



EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

on a consultation from the Bank of Greece (the “Bank”) under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI on a draft law containing provisions relating to the Bank (the “draft law”)

CON/97/15

1. The present opinion was requested by the Bank which submitted the draft law together with an introductory report containing explanatory notes for consultation to the EMI on 11 July 1997. The present opinion is based on the unofficial English translation of both the draft law and the explanatory notes thereto.
2. The main objective of the draft law is to establish the independence of the Bank, as defined in Article 107 of the Treaty, and to ensure compatibility of relevant national legislation with the Treaty and the ESCB/ECB Statute (the “statute”), as required by Article 108 of the Treaty. In addition, the draft law aims at updating the existing legislation relating to the Bank (for instance on issues concerning payment systems and prudential supervision). The draft law also abolishes a number of existing legal provisions which are either obsolete or contrary to more recent legislation or to the draft law itself, in most cases affecting the powers or status of the Bank. The EMI is therefore competent to deal with this consultation under Article 1.1 of Council Decision 93/717/EC of 22 November 1993.
3. The EMI welcomes the timing and scope of the adaptation of national legislation relating to the Bank and of other legislation. This enables the EMI to fulfil its reporting requirements under Article 109j of the Treaty and Article 7 of its Statute in a timely manner for Greece.

In its 1995 and 1996 Convergence Reports, the EMI stressed the importance of timely adaptation of national legislation to the Treaty and Statute requirements for Stage Three of EMU, distinguishing between requirements on:

- central bank independence which would need to become effective at the latest at the date of the establishment of the ESCB/ECB;
- integration of NCBs in the ESCB which would need to become effective at the date of adoption of the single currency by the Member State concerned; and

- special features of the transitional period, i.e. the period between the date of adoption of the single currency and the date of introduction of euro banknotes and subsequent disappearance of national banknotes in the participating Member States.

The draft law acknowledges and accommodates this distinction.

4. The EMI welcomes that the Greek authorities are using the opportunity for a more general review of relevant legislation with a view to the requirements of Stage Three. Indeed, Article 108 of the Treaty requires, irrespectively for instance of the supremacy of Community law over national law or of the question whether national statutory provisions become obsolete, to remove incompatibilities between national legislation on the one hand and the Treaty on the other, in order to ensure legal clarity and certainty. Again, the draft law acknowledges and accommodates this principle, except as far as provisions concerning the integration of the Bank within the ESCB are concerned once Greece adopts the single currency (which will be further examined in point 7 below).
5. In the area of central bank independence, the EMI notes with satisfaction that the draft law contains several provisions improving the institutional, personal and functional independence of the Bank. Price stability is mentioned as primary objective (Article 1). The definition and implementation of monetary policy will be a responsibility of the Bank, i.e. the Monetary Policy Council which will be established under the law upon its entry into force (Article 2). A prohibition of external influence is explicitly provided for (Article 3). Finally, the term of office of all members of the Monetary Policy Council will be six years, whilst the grounds for dismissal for the Governor and the two Deputy Governors are in conformity with those mentioned in Article 14.2 of the Statute. The above elaboration of the principle of central bank independence generally corresponds in a straight-forward and transparent manner with features of central bank independence which the EMI has developed in its 1995 and 1996 Convergence Reports.

There are, however, three issues which require further attention. The first two remarks relate to the security of tenure of members of the Monetary Policy Council other than the Governor and the two Deputy Governors.

Firstly, the grounds for dismissal for such other members as laid down in Article 6.3 of the draft law do not fully correspond with those mentioned in Article 14.2 of the Statute. They contain an addition (“in particular of violation of the duties and obligations conferred upon him under the provisions in force, the provisions of the present law and the Statute of the Bank of Greece”) which, also in view of the current wording of Articles 22 and 24 of the statute of the Bank, are not in line with Article 14.2 of the ESCB Statute. For reasons set out in the EMI's 1995 and 1996 Convergence Reports (see, for example, Chapter II, paragraph 2.2, of the 1996 Convergence

Report), the grounds for dismissal for all members of NCB's decision making bodies involved in the performance of ESCB-related tasks should be compatible with those mentioned in Article 14.2 of the Statute, unless the degree of actual involvement in the performance of such tasks would justify a certain differentiation.

