

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 reform of the Organic Law of the National Bank of Belgium

CON/96/16

1. The consultation was initiated on 22 November 1996 by the Belgian Ministry of Finance. For this purpose, the Ministry of Finance submitted the text of the draft legislation together with an explanatory memorandum to the EMI.
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”).
3. The proposed amendments to the Bank’s statute form part of a more extensive review thereof on which the EMI was consulted in August 1996 and on which it gave its opinion on 6 September 1996 (CON/96/10). The amendments which are presently in addition being proposed concern the Bank’s powers to issue for collection or commemorative purposes gold coins with legal tender status and to transfer the net revenues thereof to the State for the purpose of reducing its debts in foreign currencies. The main additions to the Bank’s Organic Law read in an unofficial translation as follows:

Article 23 bis

“The Bank shall be authorised, subject to the approval of the ECB, where appropriate, to issue for collection or commemorative purposes gold coins with legal tender status in a total amount of up to 10% of the weight of gold recorded in the assets of the Bank as at 1 January 1987. At most, 2% of this weight of gold may be used for this purpose each year.

The net revenue resulting from the issue of such coins shall be transferred to the State for the purpose of reducing its debts in foreign currencies after the deduction of the dues to which Luxembourg is entitled by virtue of the Protocol of 9 March 1981 on the monetary association between the two countries.”

Article 43 bis

“Notwithstanding the provisions in Article 23 bis, the net revenue resulting from the issue of coins for collection and commemorative purposes shall be transferred to the State in a total amount of up to the unused balance of 2.75% of the weight of gold recorded in the assets of the Bank as at 1 January 1987 and which the State was authorised to use, particularly for the purpose of issuing coins in accordance with Article 20 bis, second paragraph, of the Law of 24 August 1939 on the National Bank of Belgium.”

For reasons of easy reference, Article 20 bis, second paragraph, of the Bank’s present statute is also cited below.

“Notwithstanding the provisions of the first paragraph, any capital gain realised after 1 January 1987 as a result of transfers of gold assets, especially for the issuing by the State of collector’s or commemorative coins, shall be allocated to the State. However, the total amount of the transfers whose increased value is being allocated in this way may not exceed 2.75% of the weight of the gold which appears in the Bank’s assets on the aforementioned date.”

4. Whereas Article 20 bis, second paragraph, implies that the State may presently up to a certain limit issue gold coins for collection or commemorative purposes, this function would be taken over by the Bank under Article 23 bis. For the future, this gives rise to the question whether the issue of gold coins by the Bank is compatible with the Bank’s ESCB-related tasks. Article 14.4 of the Statute of the ESCB/ECB states that national central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. However, without prejudice to the ECB’s Governing Council’s exclusive competence to take action under Article 14.4, the EMI does not see an incompatibility with ESCB-related tasks. Indeed, the issue of such coins is subject to approval by the ECB and does not in itself interfere with the objectives and tasks of the ESCB.

Furthermore, there are three issues which the EMI would like to note, merely as a reminder, in connection with the draft legislation. Firstly, the issue of gold coins by the Bank is an activity which, in accordance with Article 14.4 of the ESCB/ECB Statute, shall be performed on the responsibility and the liability of the Bank and shall not be regarded as being part of the functions of the ESCB. Secondly, the introduction of euro coins and the relevant Community, and where appropriate national, legislation to support the introduction of such coins will affect the legal tender status of Belgian franc gold coins. And last but not least, Article 31.2 of the

ESCB/ECB Statute makes national operations with foreign reserve assets inclusive of gold above a certain limit subject to the approval of the ECB.

As far as the transfer of the net revenues of the issue of gold coins to the State is concerned, the EMI understands that this reflects the Bank's status as legal owner of Belgium's gold reserves, whilst the State is considered to be the fiduciary owner, a situation which was also implied in Article 20 bis, second paragraph. The main differences of the new regime for the issue of gold coins, apart from the issuing authority, are: another ceiling (10% in total and not more than 2% per year, with the same historical benchmark as contained in Article 20 bis, i.e. the weight of gold in the Bank's books on 1 January 1987) and an explicit reference that the net revenues transferred to the State may only be used to reduce Belgium's debts in foreign currencies. This construction is not deemed incompatible with provisions of the Treaty and/or the ESCB/ECB Statute. This observation applies also to the transitory arrangement contained in Article 43 bis which provides for equal treatment (i.e. transfer of net revenues from the Bank to the State) of that part of Belgium's gold reserves which the State in the past was authorised to use, particularly for the issue of coins, and which it did not use.

5. The EMI agrees that this opinion may be made public by the consulting authority.

10 January 1997