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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 December 2006

at the request of De Nederlandsche Bank

on amendments to its Articles of Association and Rules of Procedure

(CON/2006/54)

Introduction and legal basis

On 20 October 2006 the European Central Bank (ECB) received a request from De Nederlandsche Bank (DNB) for an opinion on amendments to its Articles of Association and Rules of Procedure (hereinafter the 'draft amendments')[1].

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[2], as the draft amendments concern a 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 has adopted this opinion.

1. Purpose of the draft amendments

The draft amendments are largely a consequence of the introduction of the Dutch Corporate Governance Code (hereinafter the 'Code') by Royal Decree[3]. Although the Code does not formally apply to DNB, DNB's Governing Board wishes as far as possible to incorporate the basic principles and best practices laid down in the Code into DNB's Articles of Association and to enhance its corporate governance. Moreover, the merger in 2004 between DNB and the Pensions and Insurance Supervisory Authority Foundation also triggered a number of amendments.

2. Specific observations

2.1 Independence of DNB and government approval of remuneration policies

The ECB understands that under Article 10(1) of the amended Articles of Association, the remuneration policy for DNB's Governing Board is adopted by the general meeting of shareholders, whilst under Article 10(2) it is the Minister for Finance who determines the salaries of the President and the Executive

1 It should be noted that formally the Rules of Procedure are not covered by Council Decision 98/415/EC.

2 OJ L 189, 3.7.1998, p. 42.

3 *Staatsblad* 405 of 19 August 2004.

Directors. In this context, the ECB would emphasise that DNB's remuneration policy should continue to respect the principle of institutional independence.

2.2 Grounds for dismissal for Supervisory Board members

Article 11(5) of the amended Articles of Association stipulates that Supervisory Board members may be suspended or dismissed if they no longer fulfil the requirements for carrying out their duties or seriously fail to perform them. However, Article 6(7) of the amended Articles of Association stipulates that these are the 'only' grounds for dismissal or suspension of the President and the Executive Directors. For reasons of clarity and legal certainty, the ECB would recommend inserting the word 'only' into Article 11(5) between the words 'may' and 'be suspended', thereby aligning it with Article 6(7).

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

Done at Frankfurt am Main, 7 December 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET