



EUROPEAN MONETARY INSTITUTE

13 March 1998

OPINION OF THE EUROPEAN MONETARY INSTITUTE

at the request of the French Ministry of Economy, Finance and Industry 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 on a draft law amending Act 93/980 of 4 August 1993 on the Statute of the Banque de France and the activities and supervision of credit institutions (the “draft law”)

(CON/98/12)

1. On 16 February 1998, the EMI received a request for an opinion on the draft law from the French Ministry of Economy, Finance and Industry. This opinion is primarily based on the English translation of the draft law, but takes also account of the original text in French. References in this opinion to articles are references to articles in the draft law unless otherwise indicated.
2. The EMI is competent to deal with the present consultation under Article 1.1, second indent, of Council Decision 93/717/EC of 22 November 1993, since the draft law concerns the status and powers of the Banque de France.
3. The draft law intends to adapt the statute of the Banque de France to Treaty and ESCB/ECB Statute requirements under Article 108 of the Treaty as repeated in Article 14.1 of the ESCB/ECB Statute with a view to Stage Three of Monetary Union.
4. Article 8 of the draft law provides for an entry into force of the draft law on 1 January 1999 or, alternatively, the date on which France will adopt the single currency if that would be a later date. As far as this applies to provisions ensuring the legal integration of the Banque de France in the ESCB, this is compatible with the Treaty and ESCB/ECB Statute. However, as far as requirements on central bank independence are concerned, Article 108 requires that adaptations in this area enter into force at the latest at the date of the establishment of the ESCB/ECB. This is important as the ECB and NCBs will take many decisions between this establishment and the end of 1998 which will pre-determine the monetary policy of the euro area and which need to be implemented at a national level by the national central banks in advance of the starting date of Stage Three.

The above applies in particular to the last paragraph of Article 1 incorporating the prohibition of instructions in the statute of the Banque de France, and to Article 6 of the draft law, modifying Article 19, submitting the Governor's appearances before Parliament to Articles 107 of the Treaty and the secrecy rules of the European Central Bank. These should enter into force at the latest at the date of the establishment of the ESCB.

Furthermore, and although the Bank may be considered as independent with regard to the formulation and the implementation of monetary policy, the independence requirements need to be applied to the Banque de France as an institution and not only to the members of the Monetary Policy Council and extended to all ESCB-related tasks and not limited to monetary policy functions.

5. The reference in Article 1 of the draft law to Articles 105(1), 105(2) and 105(5) may be interpreted as an exhaustive enumeration and it should therefore simply refer to the Treaty.
6. Article 2 of the draft law provides that the Banque de France shall, within the conditions established by the ESCB Statute, hold and manage the State's gold and foreign exchange reserves and that such reserves shall be recorded as assets of the Bank in its balance sheet. However, this Article also adds that this function will have to be executed in accordance with "procedures" ("*modalités*" in the French text) which will be set by a formal agreement between the State and the Banque de France. The Banque de France's activities in this context are governed by the Treaty and the Statute as well as the legal acts adopted by the ECB in this respect. Whilst it is assumed that the above agreement leaves the Bank every freedom not to accept any procedures which might infringe on ESCB-related obligations, references to national rules, which may hinder the Bank's independence and status as an integral part of the ESCB, must be deleted if the above procedures could have such an effect. The above agreement needs, in any case, being submitted to the ECB for prior approval.

One NCB points out that, in any case, a formal agreement in the area of ESCB-related tasks with a national Government, even if it hypothetically required the approval by the ECB, would not be compatible with the independence of the ECB and NCBs as established by the Treaty and the Statute of the ESCB and with the legal integration of NCBs in the ESCB. Therefore, any reference to that formal agreement should be deleted from the draft law.

7. Article 2 also states that the Banque de France may, without prejudice to Article 6.2 of the ESCB/ECB Statute, participate in international monetary "agreements" (or "accords" in the French text) with the permission of the Minister in charge of Economy. The wording is confusing. Article 6.2 of the ESCB Statute deals with the ECB's competence to approve the participation of national central banks in international monetary institutions while Article 109 of

the Treaty establishes the Community's competence in the field of international agreements on monetary and foreign exchange regime matters. The latter Article indicates, incidentally, that there will be no freedom for Member States any more to enter into international monetary agreements. Article 2 should therefore refer, in accordance with Article 6.2 of the ESCB/ECB Statute to participation in international monetary "institutions". Should it be purported to have a wider scope, then it would have to specify that this capacity is "without prejudice to Article 109 of the Treaty".

The Banque de France states that the agreements falling within the scope of Article 2 will not concern ESCB-related tasks; however, this statement should be clearly reflected in the language of the draft law.

It would be contrary to the independence of the Banque de France to provide for an approval of the Minister in charge of Economy either to participate in international monetary institutions or in international agreements on monetary and foreign exchange regime matters.

One NCB, however, considers that the necessity for the approval of a national Government would not in any case be compatible with the institutional independence required for NCBs by the Treaty and the Statute of the ESCB, and therefore such national constraint should be deleted from the draft law.

