



EUROPEAN MONETARY INSTITUTE

**LEGAL CONVERGENCE
IN THE
MEMBER STATES
OF THE EUROPEAN UNION**

As at August 1997

October 1997





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**Report of the European Monetary Institute on the adaptation
of national legislation, and in particular the statutes of the national
central banks, of the Member States of the European Union
with a view to Stage Three of Monetary Union**

October 1997

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LEGAL CONVERGENCE

1. INTRODUCTION

The EMI's 1995 and 1996 reports on "Progress towards convergence"¹ contained, inter alia, a Chapter on progress towards legal convergence. "Legal convergence" means the adaptation of national legislation, inclusive of statutes² of NCBs, with a view to Stage Three. These reports described the legal basis for the reports³, the benchmark provisions in the Treaty and the Statute for the obligation and the assessment of legal convergence⁴ as well as the basic assumptions for such assessment⁵. They distinguished between legal convergence in the following areas:

- central bank independence;
- integration of NCBs in the ESCB;
- legislation other than statutes of NCBs⁶.

In addition, changes in legislation in these areas during the reporting period were also addressed. The present report will maintain the same structure. It will build further on the previous reports and attempts to avoid repetitions. As in the case of the 1995 and 1996 Convergence Reports, the present report is not exhaustive and does not prejudge subsequent assessments of legal convergence.

In order to put the observations in the following paragraphs in their context, the main basic assumptions flowing from the 1995 and 1996 Convergence Reports are summarised below.

- The Treaty and the Statute⁷ do not require harmonisation of national legislation. National peculiarities may continue to exist.
- The Treaty and the ESCB/ECB Statute require the removal of incompatibilities between the Treaty and the Statute on the one hand and national legislation on the other.⁸ Neither the supremacy of the Treaty and the Statute over national legislation nor the nature of the incompatibility affect this obligation.
- The Treaty and the Statute do not prescribe the manner in which national legislation needs to be adapted. This may be achieved by references to the Treaty and the Statute, by the incorporation of provisions thereof, by the simple deletion of incompatibilities or by a mixture of those methods.

¹ The "1995 and 1996 Convergence Reports".

² Statutes in the broad sense of the word, i.e. all statutory provisions which directly relate to NCBs irrespectively of the laws in which they are incorporated.

³ Article 7 of the EMI's Statute and Article 109j (1) of the Treaty.

⁴ See in particular Articles 107, 108 and 109e (5) of the Treaty and Articles 7 and 14 of the Statute.

⁵ In particular pages 98 and 99 of the 1996 Convergence Report.

⁶ This issue was first dealt with in the 1996 Convergence Report.

⁷ Where this Report refers to the "Treaty" and the "Statute", the Treaty establishing the European Community and the Statute of the ESCB/ECB are meant.

⁸ See Article 108 of the Treaty and Article 14.1 of the Statute.

The obligation to remove incompatibilities in national provisions extends to incompatibilities with Treaty and Statute provisions only and not to incompatibilities with secondary Community legislation. Also, Article 108 targets one specific point in time. Possible legal changes to be made at a later stage do not fall within its scope. 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. Moreover, adaptations of NCB statutes in the field of central bank independence need also to become fully effective at the latest by the date of the establishment of the ESCB⁹, whilst adaptations aiming at the integration of NCBs in the ESCB would need to become effective only at the start of Stage Three for Member States without a derogation or at the start of their full participation in Monetary Union for Member States with a derogation or with a special status.

2. CENTRAL BANK INDEPENDENCE

In the 1995 and 1996 Convergence Reports, the EMI established and elaborated a list of features of central bank independence. A distinction was made between features of an institutional, personal, functional and financial nature. In addition, the 1996 Convergence Report contained a description of institutional features of NCBs in which the EMI identified¹⁰ those provisions in the statutes of NCBs which in its view are incompatible with Treaty and Statute requirements on central bank independence and which therefore, in its view, required adaptation. The country Annexes to this Chapter identify on an Article-by-Article basis incompatibilities in statutes of NCBs in the area of central bank independence. These incompatibilities have to be read in the light of the following summary of the features of central bank independence as elaborated in the 1995 and 1996 Convergence Reports.

