

OPINION OF THE EUROPEAN MONETARY INSTITUTE

on a consultation from the Ministry of Finance of Portugal under article 109f(6) of the Treaty establishing the European Community (“the Treaty”) and Article 5.3 of the Statute of the EMI

on a draft decree-law introducing amendments to the Organic Law of Banco de Portugal (“the Draft”).

CON/95/11

- 1 The present consultation was initiated on 12th July 1995 by the Ministry of Finance of Portugal and transmitted to the EMI through the Permanent Representation of Portugal before the European Union. Both the original Portuguese Draft and an English translation were received by the EMI. Pursuant to Article 4 of the Council Decision of 22nd November 1993 (93/717/EC) on consultation of the European Monetary Institute by authorities of the Member States on draft legislative provisions, the EMI has been asked to deliver its opinion by the end of July 1995.
- 2 The main purpose of the Draft is to introduce into the Organic Law of Banco de Portugal some amendments in order to adapt it to several provisions of the Treaty, namely concerning the objective of the Bank, its independence from Government, its payment systems and statistical functions and the prohibition of monetary financing. The reform provides for other amendments which do not relate to provisions of the Treaty. The present opinion focuses on those provisions which are purported to be adaptations of the Statute of the Banco de Portugal to the Treaty and their compatibility with the Treaty. However, at this juncture it cannot be excluded that further adaptations may be necessary in the future to fully comply with Treaty requirements relating to Stage Three of EMU.
- 3 The EMI’s competence to give an opinion in this consultation procedure is based on Article 1, paragraph 1, of Council Decision 93/717/EC, as the Draft deals with the adaptation of the statute of a national central bank of a Member State.
- 4 The Draft rewrites the definition of the objective of the Banco de Portugal in Article 3 of the Organic Law, basically following the content of Articles 105.1 of the Treaty and 2 of the Statute of the ESCB/ECB. The EMI welcomes such a reform, as it emphasises that priority is to be given to price stability. The wording of the Draft (“to maintain price stability, taking into account

the overall economic policy of the Government”) leaves some ambiguity as to the primacy and autonomy of price stability as primary objective of the Bank. Although it may be understood as reflecting other objectives which are of secondary nature, in the line of Articles 105.1 of the Treaty and 2 of the Statute of the ESCB/ECB, the EMI would suggest a language that avoids any ambiguity on this essential matter.

- 5 The Draft enhances the independence of the Banco de Portugal with respect to Government in the “conduct” of monetary policy by deleting the sentence “taking into account guidelines of the Government” from Article 18 of the current Organic Law, which defines such monetary policy competence of the Bank. This is a reform subsequent to the Constitutional Law no. 1/92 of 25th November 1992 amending Article 105 of the Portuguese Constitution. The EMI welcomes the new draft of Article 18, although it might be appropriate to clarify with whom the Banco de Portugal needs to cooperate (presumably the Government). In addition, central bank independence required for Stage Three of the EMU may necessitate further adaptations of Portuguese law before the establishment of the ESCB in the light of the interpretation which will be given to Articles 107 and 108 of the Treaty.

- 6 The Draft amends Article 19 with the twofold purpose of defining the compulsory statistical functions of the Bank, relating to “the collection and compilation of monetary, financial and exchange statistics”, and of explicitly stating the principle of statistical secrecy. Whereas the latter is welcomed as a prerequisite for the collection of reliable statistical data, the former gives rise to the following caveat. The definition of the compulsory tasks of the Banco de Portugal in the statistical field should not lead to a limitation of its competences in this area, particularly keeping in mind the preparation of Stage Three of EMU. In particular, it should be recalled that in Stage Three of EMU the Banco de Portugal will be involved under Articles 5.1 and 5.2 of the Statute of the ESCB/ECB in the collection of statistical data required by the ECB in the framework of the execution of tasks of the ESCB. For this purpose, Portuguese legislative authorities may already wish to modify the draft in such a way as to facilitate the fulfilment of the Banco de Portugal’s obligations in the statistical field within the framework of the ESCB in Stage Three of EMU and the preparation thereof. More specifically, the EMI would suggest, firstly, to further enhance the accuracy of the definition of the statistical tasks of the Banco de Portugal by replacing in the first paragraph the words “exchange statistics” with “exchange rate and balance of payments statistics”; secondly, to bring Article 19 in line with Article 5.1 of the ESCB/ECB Statute by replacing in the second paragraph the words “whatever

information is deemed necessary for compliance with the provisions of the foregoing number” with “the necessary statistical information in order to undertake its tasks”.

- 7 The Draft amends the definition of the payment systems function of the Bank, contained in Article 20 of the Organic Law, with the purpose of having its language in line with Article 105.2, fourth indent, of the Treaty, and Article 3.1, fourth indent, of the Statute of the ESCB/ECB. The EMI welcomes such technical adaptation.
- 8 The prohibition of monetary financing, contained in Article 104 of the Treaty, motivates the amendment of several articles of the current Organic Law. Articles 25 and 26, which presently permit credit facilities from the Bank to the State, are substituted by new articles which (i) prohibit any overdrafts, credit facilities and direct debt purchases with a language similar to the one of Article 104.1 of the Treaty, and whereby central bank guarantees to the State are also forbidden, and (ii) contain the exceptions to the general prohibition, in accordance with Article 104.2 of the Treaty and Articles 6 and 7 of Council Regulation 3603/93/EC of 13 December 1993. Article 35 of the Organic Law is also amended to exclude from the securities trading activities of the Bank the direct acquisition of public debt, which might only be done henceforth in the secondary markets. Furthermore, Article 17 of the Organic Law is amended, with a twofold purpose: (i) to limit public debt acquisitions to the secondary market, and (ii) to permit maintenance of existing claims over the Regional Governments of Madeira and Azores, in accordance with Protocol n. 9 of the Treaty. The EMI welcomes the proposed amendments, which correctly adapt the statute of Banco de Portugal to provisions of the Treaty applying as from the starting date of Stage Two of EMU. Particularly, the wording of Article 26, paragraph 1, of the Draft is in line with the EMI’s interpretation of Article 104, paragraph 2, of the Treaty. With regard to Article 35, it is noted that the choice of eligible collateral in the framework of operations under Article 18 of the Statute of the ESCB/ECB might require an adjustment of Article 35 in the future.
- 9 The Draft also provides for amendments to other articles of the Organic Law, which are not purported to implement Treaty provisions and do not need to be addressed in this opinion from the EMI’s point of view.
- 10 The EMI agrees that this opinion may be made public by the competent Portuguese authorities at their discretion.