

## **OPINION OF THE EUROPEAN MONETARY INSTITUTE**

on a consultation under Article 109f(6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI as elaborated in Council Decision 93/717/EC of 22nd November 1993 (the “Council Decision”) from the National Bank of Belgium on behalf of the Belgian Government concerning a draft amendment to its Organic Law.

### **CON/95/12**

1. The present consultation was initiated by letter of 10th July 1995 by the National Bank of Belgium on behalf of the Belgian Government. The consultation concerns a draft amendment to the Organic Law of the National Bank of Belgium, providing the Bank with a legal lien on all securities booked in its accounts in the name of the participants. The purpose of the amendment is to ensure the repayment of intra-day or overnight credits granted by the National Bank of Belgium to participating institutions, thus fostering the efficient management and smooth functioning of the real-time gross-settlement system called ELLIPS, which is in the process of being established. During the present consultation process, the National Bank of Belgium informed the EMI that the draft legislation on which the EMI was originally consulted had been changed, as a result of discussions between the responsible Belgian ministries. The change concerned the nature of the lien on securities provided by participants to the National Bank of Belgium. In the new text of the law, the lien provided will have the same ranking or priority as that of any other pledge which participants in the ELLIPS system may provide to third parties.
2. As the draft bill provides for amendments to the statute of a national central bank of a member State of the European Union and relates to clearing and settlement systems, the EMI is competent to issue an opinion on the draft legislation under Article 1.1, second and fourth indent, of the Council Decision.
3. The EMI welcomes the measures as contained in the draft since they provide for an adaptation of the current Organic Law of the National Bank of Belgium to various Articles of the Treaty and of the Statute of the European System of Central Banks and of the European Central Bank (the “Statute”) and in particular of Article 18.1 of the Statute which states that the ECB and the national central banks may conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral. The practical implications of this Article for payment systems are such that national central banks and their counterparts should be able to establish collateral in a timely and efficient manner. The draft legislation

contemplates this as it gives a generic lien on all securities which the National Bank of Belgium at any time may keep in deposit for a participant of the ELLIPS system to ensure re-payment of credits and also provides for a simplified procedure for the realisation of collateral and, thus, supports the smooth operation of the payment system itself. The amendment is also consistent with Article 105.2, fourth indent, of the Treaty, as reproduced in Article 3.1, fourth indent, of the Statute, which lists as one of the tasks of the ECSB and its components the promotion of the smooth operation of payment systems.

It is noted that the legal construction chosen for the collateralisation of credit facilities for participants in the ELLIPS system and its practical elaboration should, on the one hand, not form an obstacle for selling or pledging securities deposited with the National bank of Belgium to third parties in the normal course of trading activities, whilst on the other hand a monitoring mechanism should ensure that outstanding debts are, at any point in time, sufficiently covered by collateral.

Finally, the proposed adaptation of the Statute of the National Bank of Belgium is in accordance with Article 108 of the Treaty which requires that statutes of national central banks shall be made compatible with the Treaty and the Statute.

The draft amendment does not give rise to any further remarks which should be addressed in this opinion from the EMI's point of view.

4. The EMI agrees that this opinion may be made public by the competent Belgian authorities at their discretion.

30th August 1995