Institutional independence

The EMI is of the opinion that the following rights of third parties (e.g. government, parliament) are incompatible with the Treaty and/or the Statute and therefore require adaptation:

- rights of third parties to give instructions to NCBs or their decision-making bodies as far as ESCB-related tasks are concerned;
- rights of third parties to approve, suspend, annul or defer decisions of NCBs as far as ESCB-related tasks are concerned;
- a right to censor, on legal grounds, decisions relating to the performance of ESCB-related tasks (also if this right is granted to the Governor of an NCB);

⁹ This follows from Articles 108 and 109e (5) of the Treaty. Protocol No. 12 of the Treaty on certain provisions relating to Denmark states that the Danish Government shall notify the Council of its position concerning participation in Stage Three before the Council makes its assessment under Article 109j (2) of the Treaty. Denmark has already given notification that it will not participate in Stage Three and, in accordance with Article 2 of the Protocol No. 12, Denmark will therefore be treated as a country with a derogation. The implications thereof were elaborated in a Decision taken by the Heads of State or Government at their Edinburgh Summit meeting on 11 and 12 December 1992. This Decision states that Denmark will retain its existing powers in the field of monetary policy according to its national laws and regulations, including the powers of Denmark's Nationalbank in the field of monetary policy. By virtue of Article 5 of Protocol 11 to the Treaty, Article 108 does not apply to the United Kingdom as long as the United Kingdom has not expressed its wish to participate in Monetary Union.

¹⁰ Not necessarily on an exhaustive basis and without prejudice to future assessments of legal convergence in the area of central bank independence.

- a right of representatives of other bodies (e.g. government or parliament) in decision-making bodies of an NCB to vote on matters concerning the exercise by the NCB of ESCB-related tasks, even if this vote is not decisive;
- a right to be ex ante consulted on an NCB's decisions.

Personal independence

- The statutes of NCBs must contain a minimum term of office for a Governor and other members of decision-making bodies involved in the performance of ESCB-related tasks of five years.¹¹
- NCBs' statutes must ensure that Governors and other members of decision-making bodies involved in the performance of ESCB-related tasks may not be dismissed for reasons other than those mentioned in Article 14.2 of the Statute (i.e. no longer fulfilling the conditions required for the performance of his/her duties or being guilty of serious misconduct).¹²
- No conflicts of interest should arise between the duties of members of decision-making bodies of NCBs vis-à-vis their respective NCB (and of Governors, additionally, vis-à-vis the ECB) and any other functions which such members of decision making bodies involved in the performance of ESCB-related tasks may have and which may jeopardise their personal independence.

Functional independence

NCBs in Stage Three operate in a framework whose objectives are determined by Article 105(1) of the Treaty and Article 2 of the Statute (the core element of which is the primacy of maintaining price stability) and statutes of NCBs should leave no ambiguity with regard to this situation. This feature of central bank independence is also closely related to the legal integration of NCBs in the ESCB (see Chapter 3 below).

Financial independence

NCBs should be in a position to avail themselves of the appropriate material means to ensure that their ESCB-related tasks can be properly fulfilled.

¹¹ This, of course, does not preclude longer terms of office, whilst an indefinite term of office does not require the adaptation of statutes if the grounds for the dismissal of a Governor are in line with those of Article 14.2. Also, this general principle would not exclude a differentiation in terms of office in those cases where members of decision-making bodies and/or such bodies themselves are not involved in the performance of ESCB-related tasks.

¹² As from the date of the establishment of the ESCB, statutes of NCBs should contain grounds for dismissal which are compatible with those laid down in Article 14.2 or should not mention any grounds for dismissal since Article 14.2 is directly applicable. This general principle would not exclude a differentiation in grounds for dismissal in those cases where members of decision-making bodies and/or such bodies themselves are not involved in the performance of ESCB-related tasks.

3. LEGAL INTEGRATION OF NCBS IN THE ESCB

Another area of legal convergence are the legislative measures required for the legal integration of NCBS in the ESCB.¹³ In particular, measures may be necessary to enable NCBS to execute tasks as members of the ESCB and in accordance with decisions by the ECB. The main areas of attention are those where statutory provisions may form an obstacle to an NCB complying with the requirements of the ESCB or to a Governor fulfilling his/her duties as a member of the Governing Council of the ECB, or where statutory provisions do not respect the prerogatives of the ECB. For analytical purposes, a distinction may be drawn between those areas of which statutes of NCBS are usually composed: statutory objectives, tasks, operations, organisation and financial provisions.

Statutory objectives

Integration of NCBS in the ESCB requires that their (primary and secondary) statutory objectives are compatible with the ESCB's objectives as laid down in Article 2 of the Statute. This means, inter alia, that statutory objectives with a "national flavour", for example referring to an obligation to conduct monetary policy within the framework of the general economic policy of the Member State concerned, would need to be adapted.

