



EUROPEAN MONETARY INSTITUTE

17 March 1998

**OPINION OF THE EUROPEAN MONETARY INSTITUTE**

**at the request of the Belgian Ministry of Finance under Article 109f (6) of the Treaty establishing the European Community, Article 5.3 of the Statute of the EMI and Council Decision 93/717/EC of 22 November 1993 on a draft law amending protection measures relating to bank deposits and financial instruments as well as Royal Decree No 175 of 3 June 1935 on the establishment of a Discount and Guarantee Institute and the establishment of a Protection Fund for Bank Deposits and Financial Instruments (the “draft law”)**

**(CON/98/04)**

1. On 20 January 1998, the EMI received a request for an opinion on the above draft law from the Ministry of Finance of Belgium. The request contained the draft law, an explanatory memorandum as well as the Annual Report 1996 of the Discount and Guarantee Institute.
2. The EMI's competence to deliver an opinion is based on Article 1.1, second and fifth indents, of 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 law contains provisions: (i) concerning the status and powers of the National Bank of Belgium; and (ii) affecting the stability of financial institutions and markets.
3. On 23 December 1994, the Belgian legislator adopted a law implementing Directive 94/19/EC of the European Parliament and Council dated 30 May 1994 on guarantee schemes for bank deposits. The draft law intends to establish similar provisions on the protection of investors in financial instruments, thus implementing Directive 97/9/EC of 3 March 1997 on investor compensation schemes. The draft law intends to do so in a harmonised manner, combining the law of 23 December 1994 which implemented Directive 94/19/EC of 30 May 1994 on deposit guarantee schemes and the draft law in one consolidated law. In addition, the draft law provides for the dissolution of the Discount and Guarantee Institute and the establishment of a Protection Fund for Bank Deposits and Financial Instruments, the management of which would also be assigned, with the approval of the Ministry of Finance, to the National Bank of Belgium.
4. The EMI notes that the Belgian legislative authorities are not obliged to consult the EMI on the draft law as far as it seeks to implement Directive 97/9/EC of 3 March 1997 on the protection of investors in financial instruments. This follows from Article 2.2 of Council Decision 93/717/EC

of 22 November 1993 which states that the legislative authorities of the Member States do not need to consult the EMI on provisions with the exclusive purpose of the transposition of Community Directives into the law of Member States. The EMI will therefore not react on the content of the draft law insofar as it involves the implementation of Community law.

5. The only question relevant for the present consultation from the EMI's point of view is whether it is compatible with the Bank's future ESCB-related tasks that the National Bank of Belgium would manage the Protection Fund for Bank Deposits and Financial Instruments. In this connection, Article 14.4 of the Statute of the ESCB/ECB is relevant, and states that national central banks may perform functions other than those specified in that Statute unless the Governing Council of the ECB finds, by a majority of two-thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. The EMI reviewed the future tasks of the Protection Fund on the basis of the draft law and the 1996 Annual Report of the Discount and Guarantee Institute. The EMI understands that the Bank will collect contributions to the Fund from market participants in the financial sector, manage these funds and, where appropriate, distribute funds to holders of bank deposits and/or investors in financial instruments if institutions with which they hold such deposits and/or instruments become insolvent. In accounting terms, all these activities remain in the accounts of the Fund and will not be reflected in the accounts of the National Bank of Belgium, which is expected only to receive a fee for its management services.

The EMI understands that it is possible that the Fund's balances might be held on an account with the National Bank of Belgium. While it is expected that the Fund's balances will always be in credit, the EMI understands that lending (if any) to the Fund will be based on adequate collateral.

With a view to the above, and without prejudice to the ECB Governing Council's views in this respect, the EMI does not anticipate that the tasks of the National Bank of Belgium, insofar as they do not entail the use of the Bank's funds, would interfere with the objectives and tasks of the ESCB and would thus be prohibited under Article 14.4 of the ESCB/ECB Statute.

6. The EMI would appreciate obtaining a copy of any agreements concluded between the National Bank of Belgium and the Protection Fund for Bank Deposits and Financial Instruments relating to the performance of the Bank's functions with respect to the Fund.
7. The EMI has no objections to this opinion being made public.

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