



EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

at the request of 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 legislative proposals to amend the Securities Markets Act and certain other legislative provisions relating to the clearing of securities trading

CON/97/29

1. On 11 November 1997 the EMI received a request from the Finnish Ministry of Finance for an opinion on draft legislative proposals to amend the Securities Markets Act and other legislative provisions (“the legislative proposals”). The legislative proposals are set out in a Government report on proposed draft legislation concerning the clearing of securities trading (“Hallituksen esitys Eduskunnalle laiksi arvopaperimarkkinain muuttamisesta sekä muuksi arvopaperikaupan selvitystoimintaa koskevaksi lainsäädännöksi”) (“the report”). The EMI has also received an explanatory memorandum from the Ministry of Finance containing an English translation of the legislative proposals.
2. The EMI’s competence to deliver an opinion is based on Article 1, section 1, fourth and fifth indents, 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 legislative proposals contain rules relating to clearing and settlement operations and include provisions aimed at enhancing the stability of financial institutions and markets in relation to securities trading.
3. The EMI notes the definitions of the legislative proposals and that clearing shall refer to the determination and the exercise of the obligations resulting from public trading of securities on behalf of parties to the transaction. Clearing shall also refer to the determination and exercise of the obligations resulting from a transaction or a transfer of ownership of securities which does not take place through public trading when such securities are incorporated in the book-entry

system or subject to public trading. Clearing may be carried out only by a clearing house which has obtained a licence from the competent Ministry. The report also states that clearing shall be supervised by the Financial Supervisory Authority. The EMI welcomes the requirement to obtain a licence to operate a clearing house and the involvement of the Financial Supervisory Authority and would generally endorse the objectives behind the legislative proposals set out in the report.

4. The legislative proposals also lay down certain requirements for securities intermediaries and for clearing parties and set out the obligations of such parties. The EMI notes these provisions and welcomes the legislative proposals, which, in view of inter alia their prudential supervisory aspects, should promote the sound functioning of the Finnish system for the clearing of securities trading and, in particular, the soundness of clearing houses and their participants as well as the safety of operations. The EMI also welcomes the legislative proposals contained in Section 5a of Chapter 4 of the proposed draft Act on the Amendment of the Securities Markets Act, whereby securities intermediaries shall keep client funds segregated from their own funds and assets (which, according to the proposed amendment of Section 52 of the Act on Investment Firms, shall apply also to investment firms).
5. The EMI also notes and welcomes the proposed wording of Section 28 of the Act on the Book-Entry System, whereby inter alia foreign central securities depositories or other supervised foreign organisations may be allowed to register as nominee registration custodians in the Finnish book-entry system. Such an arrangement should facilitate the cross-border use of Finnish securities as collateral, which will prove positive for the development and integration of the euro market in Stage Three of EMU, as well as for the liquidity of Finnish securities in general.
6. The EMI has no objection to this opinion being made public.

3 December 1997