Tasks

In Stage Three, an NCB's tasks are predominantly determined by its status as integral part of the ESCB and, thus, by the Treaty and the Statute. In order to comply with Article 108 of the Treaty, provisions on tasks in statutes of NCBS would therefore need to be compared with the relevant Treaty and Statute provisions¹⁴ and incompatibilities would need to be removed. This applies in particular to any provisions which in Stage Three form an impediment for the execution of ESCB-related tasks.

Operations

The statutes of many, if not all, NCBS contain provisions on monetary policy operations which NCBS are authorised to enter into. Again, national provisions on such operations should be compared with those contained in the Treaty and Statute and incompatibilities should be removed in order to comply with Article 108 of the Treaty.

Organisation

In addition to the prohibition of giving, accepting or soliciting instructions, there should be no mechanisms in statutes of NCBS which either would bind a Governor in its voting behaviour in the Governing Council of the ECB in which he/she acts in the separate capacity as member of that Council or which would prevent an NCB's decision-making bodies to comply with rules adopted at the level of the ECB.

¹³ Article 14.3 of the Statute states that NCBS will become an integral part of the ESCB and that they will have to comply with guidelines and instructions from the ECB.

¹⁴ In particular Articles 105 and 105a of the Treaty and Articles 3 to 6 of the Statute.

Financial provisions

Financial provisions in the Statute, which may be of particular relevance as far as the identification of incompatibilities in statutes of NCBs is concerned, may be divided into rules on accounting¹⁵, auditing¹⁶, capital subscriptions¹⁷, transfer of foreign reserve assets¹⁸ and monetary income¹⁹. These rules imply that NCBs should be able to comply with obligations under the relevant Treaty and Statute Articles.

In summary, adaptations will need to ensure that the ECB's competences are being respected and that there are no impediments for NCBs to comply with the ECB's rules. Also, the above enumeration of areas in which adaptation of statutes of NCBs may be required is not exhaustive. For example, the obligation of professional secrecy for staff of the ECB and NCBs as laid down in Article 38 of the Statute may have an impact on similar provisions in statutes of NCBs as well.

4. LEGISLATION OTHER THAN STATUTES OF NCBS

The obligation of legal convergence under Article 108 of the Treaty, which is incorporated in a chapter entitled "Monetary Policy", applies to all areas of legislation which are affected by the transition from Stage Two to Stage Three of EMU. The EMI's review focuses in particular on laws with an impact on an NCB's performance of ESCB-related tasks and laws in the monetary field.

¹⁵ Article 26 of the Statute.

¹⁶ Article 27 of the Statute.

¹⁷ Article 28 of the Statute.

¹⁸ Article 30 of the Statute.

¹⁹ Article 32 of the Statute.



Annex

Institutional features of the national central banks of the Member States of the European Union and adaptation of national legislation with particular emphasis on adaptation of statutes of the national central banks

This Annex contains, *inter alia*, descriptions of incompatibilities between the statutes of the individual NCBs, on the one hand, and the Treaty and the Statute, on the other, which require adaptation under Article 108 of the Treaty.

Such descriptions concentrate on major incompatibilities and are not necessarily exhaustive. The EMI has benefited from NCB's contributions. Furthermore, they do not prejudge the manner of adaptation which national legislators may deem fit. In addition, the descriptions prejudge neither future assessments of incompatibilities nor of legal convergence in a more general sense in the Member States of the European Union as they will be elaborated in future reports which the EMI is required to submit under Article 109j of the Treaty and Article 7 of its Statute. Furthermore, where the Annex identifies legislation other than statutes of NCBs which may require adaptation with a view to Stage Three, it is noted that such identification is of a preliminary nature and mainly for illustration purposes without prejudice to issues such as the scope and timing of any adaptations.

For reasons of brevity, descriptions of incompatibilities are deliberately condensed and should be read in conjunction with the relevant parts of this Report for further clarification.

References to Articles are references to Articles in the statute of the NCB concerned unless indicated otherwise. References to Articles in the Treaty and the Statute are references to Articles in the Treaty establishing the European Community and the Statute of the ESCB/ECB.

NATIONAL BANK OF BELGIUM

1. Legal basis

The statute of the National Bank of Belgium is currently contained in the Organic Law on the National Bank of Belgium of 24 August 1939 as amended and the Statutes of the National Bank of Belgium of 23 September 1939 as amended. The Bank is a limited liability company (“société anonyme”), in which the Belgian State owns a controlling stake with 50% of the shares. General company law is explicitly recognised as a supplementary statutory source.

2. Organisational structure

The Bank is directed by the Governor and administered by the Board of Directors, assisted by the Council of Regency. It is supervised by the Board of Censors. There is, in addition, the General Council.