8. Whilst Article 3 of the draft law on the issue of banknotes refers explicitly to Article 105a of the Treaty, it also states that the Banque de France shall have the sole right to issue (*"émettre"*) banknotes with legal tender status within metropolitan France. It is understood that this is meant to protect the sole right of the Banque de France to issue French franc banknotes during the transitional period, since after that period euro banknotes issued by the ECB and/or NCBs have such status as well.

The restriction of the right to issue legal tender banknotes to "metropolitan France" is incompatible with Article 105a(1) of the Treaty according to which only the ECB and the NCBs may issue legal tender banknotes within the whole euro area. In fact, the French franc banknotes issued (*"émis"*) by the Banque de France are also legal tender in the *Départements d'Outre-Mer* (which are an integral part of the Community and hence of the euro area), while they are put into circulation (*"mis en circulation"*) not by the Banque de France itself but by the IEDOM on behalf of the former. The EMI has stated, in its Opinion on CON/98/09 dated 19 February 1998, that *"the IEDOM is not an NCB nor is it vested with the requirements that the Treaty requires for NCBs.."*

Therefore, this arrangement may not be valid anymore after the start of Stage Three. In general, the tasks assigned to the ESCB in the Treaty and the Statute have to be fulfilled exclusively by the ECB and the NCBs. Other national institutions are not subject to the guidelines and instructions of the ECB; such ECB acts may be used to establish the regime and the modalities under which banknotes are put in circulation, exchanged and withdrawn within the euro area, and therefore, also eventually within the French *Départements d'Outre-Mer*. Member States cannot, therefore, entitle their national central bank to delegate competencies in ESCB-related tasks to other national institutions without, as a minimum, such delegation being statutorily subject to a prior approval by the ECB. Such approval, because concerning ESCB-related tasks, may eventually establish limits and conditions. This should be clearly explicated in the draft law.

The view has been taken by a minority of NCBs, that a permanent delegation of an ESCB task to any national institution other than the NCB, even if hypothetically subject to a prior approval by the ECB, would not be compatible with the Treaty and the Statute of the ESCB, which do not foresee any delegated attribution of ESCB-related tasks outside the ESCB. In this perspective, the reference in Article 3 of the draft law to “metropolitan” France should be deleted, as well as any other reference in the French legislation to delegation of ESCB-related tasks to the IEDOM.

9. Article 4 of the draft law defines the responsibilities of the Monetary Policy Council. The EMI Council notes with satisfaction that the independence of its members remains unchanged. Although the draft law recognises that the Banque de France will have to act in accordance with guidelines and instructions of the ECB, it also states that the Monetary Policy Council shall “determine” (“*détermine*” in the French text) the nature of collateral. Along the same lines as above, although it is no doubt the intention to be in line with ESCB/ECB Statute requirements on this point and although monetary policy in Stage Three in accordance with Article 12.1, third paragraph, of the ESCB/ECB Statute is expected to be executed in a decentralised manner (i.e. by the Banque de France in France), the word “*détermine*”, to the extent that it conveys the idea of ample discretion, is inappropriate as such action will fall within the exclusive competence of the governing bodies of the ECB. A more general wording would be more in line with the Treaty.
10. Additional points raised by several NCBs:
 - (a) Article 9 of the present statute of the Banque de France remains unchanged and gives, inter alia, the right to the Prime Minister and the Minister of Economic Affairs and Finance to attend meetings of the Monetary Policy Council and to propose motions. This is a provision parallel to what is provided in Article 109b(1) of the Treaty at Community level. However, De Nederlandsche Bank, Sveriges Riksbank and Suomen Pankki consider this formal right as an imperfection requiring re-consideration, because the right of Government representatives to propose motions within a NCB decision-making body is

a statutory mechanism to exert national political influence on the performance of ESCB-related tasks, whereby such tasks are primarily directed towards Community objectives. It would therefore be appropriate to use this legislative reform to delete this right from the Bank's statute.

(b) The Deutsche Bundesbank points out that:

- Article 8, fourth paragraph, provides for replacement terms of office of less than five years which is incompatible with the term of office as laid down in Article 14.2 of the Statute of the ESCB/ECB.
- There are various provisions on operations which fall within the scope of Chapter IV of the ESCB/ECB Statute. Therefore, these operations are subject to guidelines and instructions of the ECB. They cannot be considered as other tasks as referred to in Article 14.4 of the Statute of the ESCB. This applies in particular to Article 11, fourth paragraph, on the allocation of the Bank's own funds (see Article 25 of the Statute of the ESCB), Article 15, second paragraph, 17 and 18 on the fiscal agent function (see Article 21 of the Statute of the ESCB), the holding of accounts for third parties (see Article 17 of the Statute of the ESCB) and the execution of foreign exchange operations (see Article 23 of the Statute of the ESCB), respectively. Furthermore, the General Council is responsible for these operations according to the draft law, and it does not fulfil the requirements of independence of the Treaty and of the Statute of the ESCB for decision-making bodies competent for ESCB-related tasks.

(c) De Nederlandsche Bank considers that the wording of Article 1 whereby the Banque de France shall support the general economic policy of the Government, raises doubts on whether, being part of the ESCB, NCBs will remain competent to support, even as a subsidiary objective, national economic policies and will retain instruments for such tasks.

11. The EMI has no objections to this opinion being made public.