

# De Nederlandsche Bank

Legal Department

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Date

-Telefax

-21 September 1990

Your reference

Dr Gunter Baer  
Secretary, Committee of Governors  
of the Central Banks of the EEC  
Bank for International Settlements  
BASLE  
Faxnr: 41-61-28-09-100

- Our reference

-Jz/rs/jh/4700

Direct dialling

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Enclosure(s)

-1

Re:

-Draft Statute of the E(S)CB

-Dear Dr Baer,

In reply to your telefax of 17 September and your note to the members of the Group of Legal Experts of 14 September I enclose my comments on the Draft Statute of the European Central Bank (ECB) and of the European System of Central Banks (ESCB) dated 14 September 1990.

For the sake of convenience I summarize the main points of comment:

a) the present Draft Statute does not clearly regulate the central institution of the System: the governing bodies, object, tasks, operations and staff are all attributed to the 'System' which, as such, is not a legal entity. The objective of establishing a system acting coherently is best served by specifying that the ECB (rather than 'the System') is governed by a Council and an Executive Board, that the ECB has certain objectives and tasks, etc. The 'System' which itself is not a legal person, cannot act, own, perform, sue or be sued, but the ECB and the national central banks can. The Statute will have to be amended considerably in order to be a legally conclusive document and to prevent confusion as to where responsibilities lie (and liabilities arise). It should be stressed that these amendments would not alter the intentions embodied in the present text but only serve to bring them closer to realization.

b) Inconsistent use of different terminology ('Council' versus 'Council of the System'; 'Community' versus 'Union') should be avoided. A definition clause which clearly states the meaning of all terms used throughout the text (Council, Executive Board, President, ECB, NCB's, Community, etc) would be helpful.

c) An appropriate enabling clause should be inserted, especially with a view to a potentially widening area of operations for the ECB in the field of prudential supervision.

d) Some aspects need further elaboration in secondary Community legislation (e.g., statistical data gathering, minimum reserve requirements and appurtenant sanctions and the confidentiality regime).

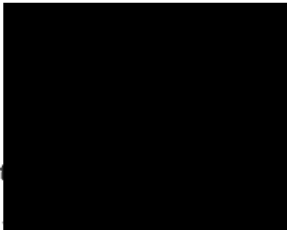
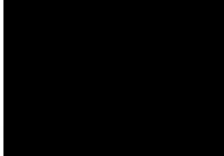
-You will find most of these main comments elaborated in the enclosed note which largely follows the numbering of the Articles.

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- As we discussed over the phone, I fully agree with your proposal for a procedure for amending the draft articles with a view to their legal consistency.

Yours sincerely,  
De Nederlandsche Bank NV



Chief Legal Department