



EUROPEAN CENTRAL BANK

Jean-Claude TRICHET
President

Mr Brian Cowen
President of the Council of the European Union
Rue de la Loi 175
B-1048 Brussels

16 April 2004

Negotiations on the draft Treaty establishing a Constitution for Europe

Dear Mr Cowen,

I am delighted that the work of the Intergovernmental Conference (IGC) has been resumed and that the prospects for finalising this important work under the Irish Presidency are good. I should like to take this opportunity to restate the European Central Bank's (ECB) positions regarding the draft Treaty establishing a Constitution for Europe ('draft Constitution')¹ and to indicate precisely which amendments we consider necessary.

The ECB is pleased that the IGC has accepted a number of its proposals. However, regarding other points that have not yet been taken on board, the ECB considers it extremely important that the IGC accepts the following amendments:

1. Introducing a reference to either 'non-inflationary growth' or 'price stability' in Part I of the draft Constitution (Article I-3(3)). In view of the recently proposed simplified procedure for amending the provisions of Title III of Part III of the draft Constitution, the request now appears even more justified. Price stability is not only the European System of Central Banks' (ESCB) primary objective but also forms the heart of monetary union for all European citizens; in this sense 'stable prices' clearly benefit society and as such merit a mention among the Union's objectives. Moreover, in the EC Treaty, 'non-inflationary growth' is already mentioned under the Community's objectives (Article 2, EC Treaty).

¹ ECB Opinion CON/2003/20 of 19 September 2003 at the request of the Council of the European Union on the draft Treaty establishing a Constitution for Europe, OJ C 229, 25.9.2003, p. 7, which was submitted with an accompanying letter to the then President of the Council of the European Union, Mr Frattini (IGC preparatory document 12655/03). In addition, the ECB proposal for a revised European System of Central Banks (ESCB) and ECB Statute which was sent to the then President of the European Council, Mr Berlusconi, on 29 October 2003 (IGC document 40/03). Finally, a further letter of 26 November 2003 to Mr Frattini on the proposed simplified procedure for amending the ESCB's basic constitutional rules (IGC document 58/03).

2. Amending the headings of Title IV of Part I and Chapter I of Title IV. Title IV of Part I would become 'The Union's Institutional Framework' which would comprise 'The Union's Institutions' (Chapter I) and 'The other Union Institutions and Bodies' (Chapter II). This would clearly indicate that the ECB, as an 'other institution' is part of the Union's institutional framework even though it is not in the list of the 'Union's Institutions' in Article I-18. Furthermore, a reference to the ESCB and the Eurosystem should be included in the heading of Article I-29 which deals extensively with the ESCB and, in accordance with ECB Opinion (CON/2003/20) and the work of the IGC Legal Experts², also with the Eurosystem.
3. Explicitly recognising also in Article I-29 that not only the ECB, but also the national central banks (NCBs), i.e. all ESCB members, are and will continue to be independent.

Concerning in particular the first and the third amendments, which relate to Part I, I should like to emphasise that the ECB's opinion has always been explicitly based on the assumption that all parts of the Constitution would have equal value. If the proposal to introduce a simplified amendment procedure for Part III was accepted, many of the safeguards for 'monetary constitution' agreed in Maastricht would no longer have the same constitutional status as, in particular, provisions in Part I. Thus, the proposals under points 1 and 3 for amending Part I have become even more essential for the ECB and for the credibility of economic and monetary union.

4. Explicitly referring to the ESCB's responsibilities in Article III-90 on the international representation of the euro.

Moreover, I would like to make two further proposals:

5. The proposed simplified procedure for amending the provisions of Title III of Part III of the draft Constitution³ does not provide for consultation of the ECB. Since this Title encompasses Monetary Policy, the ECB must be consulted whenever an institutional change in this area is proposed.
6. The ECB notes that Article I-24(2) of the draft Constitution would lead to different voting requirements in the EU Council for the simplified amendment of certain provisions of the Statute of the European System of Central Banks and of the European Central Bank, depending on whether the EU Council acts on a Commission proposal or an ECB recommendation. This provision would also apply to legislation complementary to the Statute. It is surely not intended that the Constitution would be drafted to weaken the ECB with regard to its own Statute and tasks. Therefore, it is essential for the IGC to review the relevant provisions and to adapt them in order to ensure, at least, procedural equality between Commission proposals or ECB recommendations in so far as EU Council voting requirements are concerned.

Drafting amendments on all of these issues are contained in the annex.

² See IGC document 50/03, Article I-29.

³ See IGC document 60/03 ADD 1, Annex 36.

Finally, I should like to stress the ECB's appreciation that the proposal for a specific simplified procedure for amending Articles 10 to 12 and 43 of the Statute, namely the ESCB's basic constitutional rules, has not been taken up. As the success of European monetary union depends on the soundness of its institutional framework, the abovementioned provisions should not be subject to a simplified amendment procedure.

Yours sincerely,

[signed]

ANNEX¹

1. Drafting proposal related to point 1. of the letter:

Article I-3 (3): ‘The Union shall work for the sustainable development of Europe based on balanced and non-inflationary economic growth ...’

2. Drafting proposals related to point 2. of the letter:

Part I, Title IV, heading: ‘~~The Union’s Institutions and Bodies~~’ – **‘The Institutional Framework of the Union’**

Part I, Title IV, Chapter I, heading: ‘~~The Institutional Framework~~’ – **‘The Union’s Institutions’**

Article I-29: The European Central Bank, **the European System of Central Banks and the Eurosystem**

3. Drafting proposals related to point 3. of the letter:

Article 1-29 (3): The European Central Bank is an institution, which 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.~~ **When exercising their powers and carrying out their tasks and duties, the European Central Bank, the national central banks, and any member of their decision-making bodies shall be completely independent. The ECB shall also be completely independent in the management of its finances.** Union institutions, bodies, offices and agencies and the governments of the Member States shall respect **this** ~~that~~ independence.

4. Drafting proposals related to point 4. of the letter:

Article III-90 (1): In order to secure the euro’s place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a European decision establishing common positions on matters of particular interest for economic and monetary union within the competent international

¹ The proposals are based on the following documents:

- 1) IGC Document with the outcome of the work of the Legal Experts (IGC document 50/03). <http://www.consilium.eu.int/igcpdf/en/03/cg00/cg00050.en03.pdf> and
- 2) IGC Document with the latest version of the Italian Presidency proposal. (IGC document 60/03 ADD 1). <http://www.consilium.eu.int/igcpdf/en/03/cg00/cg00060-ad01.en03.pdf>

The ECB drafting proposals assume, for the purposes of clarity, that proposals made in the IGC documents have been accepted.

monetary and financial institutions, ~~and~~ conferences and fora. The Council shall act after consulting the European Central Bank.

Article III-90 (2): The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international monetary and financial institutions, ~~and~~ conferences and fora. -The Council shall act after consulting the European Central Bank.

Article III-90, new (fourth) paragraph: **'The measures adopted on the basis of this Article shall be in compliance with the allocation of powers laid down in Articles III-71 and III-77.'**

5. Drafting proposals related to point 5. of the letter:

Article IV-7b (2): The European Council may adopt a European decision amending all or part of the provisions of Title III of Part III. The European Council shall act by unanimity after consultation of the European Parliament and the Commission and, **in its areas of competence, the European Central Bank.**

6. Drafting proposals related to point 6. of the letter:

Article III-79, new (seventh) paragraph: **'When acting in accordance with paragraphs 5b) or 6b) the Council shall apply the voting requirements laid down in Article I-24(1).'**