



EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 24 October 2003

at the request of the Ministry of Finance of the Netherlands

on a draft law on provisions concerning the merger of De Nederlandsche Bank and the Pensions and Insurance Supervisory Authority Foundation

(CON/2003/23)

1. On 2 September 2003 the European Central Bank (ECB) received a request from the Ministry of Finance of the Netherlands for an opinion on a draft law on provisions concerning the merger of De Nederlandsche Bank N.V. and the Pensions and Insurance Supervisory Authority Foundation (*Bepalingen in verband met de fusie van De Nederlandsche Bank N.V. en de Stichting Pensioen- & Verzekeringskamer*) (hereinafter the 'draft law').
2. The ECB's competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty establishing the European Community and the third indent of Article 2(1) of 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>, since the draft law concerns the national central bank (NCB). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.
3. The draft law provides the legal basis for the merger of De Nederlandsche Bank (DNB) and the Pensions and Insurance Supervisory Authority Foundation (*Stichting Pensioen- & Verzekeringskamer* - PVK) and implements the Government's intentions following the reallocation of supervisory tasks and responsibilities that has been in progress since 2002. The Dutch Government's aim, once it had consulted market participants, was to replace the existing sectoral prudential supervision approach in the Netherlands with a functional approach. This would entail attributing prudential supervision tasks relating to all credit institutions, pension funds and insurance undertakings, as well as the responsibility for the supervision of the financial system as a whole, to a new institution. This new institution consists of DNB merged with the PVK. A second institution, the Financial Markets Authority (*Stichting Autoriteit Financiële Markten*), will concentrate on conduct aspects of financial institutions, the transparency of financial markets and consumer protection issues. In order to support its decision, the Government provided Parliament

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

with a memorandum entitled the 'Reorganisation of the prudential supervision of the financial market sector'<sup>2</sup>.

4. The ECB notes in particular that the proposed model follows on from an earlier model adopted in March 2002, according to which certain governing and supervisory board members were represented on the respective boards of both DNB and the PVK. This model was followed in April 2002 by a formal cooperation agreement between the two authorities. This closer cooperation was the logical consequence of the reallocation of supervisory responsibilities that was completed in 2002 on the basis of the above-mentioned memorandum and a covenant between DNB, the PVK and the Financial Markets Authority<sup>3</sup>. These agreements laid down a new supervisory structure according to which prudential supervision, regarding the financial stability of financial institutions, was assigned to DNB and the PVK. DNB also remained responsible for the supervision of the financial system as a whole. This is the first time that the ECB has been consulted on the Dutch reorganisation.
5. The draft law merges the two legal entities, DNB and the PVK, to form a single legal entity, which will retain the name De Nederlandsche Bank. Under the draft law the PVK's assets are transferred to DNB and the PVK will cease to exist. All tasks attributed to the PVK by law are henceforth to be carried out by DNB. All of the PVK's rights and obligations, including any pending legal proceedings, are to be transferred to DNB.
6. Central banks have traditionally been closely involved in the prudential supervision of credit institutions due to their pivotal role in the financial system, in particular regarding implementing monetary policy and ensuring the proper functioning of payment systems. In the past this involvement has rarely related to the prudential supervision of pension funds and insurance undertakings, which are generally not considered to pose the same degree of systemic risk as credit institutions. However, over time the traditional borders between the banking and insurance segment of the financial system have become increasingly blurred, as is demonstrated by the emergence of 'hybrid' financial products, the increased use of risk transfer instruments and distribution agreements between the two sectors, and the growing role of financial conglomerates. Given the significant extent to which this has been the case in the Netherlands, and in view in particular of the important role in the Netherlands of financial groups that combine different types of financial services, merging the prudential supervision of credit institutions, pension funds and insurance undertakings into a single entity – DNB – should lead to a better understanding of the soundness of individual financial conglomerates. In addition, this should contribute to an earlier identification and better monitoring of systemic risk, thus contributing to financial stability. For these reasons the ECB welcomes the fact that DNB is becoming more involved in the prudential supervision of pension funds and insurance undertakings.

