

OPINION OF THE EUROPEAN MONETARY INSTITUTE

on a consultation from the the Irish Roinn Airgeadais (Department of Finance) under Article 109f (6) of the Treaty establishing the European Community and Article 5.3 of the Statute of the EMI;

on a draft scheme for a Proposed Investment Intermediaries Bill (the “Bill”).

CON/95/4

- 1 The present consultation was initiated on 16th February 1995 by the Irish Department of Finance, which, for this purpose, transmitted to the EMI through the Central Bank of Ireland the draft Bill, together with an explanatory memorandum. The EMI received the consultation on 23rd February 1995. Pursuant to Article 4 of the Council Decision of 22nd November 1993 (93/717/EC) on consultation of the European Monetary Institute by authorities of the Member States on draft legislative provisions, the EMI has been asked to deliver its opinion by the end of March 1995.

- 2 The main purpose of the Bill is to implement the EU Investment Services Directive (93/22/EEC), and to establish a regulatory and supervisory authority for Irish investment firms (“Investment business firms” in the wording of the Bill). The Central Bank of Ireland (the Bank) and the Minister for Enterprise and Employment will be the “supervisory authorities” for investment business firms, and will be competent, inter alia, for authorising, supervising and regulating these undertakings and for certain aspects concerning auditors and employees of these undertakings. Article 2.2 of EU Council Decision of 22nd November 1993 (93/717/EC) exempts draft provisions aimed exclusively at the transposition of Community directives into the law of Member States from the EMI consultation procedure. The Bill contains a number of provisions concerning issues other than the implementation of the Investment Services Directive. The Bill contains provisions affecting firms that are not investment firms under the Investment Services Directive. The status and powers of a national central bank in the sense of Article 1.1, second indent, of EU Council Decision of 22nd November 1993 (93/717/EC) are affected. Legislative provisions establishing a supervisory regime for financial institutions may also be included within the fifth indent of Article 1.1 of the above Council decision. Thus, the present consultation is a compulsory step and the EMI is competent to deal with this consultation.

Nevertheless, in accordance with the criteria of Article 2.2 of the mentioned EU Council decision, this opinion will not address those parts of the Bill aimed solely at the implementation of the Investment Services Directive, and this opinion should not be understood as the EMI's advice on the consistency of the Bill with the Investment Services Directive.

- 3 The institutional organisation of prudential supervision differs throughout the European Union. Attribution to central banks of tasks in the field of supervision of investment firms is not a common feature in the institutional organisation of prudential supervision and regulation in the Member States, but that attribution is consistent with Articles 14.4 of the Statute of the ESCB/ECB and 105.5 of the Treaty.
- 4 Finally, those parts of the Bill that contain provisions other than those whose exclusive purpose is the implementation of the Investment Services Directive do not give rise to any specific issues which need to be addressed in this opinion.

March 30th 1995.