

EUROPEAN MONETARY INSTITUTE

OPINION ON A CONSULTATION FROM THE IRISH MINISTRY OF FINANCE UNDER ARTICLE 109F (6) OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY AS AMENDED BY THE TREATY ON EUROPEAN UNION AND ARTICLE 5.3 OF THE STATUTE OF THE EMI ON A PROPOSAL FOR A STOCK EXCHANGE BILL (CON/94/11)

- 1 On 16th December 1994 the Irish Ministry of Finance consulted the EMI under Article 109f (6) of the Treaty establishing the European Community as amended by the Treaty on European Union (the "Treaty") and Article 5.3 of the Statute of the EMI on a proposal for a Stock Exchange Bill of which the text and an explanatory memorandum were submitted to the EMI. Pursuant to Article 4 of the Council Decision of 22nd November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions (93/717/EC) a time limit of one month was set for the submission of the EMI's opinion.

- 2 The proposed Bill transfers the regulatory and supervisory authority for Irish stock exchanges to the Central Bank of Ireland. This includes the competence for the approval to operate as a stock exchange, the granting of membership of stock exchanges, certain aspects concerning the appointment of auditors and the authority to impose various requirements on member firms. Thus, the status and powers of a national central bank in the sense of Article 1, Section 1, second indent, of the above Council Decision are at stake and the EMI is therefore competent to deal with the subject matter. In this respect, reference may also be made to Article 109j of the Treaty (which empowers the EMI to monitor and report on progress made by Member States towards the compatibility of national legislation, including the statutes of its national central bank, with Articles 107 and 108 of the Treaty and the Statute of the ESCB/ECB) as well as Article 14.4 of the Statute of the ESCB/ECB (which states that national central banks may perform functions other than those specified in the Statute of the ESCB/ECB, unless the Governing Council finds, by a majority of two thirds, that these interfere with the objectives and tasks of the ESCB). Finally, another basis for the EMI's competence might be found in the fifth indent of Article 1, Section 1, of the above Council Decision as supervision of stock exchanges and the stability of financial markets may be considered as interrelated.

- 3 It is recognised that the institutional organisation of prudential supervision differs in the Member States of the European Union. As well known, the main distinction is between those Member States in which prudential supervision is attributed to the central bank and those in which an agency of the executive power is entrusted with such supervision. Whilst attribution to central banks of supervision of stock exchanges and their members is not a common feature in the institutional organisation of prudential supervision in the Member States, the proposed Bill is not incompatible with the Treaty on European Union and in particular the Protocol on the Statute of

the ESCB/ECB. The Treaty accepts the idea that the national central banks and also the ECB (at least to a certain extent) are involved in prudential supervision of credit institutions and other financial institutions (see, inter alia, Article 105 (5) and (6) of the Treaty). The manner in which this supervisory framework is elaborated for Irish stock exchanges in the proposed Bill does not give rise to any specific issues which, in the EMI's view, need to be addressed in this opinion.

3rd January 1995