Secondly, Article 6.3 provides that the initial and replacement terms of office of members of the Monetary Policy Council other than the Governor and the Deputy Governors are below the minimum term of office of five years referred to in Article 14.2 of the Statute. The EMI appreciates that the initial term of office may be inspired by the wish to create a rotation scheme in order to strengthen independence from political authorities. At the same time, the EMI would like to emphasise that each individual member of a decision-making body involved in the performance of ESCB-related tasks implies should have the same security of tenure.

Thirdly, it is noted that the competence of the Monetary Policy Council is restricted to monetary policy and exchange rate policy matters and does not extend to all ESCB-related tasks as listed in Article 3 of the Statute. The EMI understands from Article 5.3, second paragraph, of the draft law that the remaining ESCB tasks will be executed by the Governor which does not encounter any legal difficulties. However, the Greek legislative authorities may nevertheless wish to make this more explicit in the draft law as the sentence "... the Governor shall retain the responsibilities conferred upon him by the Statute of the Bank and the legislation in force" in Article 5.3 may not be precise enough to avoid misunderstandings, particularly where the division of powers between the Monetary Policy Council, the Governor and the General Council is concerned.

6. As far as the integration of the Bank in the ESCB is concerned, the EMI notes that the draft law attempts, through a general provision in Article 2.3, to eliminate any incompatibilities which may in this area exist between the draft law on the one hand and the Treaty and the Statute on the other once Greece adopts the single currency in accordance with the Treaty. The EMI acknowledges, as it did in its 1995 and 1996 Convergence Reports, that there is no standard method for adaptation, particularly not in the area of legal integration of NCBs in the ESCB. The EMI also appreciates that there may be practical or political considerations for the Greek authorities to postpone a more detailed elaboration of statutory integration provisions until the moment arrives that Greece adopts the single currency. However, Article 108 of the Treaty requires for reasons of legal clarity and certainty, the removal of incompatibilities and this, in the view of the EMI, cannot be accomplished through a general provision abolishing incompatible provisions without at the same time identifying them. The draft law contains various examples of provisions which would need to be reviewed from a perspective of full integration of the Bank in the ESCB, in spite of the general provision of Article 2 (3) of the draft law, for instance:

- The reference to the general economic policy of the Greek Government (Article 1) would need to take account of Article 2 of the Statute.
- Paragraphs (a), (b) and (f) of Article 2 on the Bank's tasks should recognise the ECB's powers; likewise, the power of the Monetary Policy Council to define and implement monetary policy (Article 6) would need to be adapted to be compatible with ECB's competences in this field.
- The need to produce an annual report on the monetary policy of the previous and the current year (Article 4.1) would need to be reviewed in the light of the ECB's reporting obligations.
- Article 7.4 of the draft law contains a definition of monetary financial institutions which intends to be in line with definitions at a Community level as they have, inter alia, been developed within the EMI. However, a uniform definition has not been developed yet as far as institutions subject to minimum reserve requirements are concerned, whilst such definition may also change overtime. In order to avoid the need to amend the definition in the future, the Greek legislative authorities may therefore wish to refer to monetary financial institutions "as defined by the EMI/ECB or in Community law".
- The provision that the exchange rate policy framework shall be determined by the Greek Government after consultation with the Bank (Article 12.2) will have to be adapted once Greece adopts the single currency in order to reflect the competence of Community bodies in this field.

The EMI recognises that there may be various methods to accommodate the full integration of the Bank in the ESCB in the process towards adoption of the single currency: a revision of the Bank's statute, amendments through Presidential Decrees or a combination thereof.

7. Finally, the EMI notes with satisfaction that the draft law reflects the current state of thinking in relation to issues such as the Statute requirement on lending against adequate collateral and the abolition of the zero hour rule (retro-active effect of insolvencies) for payment systems. Incidentally, it is noted that the abolition of the zero hour rule should, under the Directive on Settlement Finality and Collateral Security as it is expected to be adopted, also extend to payment systems other than the one operated by the Bank as well as to securities settlement systems, but this may of course also be accomplished through legislation other than the draft law, particularly if the Bank is at this juncture the only relevant party in these areas.
8. The EMI has not objections to this opinion being made public.

28 August 1997