



EUROPEAN MONETARY INSTITUTE

## OPINION OF THE EUROPEAN MONETARY INSTITUTE

**at the request of the Banca d'Italia under Article 109f (6) of the Treaty establishing the European Community (the "Treaty"), Article 5.3 of the Statute of the EMI and Council Decision 93/717/EC of 22 November 1993, concerning draft amendments to some provisions of the Statute of Banca d'Italia (the "Draft Statute Amendments")**

(CON/98/07)

1. On 29 January 1998, the EMI received a request for an opinion on the Draft Statute Amendments from the Governor of Banca d'Italia. An Explanatory Memorandum was also submitted to the EMI. This opinion is based on the English translation of the draft 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 Statute Amendments contain provisions concerning the status and powers of the national central bank.
3. The EMI has analysed the proposed amendments to the Statute of Banca d'Italia (the "Statute"). Such amendments are required by Article 10 of the draft legislative decree implementing Article 108 of the Treaty, on which the EMI has already given its opinion (CON/97/32), and by Article 108 of the Treaty itself. In conformity with the analysis contained in its Legal Convergence Report, the EMI welcomes the changes introduced into the Statute to bring it into line with those introduced by the Legislative Decree and with the requirements of the Statute of the ESCB. In particular, the EMI considers it appropriate to clarify at the beginning of its Statute both the new status of Banca d'Italia as integral part of the ESCB and the new limits of its competences in Stage Three. Also, the EMI welcomes the substitution for the exhaustive list of operations which can be undertaken by the Bank of a much more flexible and appropriate general clause allowing Banca d'Italia to undertake all acts and operations allowed by the Statute of the ESCB and by its implementing measures.
4. However, some further amendments are necessary in order to meet fully the requirements of the Treaty. In the first place, the EMI considers that the independence of the members of the decision-making bodies, in particular of the members of the Board of Directors, has been

improved by the change of Article 17 of the Statute proposed in the Draft Statute Amendments. However, the Statute should also ensure that no conflict of interest can arise between the ESCB-related tasks of the members of the Board of Directors and their other functions. Even though important cases of incompatibilities are already covered by Article 60 of the Statute, a clause in this sense should be added, either in Article 17 or in Article 60.

- 5 Moreover, on the question of the competences of the Board of Directors, the EMI understands that paragraph 19 of Article 20 has to be read in the light of the first paragraph of Article 20: this means that only tasks related to the general administration of the Bank can be submitted to the Board of Directors by the Governor. However, to enhance legal certainty, this limitation should be clarified in the text of Paragraph 19.
- 6 Also, concerning Article 42, similarly to what already observed in the EMI opinion on the Draft Legislative Decree, a reference should be added to the relevant ECB provisions contained in Chapter IV of the Statute of the ESCB.
- 7 Finally, the EMI understands that the obligation of secrecy imposed on officials and employees of Banca d'Italia by Article 62 of the Statute continues to apply, for the matters which have come to their knowledge in the exercise of their duties, after they leave the service of the Bank.

The EMI confirms that it has no objection to this opinion being made public by the competent Italian authorities at their discretion.

19 February 1998