



EUROPEAN MONETARY INSTITUTE

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OPINION OF THE EUROPEAN MONETARY INSTITUTE

CON/96/05

Consultation by the Finnish Ministry of Finance under Article 109f (6) of the Treaty establishing the European Community and Article 5.3 of the Statute of the EMI on draft legislation establishing the statute of the Bank of Finland.

- 1 On 10th April 1996 the EMI received from the Finnish Ministry of Finance a request for **consultation** on draft legislation establishing the Statute of the Bank of Finland (“the Act”). The documentation submitted for consultation comprises an explanatory memorandum accompanying the draft (“the Memorandum”), the Act itself and, in addition, a draft amendment of paragraph 4 of Section 4 of the Currency Act (358/93), addressing a reallocation of competences on currency matters within the decision-making bodies of the Bank of Finland (“the Amendment Act”). All documentation has been received in the English language, translated by the consulting authority, and the present opinion is issued on the basis of such translation.
- 2 The **objective** of the Bank of Finland is defined in Section 2 of the Act as follows: “*to safeguard the value of money*”. Article 2 of the ESCB Statute stipulates that: “[...] *the primary objective [...] shall be to maintain price stability*”. Although the EMI has received clarification from the Bank of Finland that the present wording of Section 2 of the official version of the Act reflects an identical objective to the one expressed in Article 2 of the ESCB Statute, which clarification has been duly noted, the importance of this provision mandates legal clarity and full consistency between the Act and the Treaty.
- 3 Section 8 of the Act is purported to introduce into domestic law the content of **Article 104** of the Treaty. To avoid any potential discrepancy with that Treaty article and with Council Regulation (EC) n. 3603/93 of 13.12.1993, the language of Section 8 may be considered further before the enactment of the Act.

- 4 Article 109e(5) of the Treaty states that “*During the second stage, each Member State shall, as appropriate, start the process leading to the independence of its central bank.*” **Independence** of national central banks is a significant element of central banks qualifying to become an integral part of the ESCB, which needs to be accomplished before the date of establishment of the ECB and is a prerequisite to participation in monetary union. Independence may, however, be achieved through different measures, taking into account different institutional traditions in the various Member States. The Act, namely if amended as suggested in the following, is one example of several possible alternatives for a legislative framework which would further the degree of central bank independence, although additional adaptations for Stage Three may be necessary as anticipated below.
- (a) The Act under review mentions, in Section 1, that “*The Bank of Finland [...] is an independent institution [...]*”. The EMI welcomes such an initial legal statement, which gives a basis to Section 5, second paragraph, and may inspire the interpretation of other sections of the Act. The EMI moreover welcomes the disappearance in the Act of some sections of the current Statute which might have been seen as inconsistent with the basic principle of central bank independence required for by the Treaty.
- (b) Sections 12 to 14 of the Act refer to a Parliamentary Supervisory Council, a body foreseen in constitutional provisions and characterised in Section 11 as one of the Governing Bodies of the Bank of Finland. Being integrated by members of parliament, it has to be defined as a political organ. The Treaty requirement of independence in decision-making applies not only vis-à-vis Government but also in relation to any other political body, and therefore it would not be achieved if the Parliamentary Supervisory Council would have the possibility of interfering in any manner with the decisions of the Board on monetary matters. The permanency of a political body within the internal structure of the Bank would be consistent with the required level of independence to the extent that statutory tasks by such a body could not interfere with the required autonomy of the decision-making process of the central bank with respect to monetary policy issues.

The EMI notes that the new list of tasks vested in the Parliamentary Supervisory Council does not explicitly include monetary powers. The EMI reads the draft text of the Act, and in particular Section 16, as implying that the list of tasks vested in the Parliamentary Supervisory Council through Section 13 is exhaustive, and draws the conclusion that the

supreme decision-making body of the Bank in monetary matters would be the Board. Hence, Sections 6 and 7 of the Act would have to be read as implying that the exclusive responsibility for monetary policy decisions is vested with the Board. This interpretation is coincident with the explanations contained in the Memorandum. Provided that the supervisory powers of the Parliamentary Supervisory Council are limited to the tasks listed in Section 13, and further provided that these supervisory powers are without prejudice to the exclusive competence of the Board as regards monetary matters, this aspect of the projected legal architecture for the Bank of Finland would not appear to be incompatible with the letter and the spirit of the Treaty.

- (c) Sections 12 and 15 of the Act are drafted in a manner which does not explicitly preclude the appointment of a member of the Parliamentary Supervisory Council as member of the Board. Simultaneous membership of both the Parliamentary Supervisory Council and the Board could result in a situation where a conflict of interest may possibly arise which may hinder the required independence of the Board on monetary policy matters.
- (d) The second paragraph of Section 5 of the Act reads: *“In carrying out its tasks related to monetary policy, the Bank of Finland may not seek or take instructions concerning its activities”*. The EMI interprets the Act as providing for the exclusive responsibility of the Board on *“tasks related to monetary policy”*. The Board, as supreme decision-making body on monetary policy matters, should not seek nor take instructions from the Parliamentary Supervisory Council, nor from any other internal or external body or institution. Moreover, the requirement of central bank independence as specified by the Treaty addresses not only institutional independence of central banks and its decision-making bodies as collective organs, but also the personal independence of the members of such organs. To achieve more legal clarity and full consistency with Article 7 of the ESCB Statute, the language of Section 5 may be considered further before the enactment of the Act.

