

OPINION OF THE EUROPEAN MONETARY INSTITUTE

on a consultation from the German Minister of Finance 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 the Council Decision of 22 November 1993 (93/717/EC) (the "Decision")

on the Draft 6th Act amending the Bundesbank Act

CON/97/10

1. The above consultation was initiated by the German Minister of Finance, who on 12 May 1997 submitted the relevant draft provisions to the European Monetary Institute. Owing to the urgency of the matter given to it by the German authorities an opinion of the EMI was requested to be delivered by the end of the month.
2. The EMI's competence to deliver an opinion is based on Article 1.1, second indent, of the Decision, as the draft provisions relate to the status and powers of the Bundesbank.
3. The EMI welcomes the timely and efficient legislative action to clarify the legal situation of the German central bank in the light of requirements of the EC Treaty and Article 108 thereof. This applies in particular with regard to the reorganisation of the responsibility for monetary policy resulting from the entry into the third stage of monetary union.
4. With regard to the specific provision the EMI appreciates that Section 3 of the draft Act on the primary objective and task of the Bundesbank incorporates the concept of price stability of Article 105(1) of the EC Treaty and confirms the principle of the national central banks being an integral part of the European System of Central Banks as laid down in Article 14.3 of the Statute of the ESCB. It takes note that the revised wording of Section 3 reflects the legal acknowledgement of obligation of the Bundesbank to implement, within the framework of the ESCB, the monetary policy adopted by the Governing Council of the ECB. The EMI also agrees that the pledge of secrecy provided for in Section 32 of the Bundesbank Act does not obstruct communications with the ECB on monetary developments and measures.
5. The draft amendment does not touch upon Section 4 of the Bundesbank Act which entitles the Bundesbank to participate in the Bank for International Settlements and, subject to the approval

of the Federal Cabinet, inter alia in other institutions serving the purposes of supranational monetary policy. It is understood that Section 4 is to be read in the light of the prevailing Article 6.2 of the Statute of the ESCB which states that the national central banks may participate in international institutions, subject, however, to the approval of the ECB. It would be welcome, for reasons of legal certainty and clarity, that this legal situation is adequately mirrored.

6. The amendment of Section 6(1) reflects the transfer of the responsibility of the Central Bank Council for determining monetary policy to the Governing Council of the ECB and confirms the conformity of actions of the Bundesbank with guidelines and instructions of the ECB in accordance with Article 14.3 of the Statute of the ESCB. The EMI does not see any interference with that principle by the Central Bank Council determining the Bundesbank's business policy or by the mention of discussions of implications of monetary policy by this body. It acknowledges that in these respects no organisational change of the Bundesbank is intended.
7. The EMI acknowledges that the amendments to Section 7 and Section 8 fully reflect the requirements concerning the minimum term of office of the Governor of a national central bank according to Article 14.2 of the Statute of the ESCB. It welcomes that the minimum term of office also of the other members of decision-making bodies of the Bundesbank has been increased to five years.
8. Section 12 of the Bundesbank Act has remained unchanged and provides for the support of the Bundesbank, without prejudice to the performance of its functions, to the general economic policy of the Federal Cabinet. The EMI notes that the functions of the Bundesbank are defined according to the revised Section 3. Therefore, as the Bundesbank will be an integral part of the ESCB which according to Articles 105(1) of the Treaty and 2 of the Statute of the ESCB entails that it shall support the general economic policies in the Community, any support by the Bundesbank to national economic policy has to be confined to those areas that do not conflict with Article 2 of the Statute of the ESCB. However, it would be welcome that Section 12 explicitly addresses this issue in order to avoid any misinterpretation of this provision.
9. The EMI welcomes the repealing of Section 13(2), sentence 3 in the Bundesbank Act which provision was not in line with the institutional independence of the national central bank in accordance with Article 107 of the EC Treaty.
10. With regard to the amendment of Section 14 the EMI agrees with the proposed wording to be added. It is understood that this section is meant to protect the sole right of the Bundesbank to issue banknotes within the German monetary area during the transitional period without prejudice to the competencies of the ECB in accordance with Article 105a(1) of the EC Treaty.

11. The decision to repeal the provisions of Sections 15 and 16 of the Bundesbank Act on the discount, lending, open market and minimum reserve policies reflects the availability, for the ESCB, of monetary policy instruments under the Treaty and the Statute of the ESCB to fulfil its tasks.
12. Whereas the EMI has no objections with regard to Article 108 of the EC Treaty to maintaining at this stage the provisions in Sections 19 to 21 of the Bundesbank Act, once the ECB has adopted the operational framework for its monetary policy at a later stage, it may result in inconsistencies with that operational framework and legal clarity would require at that stage adaptation.
13. Section 27 of the Bundesbank Act has remained unchanged. The EMI would like to emphasise that this provision will have to be applied in the context of Article 32 on the allocation of monetary income of national central banks.
14. The EMI has no objections against the repealing of Section 28 on the Bundesbank's Weekly Returns.
15. According to Section 32 of the Bundesbank Act all persons in the service of the Deutsche Bundesbank are pledged to secrecy about affairs and facilities of the Bank. Sentence 3 of this section lays down the procedure under which the permission to make statements about these matters is granted "where the interests of the Bank are involved". It is recommended that it is confirmed that, where the objectives and tasks of the ESCB are concerned, the conditions of Article 38 of the Statute of the ESCB - on the professional secrecy of members of the governing bodies and the staff of the national central banks - take precedence over such procedure of permission.
16. This opinion is confined to the text submitted by the consulting authority.

The EMI has no objection to this opinion being made public.

30 May 1997