit and other financial institutions participating in payment or security settlement systems as obligations due on 31 December 1999 cannot be performed. The obligations concern instructions given by clients to credit and other financial institutions, as well as obligations of the said institutions themselves to

transfer money or securities by way of payment or security settlement systems on 31 December 1999.

4. The draft legislative provisions address these legal consequences by holding credit and other financial institutions harmless from failure to transfer money or securities via payment or security settlement systems on 31 December 1999. Specifically, Section 1 of the draft legislative provisions clarifies that the transfer of money or securities by credit institutions and other financial institutions on 30 December 1999, instead of on 31 December 1999, is neither a breach of contract, nor a wrongful act on the part of the clients, credit institutions and other financial institutions involved. This protection means, for transactions governed by Dutch law, that neither the clients, nor the credit institutions and other financial institutions are liable for possible losses suffered by creditors on account of this earlier performance. Contractual parties are, of course, free to agree on other solutions *inter se*. The draft legislative provisions will enter into force on the day after the date of publication. According to Section 2 of the draft, the legislative provisions will, however, apply retroactively as from 30 December 1999 in the event of it entering into force on a later date.
5. The ECB welcomes the effort made by the authorities of the Netherlands to reduce the legal uncertainty which might result under Dutch law from the closure of payment and securities settlement systems on 31 December 1999. The legislative proposal takes into account the communiqué of the central bank governors, endorsed by ECOFIN ministers at their informal meeting in Dresden on 17 April 1999, which urged the Member States to take appropriate means ensuring that the performance of any contractual obligations of credit institutions or other agents in the financial markets shall neither become due nor enforceable on 31 December 1999. The ECB also notes that in shifting the performance of the said obligations to 30 December 1999, the draft legislative provisions limit the number of transactions on the first days of the year 2000. This is in line with internationally given advice. In doing so, the ECB finds that the draft legislative provisions could contribute to maintaining the stability of financial institutions and markets during the changeover to the year 2000.
6. The ECB has one drafting comment regarding the draft legislative proposal. In its opinion, the words “Section 212 A, sub a of the Insolvency Act” in the fifth line of Section 1, paragraph 2 should read: “Section 212 A, sub b of the Insolvency Act”.

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

Done at Frankfurt am Main on 14 September 1999.

The President of the ECB

[signed]

Willem F. Duisenberg