The Governor is appointed by the King on a nomination from Government for a renewable term of five years. The Governor can be suspended or dismissed by the King. The grounds for such suspension or dismissal have not been laid down in statutory provisions.

The Board of Directors includes, in addition to the Governor, three to six members appointed by the King on a proposal of the Council of Regency for a term of six years. No specific provisions regarding their dismissal from office are included in the statute of the Bank. The Board manages the Bank and is in charge of the orientation of policy under the control of the Council of Regency.

The Council of Regency includes the Governor, the Directors and ten Regents. Regents are appointed for three years by the general meeting of shareholders. Five are appointed on a proposal of the Minister of Finance, three on a proposal from the most representative organisations of industry, commerce and agriculture, and two on a proposal of the most representative labour organisations. The Council of Regency has general powers to set the rates and terms of discount, advances and loans and approves the Annual Report on the Bank's operations.

The Board of Censors includes eight to ten Censors elected for three years by the general meeting of shareholders. Besides controlling the operations of the Bank, it votes on the budget and approves the annual accounts as proposed by the Council of Regency.

The General Council includes the Governor, the Directors, the Regents and the Censors. It has important administrative functions, and decides on the distribution of profits in accordance with the criteria laid down in the Organic Law.

Membership of the above governing bodies is subject to several rules on incompatibilities of functions, the most important being that members of Parliament or Government may not hold the office of Governor, Vice-Governor, Director, Regent or Censor and that the Governor, Vice-Governor and the Directors may not exercise any function on the boards of commercial companies, whilst Regents may not perform high-ranking functions in banks.

While there is no right of instruction from political authorities, there is a Government Commissioner in the Bank who is entitled to participate without voting rights in meetings of decision-making bodies of the Bank. A power of suspension and a right to oppose decisions can in general terms be

exercised by the Government Commissioner and the Minister of Finance respectively against any decision of the Bank contrary to the law, to the Statutes of the Bank or to the interests of the State. However, by virtue of the Law of 22 March 1993, this power no longer exists with regard to the basic tasks of the Bank - namely the definition and implementation of monetary policy, the conduct of foreign exchange operations consistent with the exchange arrangements applicable to the franc, the holding and management of the official foreign reserves and the promotion of the smooth operation of payment systems - insofar as the decisions are in conformity with the law and the Statutes of the Bank. In this respect, the autonomy of the Bank has thus been enhanced.

3. Objectives and tasks

No explicit statutory objectives are laid down in the Bank's Organic Law or its Statutes. The Bank's main tasks are: the determination of monetary and exchange rate policy; management of foreign reserves; European and international monetary co-operation; and safeguarding the smooth functioning of payment systems. Other tasks, which do not include banking supervision, are conferred on the Bank under specific legislative provisions.

The Bank is responsible for the formulation and implementation of monetary policy. It conducts monetary policy in the context of the exchange rate regime which is determined by the Government. In particular, exchange rate arrangements are adopted by the King (the Government) after consultation with the Bank. The Bank can use a wide range of monetary policy instruments. However, the introduction of reserve requirements requires the approval of the Government.

4. Relations with political bodies

There are no institutional statutory relations between Parliament and the Bank and, indeed, the Governor has rarely appeared before Parliament. Regarding relations with the Government, the Governor has only rarely attended meetings of the Council of Ministers. The Bank publishes an Annual Report. The Minister of Finance has to approve the form of the weekly financial statements of the Bank.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Prospective changes

The Belgian Government and the Bank have acknowledged in the past that the above structure requires the adaptation of the Bank's statute in the light of the Treaty and Statute requirements for Stage Three. This resulted in a draft law on the reform of the Organic Law on the National Bank of Belgium, which was submitted to the EMI for consultation on 1 August 1996 and on which the EMI delivered an opinion (CON/96/10) on 9 September 1996. The EMI welcomed the draft law as a comprehensive piece of legislation, both on central bank independence as well as on the integration of the Bank in the ESCB. The draft law recognised that:

- central bank independence would need to be achieved at the latest at the date of establishment of the ECB/ESCB;
- integration provisions would need to become effective at the start of Stage Three; and
- certain provisions would need to reflect the practicalities of the transition from Stage Two to Stage Three, such as the envisaged date for the introduction of euro banknotes.

The Belgian Council of State criticised the draft for having unduly reproduced provisions of both the Treaty and the Statute which are under Community law already directly applicable in national law. For the Council of State, it was sufficient to state in the text of the law (Article 2) that the Bank will form an integral part of the ESCB and that it will be governed by the Statute of the ESCB. This opinion has led the Government to simplify the wording of the text by deleting the provisions which did only reproduce Treaty or Statute Articles. As a result, the objectives, the main tasks and features of the ESCB are incorporated in Belgian law through the reference made by the law to the Statute of the ESCB (see Parliamentary Papers, House of Representatives, No. 1061/1 - 96/97, 4 June 1997). On July 10th 1997, the House of Representatives adopted the draft, which was subsequently submitted to the Senate.

