

Brief initiatiefnemers aan ECB van 25 april 2019

Date: 25-4-2019

Subject: Request for consultation on a private member's bill on transparency regarding the confidentiality of documents in possession of the Dutch central bank.

Dear Mr. Draghi,

Pursuant to article 127, section 4, and article 282, section 5, of the Treaty on the Functioning of the European Union, as well as article 4 of the ESCB Statute, I kindly request you to submit your opinion on the members of Dutch parliament's private bill (Snels, Van Weyenberg) on the introduction of a "Wet open overheid" (Open Government Act, Woo), that is to replace the current Dutch Freedom of Information Act (Wet openbaarheid van bestuur, Wob).

Given the field of competence of the ECB, your opinion is sought in particular on article 8.8 of the private member's bill and its annex and of the articles 9.4 and 9.5 of a second bill that is to adjust the proposed bill. The proposed bill already has passed the Tweede Kamer (Lower House) of the Dutch Parliament and is now under consideration of the Eerste Kamer (Senate). The second bill has been sent to the Council of State for advice. The articles 9.4 and 9.5 of the second bill have been adjusted after deliberations with the Dutch Ministry of Finance.

The Woo changes the way confidential documents in possession of the Dutch central bank are exempted from the general rules regarding freedom of information and transparency. In current law, special rules about transparency and confidentiality that leave no room for applying the Wob, have prejudice. This leaves room for interpretation whether a provision is an exception from the Wob. Furthermore, an exception was made for the Dutch central bank regarding its task and activities in a decree (a cabinet decision) based on a provision in the Wob. Dutch Parliament had no part in the decree. In the Woo, the guiding principle is that Parliament has to agree with exceptions on the general rules on transparency and confidentiality. Therefore, the cabinet is no longer allowed to exempt by means of a decree. Also, special rules only have prejudice when it is stated in an act that has passed parliament.

The annex mentioned in article 8.8 Woo consists of a list of articles in various acts that have prejudice above the Woo. To maintain the level of confidentiality regarding the Dutch central bank, the relevant provisions about confidentiality are added to the annex. With article 9.4 Woo, extra provisions about confidentiality are added to the Dutch Bankwet (Banking Act), to be included in the annex with article 8.8 Woo. With article 9.5, two acts without a special provision for confidentiality are added to article 1:89 Wet financieel toezicht (Financial Supervision Act), so that the provisions of that act are applicable in those cases. In both cases, these provisions replace the cabinet decree.

I appreciate receiving the opinion of the ECB about this draft legislative provision within a period of one month after this request. This time frame allows the initiators of the draft bill for sufficient time to consider the opinion of the ECB before continuing the legislative process. For further questions you may contact mr. Marte van der Loop (Ministry of Internal Affairs and Kingdom Relations), [telefoonnummer en emailadres].

Enclosed are:

- Version of the Woo, under consideration in the Eerste Kamer
- Version of the adjustment bill, under advice of the Council of State
- Version of the annex and articles 9.4 and 9.5 (with relevant excerpts of the memorandum of explanation), as amended after deliberations with the Dutch Ministry of Finance

Your sincerely,

Bart A.W. Snels

Member of Parliament of the Netherlands

Steven P.R.A. van Weyenberg

Member of Parliament of the Netherlands