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<sup>2</sup> *Hervorming van het toezicht op de financiële marktsector*, Kamerstukken II 2001/02, 28122, nr. 2.

<sup>3</sup> *Convenant tussen Stichting Autoriteit Financiële Markten en De Nederlandsche Bank N.V. respectievelijk Stichting Pensioen- & Verzekeringskamer inzake de coördinatie van het toezicht*, Amsterdam, 9 September 2002.

7. The ECB particularly welcomes the fact that the draft law attributes new responsibilities to DNB, without affecting its powers in relation to the tasks it executes pursuant to the Treaty and the Statute of the European System of Central Banks and of the European Central Bank.
8. The ECB also welcomes the likely increase in the effectiveness and efficiency of prudential supervision. The merged DNB will probably be more effective both internally and externally. Increased efficiency will benefit supervised institutions in particular, as they will encounter only one interlocutor instead of two at the supervisory level. The supervised institutions will have less onerous reporting obligations and directors, supervisory directors and key officers will be subject to a single review process. However, adequate safeguards should be taken to ensure that the reduction in administrative costs does not affect the quality of supervision. In particular during the first phase of the merger due care should be taken that high standards of supervision continue to be applied. Moreover, the ECB anticipates that these changes will further improve the quality of statistics transmitted to the ECB and at the same time keep the overall reporting burden low.
9. The ECB notes that Article 7 of the draft law states that, by 1 November of each year, DNB must specify a budget for its activities arising from: the Insurance Industry (Supervision) Act 1993 (*Wet toezicht verzekeringsbedrijf 1993*), the Pensions and Savings Act (*Pensioen- en spaarfondswet*); the Funeral Insurance Business in Kind Supervision Act (*Wet toezicht natuura-uitvaartverzekeringsbedrijf*); the Professions Pension Scheme (Obligatory Participation) Act (*Wet betreffende verplichte deelneming in een beroepspensioenregeling*); the Industrial Pension Funds (Obligatory Participation) Act 2000 (*Wet verplichte deelneming in een bedrijfstakpensioenfonds 2000*); the Introduction of an Age Limit for the Notarial Profession and the Notarial Pension Funds Act (*Wet tot invoering van een leeftijdsgrens voor het notarisambt en de oprichting van een notarieel pensioenfonds*); the Access to Medical Insurance Act 1998 (*Wet op de toegang tot ziektekostenverzekeringen 1998*); and the FVP Privatisation Act (*Wet privatisering FVP*). This budget requires the approval of the Minister for Finance and the Minister for Social Affairs and Employment. As is further elaborated in the accompanying explanatory memorandum, this requirement is limited to DNB's function as insurance sector supervisor and does not therefore infringe on DNB's (financial) independence as an NCB within the European System of Central Banks as required by Article 108 of the Treaty.
10. The ECB notes that Article 8 specifies that in 2008, and thereafter every five years, the Minister for Finance and the Minister for Social Affairs and Employment must send Parliament a joint report on the effectiveness and suitability of the work performed by the PVK with regard to its tasks pursuant to: the Insurance Industry (Supervision) Act 1993; the Pensions and Savings Act; the Funeral Insurance Business in Kind Supervision Act; the Professions Pension Scheme (Obligatory Participation) Act; the Industrial Pension Funds (Obligatory Participation) Act 2000; the Introduction of an Age Limit for the Notarial Profession and the Notarial Pension Funds Act; the Access to Medical Insurance Act 1998; and the FVP Privatisation Act. Thus the report focuses on the efficiency and effectiveness of DNB's supervision of the pension funds and insurance sector

and the explanatory memorandum emphasises that the report will not address DNB's ESCB related tasks.

11. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB's website six months after the date of its adoption.

Done at Frankfurt am Main on 24 October 2003.

*The President of the ECB*

Willem F. DUISENBERG