The first paragraph of Section 5 imposes on the Bank of Finland the obligation to *“cooperate with the Council of State and other authorities.”* In order to enhance the overall importance of independence and of the prohibitions contained in the second paragraph of that Section 5, it may be suggested to change the order of the two paragraphs of Section 5 and subject the obligation to cooperate with political bodies to the prohibition of seeking and taking instructions.

- (e) Under Section 13, first paragraph, indent (2), of the Act, the Parliamentary Supervisory Council is entitled to discharge the liability of the Board. To secure the independence of the Board on monetary policy decisions, it would be advisable to state that the discharge of liability of the Board cannot be refused by the Parliamentary Supervisory Council in relation to the conduct of monetary policy.
 - (f) Section 18 of the Act provides for the compulsory dismissal of Board members, vesting upon the President of the Republic the authority for such dismissals. Article 34 of the Constitution of Finland specifies that the decisions of the President are adopted “*in the Council of State on the basis of a presentation by the competent Minister*”, and that such decisions require the countersignature of the presenting Minister. The institutional independence of the Bank and the personal independence of the Board members would be enhanced if such a presentation by the Minister either included a formal opinion or if it could only be effectuated upon an initial motion of the Board of the Bank of Finland. Furthermore, it is noted that the Act does not explicitly recognise the right to have the dismissal directly reviewed by a domestic court, unless this right already arises from the legislation referred to in Section 18 of the Act, or as a result of Section 40 of the Act, or otherwise due to general legislation regarding judicial safeguards in the area of administrative law.
 - (g) The Act does not define eligibility criteria for members of the Board, nor place any limitations on other professional activities of Board members. Neither Treaty nor the ESCB/ECB Statute specifies such criteria and limitations, but these may be seen as the necessary consequence of the Treaty requirement of personal independence, which implies the avoidance of possible conflicts of interests between the Bank and other bodies, and of potential situations of external dependency.
- 5 The **statistical** regime is addressed in Sections 3 and 38 of the Act. It would be advisable that in Section 3, second paragraph, third indent of the Act the word “*collection*” is introduced between “*provide for the*” and “*compilation and*”.
- 6 The Finnish Currency Act was issued on 16th April 1993. The Amendment Act proposes to alter Article 4 of the Currency Act with the expressed purpose according to the Memorandum of substituting the Board for the Parliamentary Supervisory Council as the competent body to

make proposals to the Council of State on the **external value** of the markka. The EMI welcomes this amendment as a provision which will enhance the powers of the Board as a body whose decision-making powers are not subject to political control.

- 7 The EMI would like to draw the attention on the fact that, according to Article 108 of the Treaty, the compatibility of the statutes of a NCB must be ensured “*at the latest at the date of the establishment of the ESCB*”, and that this compatibility will already be assessed in the EMI and the European Commission reports drawn up on the basis of Article 109j(1).

The EMI notes that the Act is exclusively purported to adapt the statute of the Bank for Stage Two of EMU, and that it is recognised that there is a need to introduce further adaptations to allow the Bank in **Stage Three** “*to become an integral part of the ESCB*”. Although at this stage the EMI has not arrived at final conclusions on the scope of these further amendments, it may be foreseen that Sections 4, 7, 18, 19, 29, 30, 35 and 38 of the Act, as well as the mechanism for the determination of the external value of the Finnish markka and the Currency Act, might in all likelihood require further adaptations. In addition, the EMI wishes to make the following specific comments as regards other statutory requirements for the integration of the Bank in the ESCB:

- (a) The second paragraph of Section 5, concerning the prohibition to seek or take **instructions** related to monetary policy, will have to be amended for Stage Three, to avoid patent incompatibilities between the national legislation and Treaty provisions, in particular with Article 14.3 of the ESCB/ECB Statute, and to include within its scope all ESCB tasks to which Articles 3 to 6 of the ESCB/ECB Statute refers.
- (b) Section 9 of the Act permits exceptionally the Bank of Finland to grant credit without **adequate collateral**. This provision would be, in Stage Three, inconsistent with Article 18.1, second indent, of the ESCB Statute, which does not contemplate that possibility. Therefore, and in accordance with Article 108 of the Treaty, this provision would require to be amended for the Bank of Finland to become an integral part of the ESCB. It is matter of internal consideration whether the application of this principle is to be anticipated in Stage Two.
- 8 The EMI has no objection to its opinion being made **public**.
