



EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

at the request of the Finnish 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 regards draft legislative proposals concerning the Act on the Bank of Finland, the Act on the Repeal of the Currency Act and the Act on Coins

CON/98/06

1. On 26 January 1998 the EMI received a request from the Finnish Ministry of Finance for an opinion on draft legislative proposals concerning the Act on the Bank of Finland (the “New Act”), the Act on the Repeal of the Currency Act (the “Repeal Currency Act”) and the Act on Coins (the “Coins Act”) (the “legislative proposals”). The Finnish Ministry of Finance also submitted an explanatory memorandum on the Government Proposal to Parliament on the Act on the Bank of Finland and Certain Related Acts (the “Memorandum”). A complete set of the legislative proposals translated into English by the consulting authority was received by the EMI on 29 January 1998, and the present opinion is issued on the basis of those translations.
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 proposals, as the legislative proposals contain new provisions concerning Suomen Pankki (the “Bank”) with a view to the implementation of the Treaty and, in particular, Article 108 thereof.
3. The EMI recalls earlier legislative amendments regarding the laws which are now subject to further revisions. Finland has already changed its Currency Act in order to enable it to participate in the Exchange Rate Mechanism of the European Monetary System. Draft legislation to this effect was submitted to the EMI for consultation on 9 November 1995 and the EMI delivered its opinion on 11 December 1995 (CON/95/16). Draft legislation concerning the statute of the Bank was submitted to the EMI for consultation on 10 April 1996 and the EMI delivered its opinion on 17 May 1996 (CON/96/05) (the “1996 Opinion”). As a result of the latter legislative amendments, a revised Act on the Bank of Finland was adopted by the Finnish Parliament and entered into force on 1 January 1998 (the “Current Act”). The EMI noted in its 1996 Opinion that the draft legislation concerning the Current Act was a step towards the

fulfilment of the requirements of the Treaty and of the Statute of the European System of Central Banks and of the European Central Bank (the "ESCB Statute") and that further adaptations would be necessary to qualify for participation in EMU.

4. The EMI notes that the New Act represents a comprehensive revision of the Current Act. It welcomes the further adaptations suggested in the legislative proposals and, in particular, the aspects to which reference is made in the Memorandum. Once enacted, and subject to the following, the legislative proposals would contribute to the completion of the legal adaptations required for participation in Stage Three of EMU as referred to in the EMI's 1995 and 1996 reports on "Progress Towards Convergence" (the "1995 and 1996 Convergence Reports"), as well as in the EMI's report on "Legal Convergence in the Member States of the European Union - As at August 1997", which was published on 27 October 1997 (the "1997 Report").
5. Central bank independence needs to be achieved at the latest by the date of the establishment of the European Central Bank (the "ECB") and of the European System of Central Banks (the "ESCB"). The timetable for the adaptation of national legislation regarding the independence of national central banks ("NCBs") in view of Articles 107 and 108 of the Treaty is addressed in the 1995 Convergence Report (pages 89-90):

"[...] NCBs should become effectively independent by the date of the establishment of the ESCB. Clear support for this view can be found in Article 109e (5) [of the Treaty], which expressly states that the process leading to NCB independence should be commenced during the second stage. [...] Before the start of Stage Three, the ECB's Governing Council will have to decide upon the policy framework of the ESCB. At this crucial stage, it is important that the Governors, who will sit on the Governing Council [of the ECB], come from fully independent NCBs."

Section 31 of the New Act stipulates that the New Act will enter into force on the date of Finland's entry into the single currency area in accordance with Article 109l of the Treaty, which would be the appropriate date of entry into force for provisions regarding the integration of the Bank into the ESCB. Furthermore, Section 31, paragraph 2, provides that Section 16 of the New Act will enter into force on an earlier date in 1998, which has yet to be specified, and repeal Section 18 of the Current Act. Section 16 of the New Act (and Section 18 of the Current Act) can be found under the heading "Dismissal of a member of the Board". The EMI agrees that Section 16 of the New Act contains provisions which address the topic of the personal independence of individual members of a decision-making body of the Bank involved in the performance of tasks and duties conferred upon the ESCB by the Treaty and the ESCB Statute ("ESCB-related tasks") and, therefore, needs to be effective by the date of the establishment of the ESCB. However, the new paragraph 2 of Section 15, which provides a most welcome

clarification that the independence and the powers of the Governor of the Bank in respect of the performance of his or her duties as a member of the Governing Council of the ECB are laid down in the Treaty and the Statute, must also be mentioned together with Section 16 of the New Act for early entry into force, namely at the latest by the date of the establishment of the ESCB. In addition, this early date of entry into force has to cover also Sections 4 and 17 (as the latter may amend Section 19 of the Current Act as suggested under item 7(h) below).

