EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 October 2009

on involvement of De Nederlandsche Bank in the monetary system in Bonaire, Sint Eustatius and Saba

(CON/2009/80)

Introduction and legal basis

On 24 August 2009 the European Central Bank (ECB) received a request from the Dutch Ministry of Finance for an opinion on the draft rules on the monetary system in Bonaire, Sint Eustatius and Saba (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on 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[1], as the draft law relates to De Nederlandsche Bank (DNB). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft law

The draft law will regulate the monetary system of the islands of Bonaire, Sint Eustatius and Saba (hereinafter the 'BES islands'), and specifically will assign the status of legal tender to the US dollar in the BES islands and will impose specific tasks on DNB.

2. General observations

2.1 The BES islands, which are currently part of the Netherlands Antilles, will become public bodies within the meaning of Article 134 of the Dutch Constitution and part of the territory of the Netherlands. The Netherlands Antilles will cease to exist as a country within the Netherlands. The BES islands will also remain overseas countries and territories within the meaning of Part 4 of the Treaty. Therefore, although the BES islands will become part of the territory of the Netherlands, they will not become part of the territory where the Treaty applies in full.

1 OJ L 189, 3.7.1998, p. 42.

2.2 As regards the tasks conferred to DNB under the draft law, the ECB welcomes the fact that DNB will be reimbursed by the Dutch State for any costs incurred in connection with its monitoring of the preparations for the currency changeover in the BES islands.

3. Compatibility of DNB's new tasks with the Treaty

Article 4(1) of the draft law assigns to DNB the task of promoting the smooth operation of payment systems in the BES islands, including the circulation of US dollar banknotes and coins. According to Article 4(2), further rules in respect of this task may be laid down by a general administrative regulation on which the ECB also expects to be consulted in due time.

The ECB understands that:

(i) in principle, commercial banks will distribute US dollar banknotes and provide US dollar accounts so that the central bank will not be directly involved;

(ii) DNB will discuss with the US authorities, including the Federal Reserve, in particular its coordinating role in screening and withdrawing from circulation counterfeit US dollar banknotes;

(iii) DNB will monitor the preparations for the changeover to the US dollar.

In this context, the ECB makes the following observations. The ECB is of the opinion that these tasks qualify as non-ESCB tasks within the meaning of Article 14.4 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). Article 14.4 of the Statute of the ESCB provides that national central banks may perform functions other than those specified in the Statute of the ESCB unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. The objectives and tasks of the ESCB include the primary objective of maintaining price stability, and the basic tasks of defining and implementing monetary policy and conducting foreign-exchange operations. As currently envisaged under the draft law, the abovementioned DNB tasks do not currently appear to have the potential of interfering with the objectives and tasks of the ESCB. Moreover, while the performance of these essentially monetary tasks by DNB does not raise any monetary financing concerns, DNB is subject to the monetary financing prohibition with respect to any activities it conducts in the BES islands in the same way as in the rest of the territory of the Netherlands.

The ECB understands that DNB may be asked in the future to provide liquidity assistance in US dollars to commercial banks located in the BES islands, through for instance either DNB's foreign currency portfolio or the borrowing of US dollars via swap arrangements. In the same vein, DNB may also be assigned supervisory tasks in these public bodies with respect to financial institutions (see the legislation referred to in Article 6.6, 6.9 and 6.10 of the Amending Law BES). Such tasks performed by DNB in the BES islands are important and should receive due consideration. It is however understood that assigning these new tasks to DNB will require an amendment to the 1998 Law on banking on which the ECB expects to be consulted in due time.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 9 October 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET