Antonio Sáinz de Vicuña*

The Status of the ECB

The ECB was not invited to take part in the European Convention on the Future of Europe, neither as a participant nor as observer. The justification given by the Convention Secretariat in 2002 was that the existing provisions on EMU would be left untouched: the introduction of the euro was still a recent event, the existing framework was working well and the Convention would address issues of more pressing importance.

Similarly, the ECB was not invited to attend the subsequent IGC. After the conclusion of the Convention and before the IGC, the ECB was invited to give its Opinion on the draft Constitution under Art. 48 of the Treaty on European Union (TEU) because the draft Constitution had foreseen some changes for the institutional framework in the monetary area. In its 2003 Opinion, the ECB stated its understanding that the Constitution “will not entail any changes to the substance, and the tasks, mandate, status and legal regime of the ECB and of the ESCB remain substantially unchanged”. Moreover, it understood that “the substance of the [ESCB] Statute ... will not be subject to changes”, and as a consequence “this Opinion is based on the premise that the substance of the Statute will not be changed”. Finally, it stated that in the event of changes to the Statute “the ECB would wish to be associated with the preparatory activity for any such revision of the Statute”.

The ECB observed in its 2003 Opinion that the draft Constitution had characterised it as an “Other institution” within the new Treaty Title IV named “The Union’s Institutions”. The Opinion explained that, contrary to the hitherto concept of “Institution” in the Community, the ECB had separate legal personality, its own and independent finances, and a narrow mandate. As a consequence, it was suggested that the name of Title IV be changed to “The Institutional framework of the Union”, a name that would al-

* The views expressed in this paper are personal and cannot be deemed to express the view of the ECB.

low for the accommodation of the ECB in that Title of the Constitution without its being assimilated to the other EU institutions.

This suggestion was not accepted.

The ECB 2003 Opinion contained a number of other suggestions to improve the draft Constitution, most of which were not accepted, in spite of the fact that the Governing Council of the ECB had decided to be minimalist and concentrate on a few very selective items. For example, it asked that the new provision on voluntary withdrawal from the union should foresee also an ECB role in the procedure, should the withdrawing country belong to the euro area.

In 2007 the ECB was asked to provide an Opinion under Art. 48 of the TEU on the Reform Treaty. This time the ECB gave a short statement based on the understanding that “as regards the status, mandate, tasks and legal regime of the ECB, the Eurosystem and the ESCB, the changes to the current Treaties to be introduced by the IGC will be limited to and will comprise all the innovations agreed at the 2004 IGC”; a footnote to the Opinion recalled the ECB’s advice given in 2004.\(^2\) The ECB was not invited to attend the IGC. The justification this time was that the very narrow mandate for the IGC, limited to preparing a Reform Treaty that would be based on the provisions of the failed draft Constitution, was without novelties in the substance. As a result, the ECB refrained in its Opinion from suggesting amendments.\(^3\) However, the IGC did

---


3  The only additional request of the ECB concerned the name of the single currency in the Cyrillic alphabet: the ECB asked confirmation in primary law of the hitherto practice in the EU’s monetary acquis, carried out in accordance with the Madrid European Council Conclusions of 1995 and with existing international standards on transliteration between Latin and Cyrillic alphabets, whereby euro becomes EYPO. Such practice had been contested by Bulgaria, which rather than transliterating the Latin spelling of the single currency wished to use the first four letters of the Cyrillic name for “Europe”: EBPO (evro); the ECB being in the process of preparing a new series of euro banknotes needed legal certainty on this question; this additional ECB request for confirmation of a single name for the single currency throughout the EU was not satisfied, and the Lisbon Treaty uses the slightly different name for the single currency requested by Bulgaria in the Cyrillic alphabet.