6. The EMI notes from the Memorandum that the legislative proposals will be presented to the Finnish Parliament in the latter part of February and, as a more general remark on the timing for the adoption of the legislative proposals, the EMI recalls its statement in the 1997 Report that, “[i]n 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 EU 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 due consideration will be given to the legislation of Member States which has been submitted to the EMI for consultation and is now in the final stages of the respective national legislative procedures, the reporting obligation of the EMI will have to be based on the legal position of the Member State in question prevailing at the time of the report’s publication.

7. With regard to the substantive aspects of the legislative proposals, the EMI welcomes in particular the following proposed legal provisions:
 - (a) Status of the Bank

The EMI welcomes the fact that the New Act provides clarification that, from the start of Stage Three of EMU, the Bank will form an integral part of the ESCB (as proposed in Section 1, paragraph 2, of the New Act) and that the Bank shall act in accordance with the guidelines and instructions of the ECB (as required by Article 14.3 of the ESCB Statute).

 - (b) Objective of the Bank

The EMI also welcomes the reformulation of the statutory objective of the Bank (Section 2, paragraph 2, of the New Act), which is now fully consistent with Article 105 (1) of the Treaty and Article 2 of the ESCB Statute. The EMI also notes that the subsidiary objective (contained in Section 2, paragraph 2, of the New Act) shall be without prejudice to the objective to maintain price stability and shall apply in

accordance with the Treaty (which should be read as a reference to Article 2 of the ESCB Statute and Articles 2 and 3(a) of the Treaty).

(c) Independence and integration of the Bank

The EMI also notes that the provision presently entitled “Co-operation with other authorities” (Section 5 of the Current Act) has been amended to contain a prohibition on instructions to the Bank in its performance of ESCB-related tasks (Section 4, paragraph 1, of the New Act) and that this prohibition on seeking or taking instructions is to cover all entities “other than the [ECB]”. As indicated under 5 above, it is necessary that this aspect of the New Act enters into force at the establishment of the ESCB.

(d) Prohibition of public financing

As indicated in the 1996 Opinion, any potential discrepancy between provisions on the prohibition of public financing and either Article 104 of the Treaty or the Council Regulation (EC 3603/93) of 13 December 1993 should be avoided, and the EMI welcomes the further consideration given to this aspect (Section 6 of the New Act).

(e) Collateral

The EMI welcomes the deletion of the provision that the Bank may “temporarily rescind the collateral requirement” and the fact that the New Act clearly stipulates that the Bank is to hold adequate collateral in connection with the granting of credit (Section 7 of the New Act; compare Article 18.1, second indent, of the ESCB Statute).

(f) Independence of the Governor

The declaration and reference to the Treaty and the ESCB Statute with regard to the independence and the powers of the Governor of the Bank in respect of the performance of his or her duties as a member of the Governing Council of the ECB is seen as a positive clarification (Section 15 of the New Act).

(g) Dismissal of Board members

The EMI welcomes the wording chosen in respect of the grounds of dismissal for a member of the Board (Section 16, paragraph 1, of the New Act), which is fully consistent with Article 14.2 of the ESCB Statute, although Section 30 of the New Act, presently entitled “Impeachment”, should be consistent with Section 16 and refer to “serious” misconduct as a basis for charges brought against a member of the Board.

(h) Limitations on other professional activities of Board members

The EMI notes that Section 17 of the New Act and Section 19 of the Current Act stipulate that a member of the Board shall not have any secondary occupation unless the

Parliamentary Supervisory Council, upon application, grants a permit authorising him or her to have such a secondary occupation, provided that no secondary occupation will be granted if it would disqualify the Board member from his or her position, jeopardise the confidence placed in his or her activities as a member of the Board, or otherwise impede the appropriate performance of his or her duties (which includes all ESCB-related tasks and covers any secondary occupation (or position) which could negatively affect the required independence of a Board member involved in the performance of such tasks). Such limitations are necessary as a means of avoiding possible conflicts of interest and, to the extent it is not already clear that the Parliamentary Supervisory Council may not grant a Board member a permit for any secondary occupation (or position) which could negatively affect either the performance by such Board member of ESCB-related tasks or his or her personal independence, additional wording to this effect must be introduced (which clarification could be added at the end of the third paragraph of Section 17 of the New Act). In view of the suggested amendment to clarify the limitation of any secondary occupation (or position), Section 17 of the New Act (as amended) must also be included in Section 31, paragraph 2, as a Section containing legal provisions which enter into force by the date of the establishment of the ESCB (see also item 5 above).

(i) Operations, base rates and other interest rates

Finally, the EMI welcomes the deletion of the Bank's right to determine the base rate and other interest rates (as specified in Section 6, paragraph 2, the Current Act). In addition, the EMI notes from the Memorandum that the Finnish Government will present a separate proposal to the Parliament for a law on the transfer of matters concerning the base rate to the Ministry of Finance and it is the EMI's understanding that the said proposal will be presented to the Parliament following the present legislative proposals and enter into force on 1 January 1999.

8. As already indicated in the 1996 Opinion, and provided that the powers of the Parliamentary Supervisory Council are limited to the tasks expressly enumerated in Section 11 of the New Act and, furthermore, provided that these supervisory (and other) powers are without prejudice to the exclusive competence of the Board as regards all ESCB-related tasks, then the division of competences between the Parliamentary Supervisory Council and the Board would not appear to be incompatible with the Treaty. In particular, the EMI welcomes the deletion of Section 16, paragraph 4, of the Current Act, according to which the Board is obliged to report regularly to the Parliamentary Supervisory Council on monetary policy and its implementation.
9. Instead, Section 14, paragraph 4, of the New Act provides that "[t]he Governor and other members of the Board shall be obliged to provide the Parliamentary Supervisory Council with information on a regular basis concerning the execution of monetary policy and other activities

of the Bank [...].” Moreover, the Parliamentary Supervisory Council is also obliged under Section 11, paragraph 1, fifth indent, of the New Act to “submit to Parliament reports on monetary policy and other activities of the Bank [...]”, as necessary. In order to achieve consistency between these two provisions, it is necessary to reformulate the latter provision (Section 11, paragraph 1, fifth indent) to clarify that the submission of reports to the Parliament also refers to “the execution of monetary policy”. In addition, the Bank shall be obliged, under Section 27 of the New Act, “to provide any concerned Committee of Parliament with all the information that is necessary for the performance of the Committee’s tasks”. According to Section 10 of the New Act (and Section 12 of the Current Act), the Parliamentary Supervisory Council is to consist of nine members elected by Parliament. The topic of consultation and dialogue between NCBs and political representatives is addressed in the 1996 Convergence Report (page 101):

“The crucial issue is whether a national institution has any formal mechanism at its disposal to ensure that its views influence the final decision. An explicit statutory obligation for an NCB to consult political authorities provides for such a mechanism and is therefore incompatible with the Treaty and the [ESCB] Statute.

A dialogue between NCBs and their respective political authorities, even when based on statutory obligations to provide information and exchange views, is not incompatible with the Treaty and the [ESCB] Statute, provided that:

- this does not result in interference with the independence of the members of decision-making bodies of NCBs;*
- the ECB’s competences and accountability at the Community level as well as the special status of a Governor in his/her capacity as a member of its decision-making bodies are respected; and*
- confidentiality requirements resulting from [ESCB] Statute provisions are observed.”*

While the EMI welcomes the deletion of the obligation for the Board “to report regularly to the Parliamentary Supervisory Council on monetary policy” (Section 16, paragraph 4, of the Current Act), Section 11, paragraph 1, fifth indent, and Section 27 of the New Act should still be critically assessed in the light of the above considerations. The said provisions of the New Act would not be incompatible with the Treaty and the ESCB Statute if the obligations under these provisions on the part of the Board and the Bank respectively to provide information relate exclusively to past activities, and provided that the criteria in the text quoted above from the 1996 Convergence Report are respected. In this connection, the EMI also notes Section 4, paragraph 2, of the New Act and suggests that additional text should be introduced to clarify the fact that the obligation on the part of the Bank to “co-operate as necessary with the Council of State and other authorities” shall be “without prejudice to paragraph 1” of the said Section 4.

