



EUROPEAN MONETARY INSTITUTE

8 May 1998

OPINION OF THE EUROPEAN MONETARY INSTITUTE

at the request of the United Kingdom under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI concerning certain subordinate legislation in connection with the Bank of England Act 1998

(CON/98/24)

1. On 21 April 1998 the EMI received from the Bank of England a request for an opinion on certain subordinate legislation proposed to be made by way of Orders of HM Treasury in connection with the Bank of England Act 1998 and under authority deriving from that Act (“the Orders”). The orders are the Cash Ratio Deposits (Value Bands and Ratios) Order 1998, The Cash Ratio Deposits (Eligible Liabilities) Order 1998, The Bank of England (Information Powers) Order 1998, and The Bank of England Act 1998 (Consequential Amendments of Subordinate Legislation) Order 1998.
2. The EMI’s competence to deliver an opinion is based on Article 1.1, second and fifth indents, of the Council Decision of 22 November 1993 (93/717/EC) (the “Council Decision”) on consultation of the EMI by the authorities of the Member States on draft legislative provisions, as the Orders contain inter alia provisions concerning the powers of the Bank of England (the “Bank”) and rules applicable to financial institutions in so far as they influence the stability of financial institutions and markets.
3. The EMI has already given detailed comments on the then current provisions of the Bank of England Bill in its opinion CON/97/27 dated 21 January 1998. Since the Orders are intended to implement certain parts of that legislation, no new comments of principle arise. Reference should be made, however, to the EMI’s earlier opinion for the EMI’s comments on the matters which three of the orders cover, namely cash ratio deposits and the collection of information.
4. In particular, it was noted in the earlier opinion as follows.

- a) The provisions relating to cash ratio deposits are established as part of the arrangements for financing the Bank. Whilst the EMI acknowledges that they are not intended to be used as a monetary policy instrument, it notes that the holding of minimum reserves might be a monetary policy instrument in Stage Three and that such cash ratio deposits might in the future need to be reviewed accordingly.

 - b) The Bank of England Act empowers HM Treasury to determine what statistical data will be reported to the Bank for monetary policy purposes. Such a right may be inconsistent with Article 5 of the Statute of the ESCB and ECB, which requires the ECB, assisted by the national central banks, to collect the statistical information necessary for the ESCB to carry out its tasks. This Article 5 applies to the United Kingdom notwithstanding its status under the Treaty. However, the EMI notes that the proposed range of the financial affairs of an undertaking about which the Bank will be empowered to obtain information are very comprehensively drafted in the relevant Orders.
5. The EMI has no objection to its opinion being made public.

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