



EUROPEAN MONETARY INSTITUTE

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OPINION OF THE EUROPEAN MONETARY INSTITUTE

CON/97/18

at the request of the Portuguese Ministry 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 on a draft Decree-Law (the “draft law”) containing amendments to the Organic Law of the Banco de Portugal (the “Bank”)

1. On 28 July 1997 the EMI received a request for an opinion on the draft law from the Portuguese Ministry of Finance. An Explanatory Memorandum was also submitted to the EMI. The present opinion is based on an unofficial English translation of the official draft in the Portuguese language submitted to the EMI by the consulting authority.
2. The EMI’s competence to deliver an opinion is based on Article 1.1, second indent, of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions, as the draft law contains a complete new set of provisions on the Bank with a view to the implementation of the Treaty and in particular Article 108 thereof.
3. The EMI welcomes the timely and accurate adaptation of the statute of the Bank. As mentioned in the EMI’s 1995 and 1996 reports on “Progress towards convergence” (the “1995 and 1996 Convergence Reports”), timely adaptation is necessary to enable the EMI and other Community institutions to assess, in accordance with their reporting obligations under the Treaty, progress made towards the fulfilment of the legal requirements for Stage Three.
4. The EMI notes with particular satisfaction the comprehensive fashion in which the adaptation of the Bank’s statute is foreseen in the draft law, whilst at the same time the different situations are accommodated which may occur dependent on the moment at which Portugal adopts the single currency. The draft law is basically in line with the EMI’s views on the adaptation of statutes of the EU central banks to the Treaty and the ESCB/ECB Statute as expressed in the 1995 and 1996 Convergence Reports and the overall assessment of the present adaptation is therefore positive.

5. Central bank independence needs to be achieved at the latest at the date of establishment of the ESCB. The draft law contains a number of articles providing for central bank independence, which are consistent with the EMI's views on this topic. These provisions will apply as from the enactment of the draft law and irrespective of whether Portugal adopts the single currency as from the starting date of Stage Three or at a later stage. This is welcomed by the EMI.

6. The draft law provides for the integration of the Bank in the ESCB both if Portugal becomes a fully participating Member State at the starting date of Stage Three and if Portugal would not adopt the single currency at the starting date of Stage Three. The EMI welcomes this approach. For the situation in which Portugal becomes a fully participating Member State, the draft law provides for a complete new statute for the Bank, which in general complies with the EMI's views on measures required for national central banks to become an integral part of the ESCB, and therefore deserves a positive appraisal. The EMI would, however, like to raise the following detailed comments:

(a) Article 4 of the new statute states that *"The capital of the Bank shall be 200 million escudos"*. If Portugal adopts the single currency, the Bank would have to comply with the requirement, laid down in Article 4 of the draft Council Regulation on the introduction of the euro, to have its unit of account in euro. Therefore, the EMI would favour that the Bank's statute already anticipates the future denomination of its capital in euro.

(b) Article 6 retains for the Bank *"the exclusive right to issue banknotes"* and *"the exclusive right to put in circulation metal coins"*. The EMI notes that in Stage Three other participating national central banks and the ECB may also issue euro banknotes with legal tender status within the Community and thus also in Portugal, and that therefore the legal monopoly of banknote issuance should be adapted in all participating Member States so as to legally permit banknote issuance by other full ESCB participants (but only such participants; see Article 105a of the Treaty and Article 16 of the ESCB/ECB Statute) without this being contrary to existing national law. The legal monopoly for banknote issuance may, however, in the transitional period still be restricted to banknotes in national **currencies note: this should say, "currency units"** and this restriction may be retained until such banknotes lose their legal tender status. The same would apply, *mutatis mutandis*, to the exclusive right granted in the draft law to the Bank with regard to metal coins.

(c) The provisions in Articles 8 and 9 of the draft law concerning banknotes should properly specify that these apply only to banknotes denominated in Portuguese Escudos; the regime to be applied to euro banknotes should be common to all participating Member States.

(d) Article 21 (a) suggests the possibility of exchange controls "*whenever required*"; for the sake of legal certainty the draft should make clear that such exchange controls may only be adopted in accordance with the Treaty.

(e) The EMI welcomes in particular Article 32.2 of the new statute of the Bank, which provides for the primacy of the ESCB responsibilities of the Governor and therefore constitutes an effective legal tool to achieve a smooth and complete integration of the Bank in the ESCB.

(f) Article 53 of the new statute does not appear to contemplate monetary income sharing within the ESCB; this provision will, of course, have to be applied in the context of Article 32 of the ESCB Statute on the allocation of monetary income of NCBs.

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

15 August 1997