



EUROPEAN MONETARY INSTITUTE

## OPINION OF THE EUROPEAN MONETARY INSTITUTE

CON/97/25

at the request of the Banco de España under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI on draft provisions in the draft Annual Financial Law (“the draft provisions”) containing amendments to the Law of Autonomy of Banco de España (the “Bank”).

1. On 2nd October 1997 the EMI received a request for an opinion on the draft provisions from the Banco de España, acting on behalf of the Ministry of Economy and Finance, sent together with an unofficial English translation of the official draft in the Spanish language.
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 new provisions on the Bank with a view to the implementation of the Treaty and in particular Article 108 thereof.
3. The proposed amendments to the Law of Autonomy of the Bank have the purpose of extending the scope of the exclusion of the voting rights of the two members of the Bank’s decision making bodies which are not independent from the Government to cover all ESCB-related tasks, and to extend the period of service of those members of these decision-making bodies who are not dependent on the Government beyond the five-year period established in Article 14.2 of the ESCB Statute. The draft provisions are, thus, fully in line with the criteria which the EMI has developed in its 1995 and 1996 reports on “Progress towards convergence” (the “1995 and 1996 Convergence Reports”) as regards the independence of central banks, and therefore the EMI welcomes the proposal and its timeliness. However, the arrangement foreseen for the application of the new regime provides for the possibility of extension of the term of office of current members of the Governing Council for three years; whilst the EMI appreciates the temporary and exceptional nature of that possibility, it would draw the attention of the consulting authority to

the inconsistency of that renewal period with the five-year period of Article 14.2, first paragraph, of the ESCB Statute.

4. Article 25.5 of the current statute of Banco de España provides for a system of simultaneous replacement of members of the Governing Council entailing the possibility of initial and individual terms of office below the period foreseen in Article 14.2 of the Statute of the ESCB in the case of a substitution before the normal expiry of the term. The EMI would like to emphasise that each individual member of a decision-making body involved in the performance of ESCB-related tasks should, in accordance with Article 14.2 of the Statute of the ESCB, have the same security of tenure, and would therefore welcome a review of that renewal system.
5. The EMI would like to recall that the necessary legal adaptations to the Treaty should also facilitate the integration of NCBs within the ESCB. In its report on “Legal Convergence in EU Member States”, which was released in August 1997, inter alia to the consulting authority, the EMI stated that:

“In order to comply with Article 108, the national legislative procedures must be accomplished in such a way that the compatibility of national legislation is ensured at the latest at the date of the establishment of the ESCB. Moreover, adaptations of NCB statutes in the field of central bank independence need also to become fully effective at the latest by the date of the establishment of the ESCB, whilst adaptations aiming at the integration of NCBs in the ESCB would need to become effective only at the start of Stage Three for Member States without a derogation or at the start of their full participation in Monetary Union for Member States with a derogation or with a special status.”

The EMI thus considers that the draft provisions constitute an appropriate step in the direction indicated in EMI’s reports, but additional adaptations would be required. In that respect, six member states have recently adopted, or are in the process of adopting, legislative texts which would permit the integration of their NCBs within the ESCB. A timely and accurate revision of the Law of Autonomy of the Bank would be necessary to complete the legislative adaptation initiated with the draft provisions, and to enable the EMI and other Community institutions to assess, in accordance with their reporting obligations under the Treaty, the progress made towards the fulfilment of the legal requirements for Stage Three.

In the Annex to the “Legal Convergence Report” of 1997 containing an analysis of the statutes of each NCB, the EMI listed those provisions from the Law of Autonomy of the Bank that, in EMI’s view, would need amendment in order for the Bank to become an integral part of the ESCB, and these are articles 7, 8, 9, 11, 12 and 15. The EMI would thus welcome that the draft provisions be timely complemented so as to adapt also those other articles in line with the above criteria, and to receive thereto for consultation the projected texts. In addition, it would be highly convenient, at least from a perspective of legal clarity, that the provision in the Preamble of the

Law 13/94 of Autonomy of Banco de España concerning the eventual integration of the Bank in the ESCB is shadowed by an appropriate sentence in Article 1 of the text of the Law which sets the overall status and legal framework of the Bank.

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

10 November 1997