



EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

on a consultation from the Belgian Ministry of Finance under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI as elaborated in the Council Decision of 22 November 1993 (93/717/EC) on a proposed derogation from the law of 24 August 1939 on the National Bank of Belgium and a modification of the law of 22 February 1998 on the Organic Status of the National Bank of Belgium

CON/98/22

1. On 6 April 1998, the EMI received a request for an opinion concerning the Belgian Ministry of Finance under Article 109f(6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI as elaborated in the Council Decision of 22 November 1993 (93/717/EC) on a proposed derogation from the law of 24 August 1939 on the National Bank of Belgium (the “24 August 1939 Law”) and a modification of the law of 22 February 1998 on the Organic Status of the National Bank of Belgium (the “22 February 1998 Law”).
2. The EMI’s competence to deal with the request for consultation is based on Article 1, second indent, of the Council Decision of 22 November 1993 (93/717/EC), as the draft legislation concerns the statute of the National Bank of Belgium (the “Bank”). This consultation is based on an unofficial English translation made by the EMI.
3. The EMI takes note of Article 2 of the draft law authorising the National Bank of Belgium to transfer to the State the amount existing on 1 April 1998 of the capital gain resulting from the conduct of sales of gold and recorded in a special unavailable reserve account on the balance sheet of the Bank, without prejudice to the recognised rights of Luxembourg, on condition that these funds are used to repurchase part of the government debt denominated in foreign currency. According to the Explanatory Memorandum, this transfer will occur in 1998. Therefore, this measure is taken as a derogation from Article 20 bis of the 24 August 1939 Law, as Article 30 of the 22 February 1998 Law, containing corresponding provisions to Article 20 bis, will enter into force only as from the introduction of the single currency in Belgium. The EMI notes, however, that Article 2 of the draft law does not state in itself that the transfer of the capital gain above will occur in 1998. From this stand point, the EMI would like to remind that following the transfer of the foreign reserve assets to the ECB on 4 January 1999 pursuant to Article 30 of the ESCB/ECB Statute, Article 31.2 makes NCB’s operations with their remaining

foreign reserve assets, inclusive of gold, above a certain threshold subject to the prior approval of the ECB.

4. Given the provisions of Article 2 of the draft law explained above, Article 3 of the draft law deletes Article 15 of the 22 February 1998 Law which allows, within certain limits, the issue of gold coins for collection or commemorative purposes with legal tender status by the Bank and organise the transfer of the net revenue resulting from the issue of such coins to the State in order to decrease the State debt in foreign currencies.
5. In line with Article 3 of the draft law, Article 37 of the 22 February 1998 Law, as modified by Article 4 of the draft law, refers now to the issuance of coins for numismatic or commemorative purposes by the State and not by the Bank any more. Assuming that these coins will have legal tender status, the EMI reminds that the volume of such issuance of coins by the State will be subject to the ECB's approval pursuant to Article 105a (2) of the Treaty. The EMI also takes note of the provisions of Article 37 stipulating an obligation to transfer to the State the capital gain on the disposal of gold assets in relation to the issuance of such coins, up to the amount of the unused balance of 2.75% of the weight of the gold held as part of the Bank's assets on 1 January 1987.
6. Finally, the arrangements envisaged in the draft law are, in the EMI's opinion, not inconsistent with the prohibition of monetary financing as laid down in Article 104 of the Treaty.
7. The EMI agrees that this opinion may be made public by the consulting authority.

15 May 1998