



EUROPEAN CENTRAL BANK

EUROSYSTEM

Jean-Claude TRICHET
President

Mr. Manuel Lobo Antunes
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Dear Mr. Lobo Antunes

Clarification of the institutional status of the ECB

I am delighted that the work of the Intergovernmental Conference (IGC) has begun and that the prospects for finalising this important work under the Portuguese Presidency are good.

The ECB has taken note of the first draft text of the Reform Treaty that was presented to the IGC on 23 July 2007, as published on the Council Secretariat's website.

Based on a first assessment, the ECB considers that, as set out in its Opinion of 5 July 2007¹, the changes to be introduced to the text of the current Treaties are limited to and comprise all the innovations agreed at the 2004 IGC. However, this does not appear to be the case on the question of the institutional status of the ECB.

In the draft text, the ECB first appears in what would become the new Article 9(1) of the Treaty on European Union (TEU), where it is included in the list of the Union's institutions. The main provisions on the ECB then appear in what would become the new Article 245a of the Treaty on the Functioning of the European Union (TFU), which mirrors the former Article I-30 of the text agreed at the 2004 IGC. However, the sentence "The European Central Bank is an institution" has been removed in the context of including the ECB in the list of institutions in Article 9(1).

¹ http://www.ecb.int/press/pr/date/2007/html/pr070705_1.en.html

At the time of the 2004 IGC, the ECB, in its Opinion of September 2003, expressed a strong view that, because of its specific institutional features, the ECB needs to be differentiated from the “Union’s institutions”. This was accepted by the 2004 IGC and formed the basis of the text agreed at the 2004 IGC, where the ECB was not included in Chapter I [of Title IV], “the institutional framework” but instead appeared in Chapter II covering the “other Union institutions”.

The ECB understands that, except where indicated otherwise by the IGC’s Mandate, as provided by the European Council at its Summit of June 2007, the text of the Reform Treaty should introduce into the Treaty the innovations resulting from the 2004 IGC.

The ECB would therefore like to request that the IGC amend the draft text as follows:

- the reference to the ECB in the new Article 9 TEU should be moved from Article 9(1) to Article 9(3), under the rubric, “The other institutions are:”. Moreover, in Article 9(1), the rubric “The Union’s institutions shall be” should be replaced by “The Union’s institutional framework shall comprise” in order to bring it into line with Article I-19 of the text agreed at the 2004 IGC; and
- the sentence “The European Central Bank is an institution” should be reintroduced into Article 245a of the TFEU.

Moreover, as in the current Treaties, the text agreed at the 2004 IGC referred in Part I not only to the ECB but also to the ESCB, the European System of Central Banks.

The ECB would like to maintain mention of the ESCB, as well as the ECB, in the TEU and would therefore like to request the inclusion of a corresponding reference to the ESCB in Article 9(3).

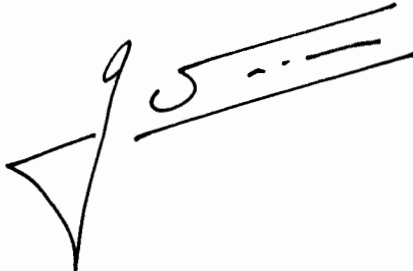
These suggestions are elaborated precisely in the attached Annex.

I would appreciate it very much if you could ensure that these requests are addressed by the IGC.

The ECB of course stands ready to contribute further to the IGC at any time during its work.

Yours sincerely,

With my best personal regards,



[TEU] Article 9 The Union's institutions

1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutional **framework shall comprise** ~~shall be:~~

- the European Parliament,
- the European Council,
- the Council,
- the European Commission (hereinafter referred to as the "Commission"),
- the Court of Justice of the European Union,
- ~~- the European Central Bank,~~
- [- the Court of Auditors.]

2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures and conditions set out in them. The institutions shall practise mutual sincere cooperation.

3. **The other Union institution(s) shall be:**

- **the European Central Bank,**

[- the Court of Auditors.]

The provisions relating to the European Central Bank, **which, together with the National Central Banks, shall constitute the European System of Central Banks,** and the Court of Auditors are set out in the Treaty on the Functioning of the Union."

[TFU] SECTION 4a

THE EUROPEAN CENTRAL BANK

Article 245a

...

3. The European Central Bank **is an institution. It** shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.