



EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

at the request of the Italian Ministry of the Treasury 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 a draft legislative decree implementing Article 108 of the Treaty (the “Draft Legislative Decree”)

(CON/97/32)

1. On 29 December 1997, the EMI received a request for an opinion on the Draft Legislative Decree from the Italian Ministry of the Treasury. 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, first and 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 Legislative Decree contains provisions concerning the introduction of the euro and the status and powers of the national central bank.
3. The EMI welcomes the initiative of the Italian government to continue its preparation for the move of the Community towards Stage Three and, in particular, for the establishment of the ESCB and the introduction of the euro. This initiative is aimed at ensuring the timely implementation of the measures necessary to comply with the Treaty and the Statute of the ESCB (the “Statute”). More specifically, the EMI notes with satisfaction that the Draft Legislative Decree amends, or eliminates from the Italian legal system, the provisions which, according to the analysis contained in the EMI’s Report on Legal Convergence published in October 1997, are incompatible with the Treaty and the Statute requirements or which do not recognise clearly enough the transfer of monetary competence from the national to the Community level in Stage Three.
4. In conformity with the analysis contained in its 1997 Report, the EMI considers that the independence of Banca d’Italia is enhanced by the legislative changes arising from the adoption of Article 3; that the competences relating to the issuing of banknotes and coins are clearly defined by Articles 4 and 5 and by their reference to the Treaty; that Article 6 ensures certainty

by clarifying that the instruments of monetary policy in Stage Three are those defined by the Statute and by the legal instruments implementing it; that Article 8 allows Banca d'Italia to derogate from the rules on annual accounts as long as it is in conformity with the rules established for the ESCB. All these Articles address in a satisfactory way the points made in the EMI's Report on Legal Convergence published in October 1997. The EMI particularly welcomes the provision in Article 9.2 which will ensure the necessary flexibility in Stage Two B and will allow Banca d'Italia and the ESCB to start the testing of operations ahead of Stage Three, so as to enable the ECB to be fully operational starting on 1 January 1999.

5. However, the EMI considers that some further amendments are necessary in order to meet fully the requirements of the Treaty. In the first place, at the end of Article 6.5, where the Article refers to the "management of its patrimony and personnel", a reference to the provisions contained in Chapter IV of the Statute of the ESCB should be added. This will clarify that, for these transactions which have effects similar to those of monetary policy operations, the relevant ECB provisions will be of application.
6. Moreover, the independence of the national central banks, which according to the Treaty has to be fully achieved at the moment of the establishment of the ECB and ESCB, has to be evaluated in the framework of the tasks which Article 3 of the Statute attributes to the ESCB. One of them is "hold and manage the official foreign reserves of the Member States". This means that, starting from mid-1998, Banca d'Italia should independently manage the Italian official foreign reserves. Therefore, the legislation concerning the management of foreign reserves assets should be modified to ensure, from the establishment of the ESCB, the independent management of such reserves.
7. On foreign reserve assets, the EMI recognises that the aim of Article 7 is to modify the national legislation relating to foreign reserves in such a way as to have it comply with the obligations arising from the Statute. However, the wording, in the English translation, refers twice to "foreign exchange reserves" instead of "foreign reserve assets" as in Article 30 of the Statute. Since the scope of Article 30 is to provide the ECB with foreign reserve assets, including gold, the EMI suggests to delete, in the Italian text, the words "in valuta" and "in valuta estera" from Article 7.
8. It should be made clear that the objective of Article 8.2 is to provide the Ministry with information exclusively on the financial status of Banca d'Italia. In order to avoid the impression that the detail of every operation has to be reported, a procedure which could jeopardise the independence of Banca d'Italia, the EMI suggests modifying the words "on the operations carried out" and clarifying that reporting is limited to the accounts situation.

9. Finally, the absence of conflicts of interest between ESCB-related tasks and their other occupations of the members of the Board of directors of Banca d'Italia involved in the performance of ESCB-related tasks needs to be further ensured. This objective should be kept in mind when, according to Article 10, the Statute of Banca d'Italia will be amended.

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

17 February 1998