EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

CON/98/05

at the request of the Banco de España (the "Bank") under Article 109f (6) of the Treaty establishing the European Community (the "Treaty") and Article 5.3 of the Statute of the EMI on draft Law amending Law 13/1994 of 1st June of Autonomy of Banco de España ("the draft Law")

1. On 23rd January 1998 the EMI received a request from the Banco de España, acting on behalf of the Ministry of Economy and Finance, for an opinion on the draft Law, sent together with an unofficial English translation of the official draft in the Spanish language.

2. The EMI's competence to deliver an opinion is based on Article 1.1, 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 law contains new provisions on the Bank with a view to the implementation of the Treaty and in particular Article 108 thereof.

3. The proposed amendments to the Law of Autonomy of the Bank have the purpose of ensuring "*the full integration of the Banco de España into the European System of Central Banks*", and acknowledge, inter alia, the new competencies that the third stage of monetary union entails. New texts are provided for Articles 1 to 4, 7 to 12, 15, 18, 21, 23 and 26.2 of the Law 13/1994 of 1st June of Autonomy of Banco de España; with regard to the Law 26/1988 of 29th July, on Discipline and Intervention of Credit Institutions Articles 4(n), 5(g) and 10(b) ensuring compliance with minimum reserves are abrogated, and amendment is made of its Article 18. Finally, two provisions of laws dated 1962 and 1987 are also abrogated. It is foreseen that the draft Law is to be effective *"as from the date of Spain's participation in the third stage of Economic and Monetary Union, provided that Spain is not a Member State with a derogation*".

The EMI welcomes the content of the draft Law, which complements the provisions of Law 66/1997 of 30th December 1997 that adapted the statute of the Bank to the requirements of independence as seen by the EMI in its previous reports on legal convergence.

4. The EMI welcomes in particular the new paragraph 3 of Article 1, which declares the Bank to be an integral part of the ESCB; this statement establishes the overall framework under which the Bank is to act, and serves as a ground for the detailed amendments introduced in the remainder of the text and for its interpretation.

Subject to the comments in paragraph 5 below, the new wording foreseen for Articles 2 to 4, 7 to 12, 15, 18, 21, 23 and 26.2 of the current statute of the Bank is in line with the criteria which the EMI has developed in its 1997 report on "Legal convergence in the Member States of the European Union". Abrogation of the exclusive right of the Bank to issue legal tender banknotes as established in Article 18 of the Decree-Law 18/1962 on Nationalisation and Reorganisation of the Bank, is consistent with the new text foreseen for banknote issuance in Article 15 of the statute of the Bank for the third Stage of EMU. The abrogation of the second additional provision of Law 33/1987 of 23rd December, establishing a system of interim instalments in the payment of annual profits of the Bank to the Treasury, facilitates the operation of Articles 32, 33 and 51 of the Statute of the ESCB[1].

5. The new wording of **Article 7.2** in the draft law provides for the support of the Bank, without prejudice to its main objective to maintain price stability, to the general economic policies in the Community, as envisaged in Article 105 of the Treaty, as well as the general economic policy of the Government. The EMI notes that the functions of the Bank are defined in the new Articles 1.3 and 7 of the draft law. Therefore, any support by the Bank to national economic policy has to be confined to those areas that do not conflict with Article 2 of the Statute of the ESCB. However, it would be welcome that Article 7.2 explicitly addresses this issue in order to avoid any misinterpretation of this provision.

The proposed new **Article 9** changes the terminology of the system currently applied in Spain to impose reserve requirements on credit institutions, named "Coeficiente de caja" ("Cash coefficient"), introduces the term "Reservas mínimas" ("Minimum reserves") used by Article 19 of the Statute of the ESCB, and recognises the competence of the ECB in this area; in addition, the disciplinary mechanism provided for the enforcement by the Bank of the current "Coeficiente de caja" is abrogated, so as to recognise in this domain the new competencies of the ECB. Even if this is not explicitly provided, the EMI understands that these legislative

[1] De Nederlandsche Bank is of the opinion that, in addition to the comments below, the possibility for the Government to dismiss a member of the Governing Council upon mere incrimination for an intentional crime by a Court of Justice, under Article 25.4(d) of the statute of the Bank, without a conviction, would be incompatible with Article 14.2 of the Statute of the ESCB.

changes will produce the effect of termination of the current Spanish system of "Coeficiente de caja", irrespective of the potential adoption by the ECB of an ESCB-wide system of reserve requirements; this effect is fully in line with EMI's report "General documentation on ESCB monetary policy instruments and procedures" of September 1997 which states that *"national central banks will apply the necessary provisions to ensure that their national minimum reserves systems are terminated by 31 December 1998 at the latest"*. The EMI has therefore no objection to this specific part of the draft Law.

The EMI notes that the wording of **Article 10** of the draft Law does not explictily and unambigously recognise that the information to be given by the Governor to Parliament and Government is an *ex post* information, subject to the secrecy rule of Article 38 of the Statute of the ESCB and without prejudice to the independence of the Governor in his/her capacity as member of the Governing Council of the ECB, and therefore considers that, in order to enhance legal clarity and certainty, it should be revised.

Although this does not pertain to the domain of Article 108 of the Treaty, the EMI would like to suggest to revise the wording of **Article 15.4** of the draft law to take into account the fact that the rights on the designs for the euro banknotes will in all likelihood pertain to the ECB, and not to NCBs, and with the possibility of future adoption by the ECB of common ESCB-wide rules for commercial reproduction of euro banknotes that will not require cumbersome case-by-case authorisations by NCBs.

6. With regard to the timing for the adoption of the proposed legislative changes the EMI would like to recall that in its report on "Legal Convergence in EU Member States" of August 1997, it was stated that "*In order to comply with Article 108, the national legislative procedures must be accomplished in such a way that the compatibility of national legislation is ensured at the latest at the date of the establishment of the ESCB.*"

The EMI will have to report to the Council under Article 109j(1) of the Treaty before the end of March 1998. According to this Treaty provision, such report "*shall include an examination of the compatibility between each Member State's national legislation, including the statutes of its national central bank, and Articles 107 and 108 of this Treaty and the Statute of the ESCB*". Although legislation of Member States having been submitted for consultation to the EMI and being in the last steps of the national legislative procedure will be duly considered, the reporting obligation of the EMI will have to be based on the legal situation of Member State existing at the time when the report is to be issued.

7. The EMI has no objection to this opinion being made public by the consulting authorities.