

OPINION OF THE EUROPEAN MONETARY INSTITUTE

at the request of the Council of the European Union under Articles 106(6) and 109f(8) of the Treaty establishing the European Community (the Treaty) and Article 42 of the Statute of the ESCB on a proposal from the Commission for a Council Regulation (EC, Euratom, ECSC) amending Regulation (EEC, Euratom, ECSC) No 260/68, which lays down the conditions and procedure for applying the tax for the benefit of the European Communities

(98/C 190/07)

CON/98/16

1. The present opinion was requested in a letter dated 6 March 1998 from the Council of the European Union which, for this purpose, forwarded document COM(97) 725 final to the EMI. The document contained the proposal and its explanatory memorandum. The EMI is competent to deliver an opinion under Articles 106(6) and 109f(8) of the Treaty.
2. The Protocol on the privileges and immunities of the European Communities (the Protocol) is applicable to the ECB according to Article 40 of the Statute of the ESCB and Article 23 of the Protocol. The objective of the proposal is to define the applicability to ECB staff of Article 13 of the Protocol, according to which officials and other servants of Community institutions and bodies are liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by their employer.
3. The proposal suggests that a new Article 12a will replace the old Article 12a, which relates to the EMI, and that the Regulation should enter into force on the date on which the establishment of the ECB becomes

effective. The EMI considers such a replacement to be problematical owing to the fact that, although it is true that the EMI will go into liquidation on the establishment of the ECB, its liquidation shall be completed by the beginning of the third stage. Until the end of the liquidation the ECB and the EMI (under liquidation) will coexist. In particular, EMI members of staff will continue to perform their tasks, working for the ECB under EMI contracts, until the expiry of such contracts or their replacement by ECB contracts. At the same time, new members of staff will be hired under the terms of ECB contracts. Therefore, it is necessary to make provision for the old Article 12a, which relates to the EMI, to remain in force until the final day of the liquidation of the EMI, while the new Article 12a, which applies the Community tax to ECB staff, must enter into force on the date on which the establishment of the ECB becomes effective.

4. This opinion will be published in the *Official Journal of the European Communities*.

Frankfurt, 6 April 1998