



EUROPEAN MONETARY INSTITUTE

April 30, 1998

**OPINION OF THE EUROPEAN MONETARY INSTITUTE**

**at the request of the Department of Finance of Ireland under Article 109f(6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI concerning a draft bill on investor compensation schemes (“the draft bill”)**

**(CON/98/21)**

1. On 1 April 1998 the EMI received a request for an opinion on the Investor Compensation Bill, 1998 (the “draft bill”) from the Irish Department of Finance. The request contained the draft bill, which enacts provisions relating to investor compensation schemes, and requested the EMI to submit its opinion within one month of receipt.
2. The EMI’s competence to deliver an opinion is based on Article 1.1 of 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 bill contains provisions concerning the status and powers of the Central Bank of Ireland.
3. The draft bill introduces investor compensation arrangements for clients of investment firms, stock exchange member firms, credit institutions providing investment services and insurance intermediaries. The draft bill gives effect to Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes (hereafter, the “investor compensation directive”). The draft bill goes further than a mere implementation of the investor compensation directive insofar as it establishes compensation arrangements for clients of a number of entities not covered by the investor compensation directive (e.g., insurance intermediaries, certified persons regulated by an approved professional body, restricted activity investment product intermediaries and certain investment business firms not falling within the definition of an investment firm under the investor compensation directive).
4. The draft bill appoints the Central Bank of Ireland as supervisory authority for investor compensation arrangements under the bill, and in this regard the bill confers various supervisory powers on the Central Bank of Ireland. In view of the Central Bank of Ireland’s designation as the competent authority in Ireland for purposes of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field, the Central Bank of Ireland is required under the

investor compensation to be the competent authority with respect to investment firms subject to the directive.

5. The EMI notes that the Irish authorities are not obliged to consult the EMI on the draft bill insofar as it seeks to implement the investor compensation directive. This follows from Article 2.2 of 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, which provides that the authorities of the Member States shall not consult the EMI on draft legislative provisions the exclusive purpose of which is the transposition of Community directives into the law of Member States. The EMI therefore refrains from commenting on those aspects of the draft bill which implement the investor compensation directive.
6. The narrow question for the EMI's consideration is whether the draft bill's proposed expansion of the Central Bank of Ireland's supervisory powers with respect to entities not subject to the investor compensation directive raises any particular concerns. Under Article 14.4 of the Statute of the ESCB/ECB national central banks may perform functions other than those specified in the Statute unless the Governing Council of the ECB finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of the national central banks and shall not be regarded as being part of the functions of the ESCB. Without prejudice to the competence of the ECB, the EMI does not envisage that the supervisory role envisaged for the Central Bank of Ireland by the draft bill would be prohibited under Article 14.4 of the Statute.
7. In passing, the EMI notes that the definition of the ECU set forth in section 2(1) of the draft bill will require adaptation in view of the repeal of Council Regulation (EC) No 3320/94 by Council Regulation (EC) No 1103/97 with effect from 1 January 1999.
8. The EMI has no objection to this opinion being made public.

30 April 1998