More generally, the EMI notes the legal provisions on the exchange of information contained in the New Act in respect of the activities of the Bank (compare Section 11, paragraph 1, fourth and fifth indents, Section 12, paragraph 2, Section 14, paragraph 4, and Section 27 of the New Act). In view of the importance of compliance with confidentiality requirements under the Treaty and the ESCB Statute (compare Articles 10.4 and 38 of the ESCB Statute), the latter requirements need to be expressly acknowledged to avoid any appearance of incompatibility between the New Act and the Treaty and the ESCB Statute.

10. The 1996 Opinion addressed the entitlement of the Parliamentary Supervisory Council to discharge the Board from liability, and stated that “[t]o secure the independence of the Board on monetary policy decisions, it would be advisable to state that the discharge of liability of the Board cannot be refused by the Parliamentary Supervisory Council in relation to the conduct of monetary policy”. Section 11, paragraph 1, second indent, of the New Act provides that the Parliamentary Supervisory Council shall decide on the discharge of the Board from liability for “matters concerning [the] internal management of the Bank [...]”. In addition, paragraph 2, third indent, of the said Section entitles the Parliamentary Supervisory Council “to decide on the issuance of warnings to members of the Board and [the settlement of] other issues related to their service”. The EMI welcomes the stipulation that the basis upon which the Parliamentary Supervisory Council may refuse to discharge the Board from liability shall be “matters concerning [the] internal management of the Bank”, and notes that a refusal to discharge the Board from liability would require the Parliamentary Supervisory Council to refer the matter to a public prosecutor or bring an action concerning the matter on behalf of the Bank within a prescribed time period. It should be clearly stated in the New Act that the provisions on the discharge of the Board from liability only cover matters outside the scope of ESCB-related tasks and that the grounds for dismissal of a member of the Board would only be those to which reference is made in Section 16 of the New Act. With such clarification, the legislative proposals concerning the discharge of the Board from liability would not seem to be incompatible with the Treaty. In a similar manner, the issuance of warnings to members of the Board and the settlement of other issues related to their service should also be restricted to aspects of their duties outside the scope of ESCB-related tasks. Accordingly, the introduction of a clarification in the New Act along the lines indicated above is required if the legislative proposals referred to in this item 10 are maintained since they could otherwise negatively affect the independence of the Board or individual Board members involved in the performance of ESCB-related tasks.
11. In the same spirit, the EMI would interpret Section 11, paragraph 3, fourth indent, of the New Act, when read in conjunction with Section 15, paragraph 3, as a reference to the establishment by the Parliamentary Supervisory Council of purely administrative rules which must not infringe upon the independence of the Board or that of its decision-making procedures in

relation to ESCB-related tasks (compare Section 13, paragraph 3, fourth indent, and Section 17, paragraph 2, of the Current Act, where there is a clear reference to the Bank's "administrative" rules).

12. The EMI welcomes the Repeal Currency Act and, in particular, the abolition of the provisions of Section 4 of the Currency Act on the determination of the external value of the markka. The EMI also welcomes the amendments and reference to Community law until 31 December 2001 in respect of Section 7 of the Currency Act, which stipulates that the Ministry of Finance decides on the face value and the characteristics of coins, and the abolition of the first paragraph of the said Section 7, under which the State has the exclusive right to mint coins for its own account.
13. Finally, the Coins Act does not reflect the provision of the Treaty that the issuance of coins by Member States is subject to approval by the ECB of the volume of the issue (Article 105a (2), first sentence of the Treaty). A reference to this provision has to be introduced.
14. The EMI has no objection to this opinion being made public.

12 February 1998