



EUROPEAN MONETARY INSTITUTE

## OPINION OF THE EUROPEAN MONETARY INSTITUTE

**on a consultation from the Dutch Ministry of Finance under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI on common exchange rate arrangements for the euro and amendments of various other acts**

**CON/97/12**

1. The present opinion was requested by the Dutch Ministry of Finance, which submitted a draft law (document IMZ nr 97/341) to the EMI for consultation.
2. The draft law serves three purposes:
  - it revokes the Act on the exchange rate of the guilder and replaces it by a legislative provision authorising the Minister of Finance to conclude, on behalf of the Netherlands and jointly with the Member States of the future euro area, arrangements on the exchange rate of the euro in relation to the currencies of those members which are not yet part of the euro area;
  - it amends the 1994 Act on external financial relations in order to ensure that obligations of De Nederlandsche Bank to comply with general guidelines from the Minister of Finance and to exchange information with the Minister do not contravene the Bank’s Treaty obligations as well in order to ensure that the Bank will be able to exchange information with the future European Central Bank; and
  - finally, it amends the Act on the supervision of securities traffic 1995 in such a manner that the ECB, as De Nederlandsche Bank, will not be subject to the supervisory regime applicable to securities institutions, implying that rules on the issuance of debt certificates would also not apply to the ECB.
3. The EMI is competent to deal with this request for consultation under Council Decision 93/717/EC of 23 November 1993, Article 1.1, first, second and fifth indents, as the draft law concerns currency legislation, the status and powers of De Nederlandsche Bank and rules applicable to financial institutions.
4. The EMI welcomes the timely manner in which the above pieces of legislation are being adapted to the requirements for Stage Three. The EMI has already on several occasions, and in particular in its 1995 and 1996 Convergence Reports, stressed the importance of a timely

fulfilment of this obligation under Article 108 of the Treaty in order to enable the EMI and other Community institutions to carry out the Article 109j assessment of (legal) convergence in the EU Member States. The manner in which the Dutch legislative authorities are contemplating this (adaptation now, entry into force later through subordinate legislation) accommodates the EMI's concern of timely adaptation, whilst it leaves at the same time flexibility to the Dutch authorities on the moment of effectiveness of the adaptations.

5. The EMI also welcomes the content of the legislation. It is indeed true, as noticed in the explanatory memorandum to the draft law, that Article 109 provides for rules, and a division of responsibilities, on exchange rate arrangements with third countries but not with Member States with a derogation. This requires revocation of the Dutch Act on the exchange rate of the guilder which will become obsolete. However, it may at the same time still be appropriate to adopt rules at a domestic level for intra-EU arrangements on, for example, the responsible authorities, in the Dutch case the Minister of Finance, whilst respecting the EU institutional framework in which this takes place, something which has now been accomplished in the draft law.

The EMI is also in favour of the clarification in the draft law of De Nederlandsche Bank's status in the institutional framework of the ESCB. Compliance with general guidelines from the Minister of Finance (see above paragraph 2, second indent) would be incompatible with Article 107 of the Treaty - the prohibition of external influence - as far as ESCB-related tasks are concerned. The addition to the draft law that this requirement does only apply, for areas covered by the 1994 Act on external financial relations (i.e. payments and capital movements), to the extent that this is not incompatible with the Treaty improves legal clarity. Also, under the Statute of the ESCB/ECB De Nederlandsche Bank will on the one hand be obliged to exchange information with the ECB, whilst confidentiality rules within the ESCB may on the other hand prevent the Bank from exchanging information with political authorities. Again, this situation has now been accommodated in the draft law (see above paragraph 2, second indent).

Finally, the EMI welcomes the situation that the ECB will obtain the same status as De Nederlandsche Bank in the Dutch financial market, i.e. that it will not be subject to the supervisory regime applicable to securities institutions when it issues debt certificates.

6. The EMI has no objection to this opinion being made public.

25 July 1997