The draft comprises, inter alia, the following provisions:

- the role of the Council of Regency is restricted to advisory tasks without an ex ante right of consultation on ESCB-related tasks;
- the right of the Government Commissioner to review the legality of the Bank's activities on ESCB-related tasks is abolished;
- the grounds for dismissal of the Governor which are derived from Article 14.2 of the Statute have been extended to other members of the Board of Directors;
- the incompatibilities of the functions of the Governor and other members of the Board of Directors are broad enough to prevent the risk of conflicts of interest.

5.2 Other legislation

In addition to the legislation which will be adapted as a consequence of the new statute of the Bank, the Belgian Ministry of Finance has also initiated an examination of other legislative texts, which would need to be reviewed with a view to the requirements for Stage Three, in particular those related to the issuance of coins. The National Bank will be involved in this work, taking into account its role as agent for the issue of coins. Reflections are in particular necessary in order to ensure the appropriate degree of parallelism in the regime of protection of both banknotes and coins, taking into account the present works in progress within the EMI.

In addition, there are gremia with horizontal competences (a group on public administrations and a group on public debt, both created within the Finance Ministry and the Commissariat General in charge of the euro) which may take the initiative for the modification of legislation of whatever nature which has to be adapted, particularly by alerting the ministerial departments in charge of specific legislation or regulations.

Danmarks Nationalbank

1. Legal basis

The statute of Danmarks Nationalbank is contained in the National Bank of Denmark Act (Act No. 116) of 7 April 1936. The Bank is a self-governing institution, its profits after allocations falling to the State.

2. Organisational structure

The governing bodies of the Bank are the Board of Governors, the Board of Directors and the Committee of Directors.

The Board of Governors consists of three members. The Chairman is appointed by the Crown. The other Governors are appointed by the Board of Directors. According to the National Bank of Denmark Act, the term of office is indefinite, with a retirement age of seventy. The Board of Governors has full and sole responsibility for monetary policy. Governors are prevented from active involvement in the management of commercial organisations and companies and may not carry out or take part in private business activities.

The Board of Directors consists of twenty-five members, of which two are appointed by the Royal Bank Commissioner, i.e. the Minister of Economic Affairs. Eight members are appointed by Parliament from among its members, while the remaining fifteen are appointed by the Board of Directors to ensure a broad representation of business and other sectors. The term of office is five years with the possibility of re-election. The Board is competent in administrative and organisational fields.

The Committee of Directors consists of the two members of the Board of Directors appointed by the Royal Bank Commissioner together with five members elected by the Board of Directors from among its members. The term of office is one year with a possibility of re-election. The Committee of Directors has - as does the Board of Directors - administrative and organisational competence.

In his/her capacity as Royal Bank Commissioner, the Minister of Economic Affairs supervises the Bank's fulfilment of its obligations under the National Bank of Denmark Act, and under the ordinances and provisions made pursuant to the Act. The Royal Bank Commissioner may participate in the meetings of the Committee of Directors, although to date never has. For certain decisions at least one of the two members of the Committee appointed by the Royal Bank Commissioner has to be present in order to form a quorum. The Royal Bank Commissioner presides over - but has no voting right at - the meetings of the Board of Directors.

According to the Bank's by-laws, the Chairman of the Board of Governors may be dismissed by the Crown, the other two members by the Board of Directors. In the latter case, a majority of two-thirds of the members of the Board of Directors is required. No grounds for dismissal have been laid down. For the members of the Board of Directors and the Committee of Directors there are no rules relating to dismissal.

3. Objectives and tasks

The National Bank of Denmark Act states that the Bank has the objective of maintaining a safe and secure currency system and of facilitating and regulating payment flows and the extension of credit. This is generally interpreted as implying the objective of maintaining price stability.

Authority for monetary policy rests with the Board of Governors, including setting interest rates and deciding on other monetary policy instruments. This includes the tasks of fixing the discount rate and rates on advances, folio account and current account, the issuing of bank promissory notes and the purchase and sale of securities. The Board of Governors has full freedom in formulating and implementing monetary policy.

The Bank also manages official reserves and serves as fiscal agent for the Danish Government.

4. Relations with political bodies

With regard to relations with Parliament, eight of the twenty-five members of the Board of Directors are appointed by Parliament from among its members. There are no reporting requirements to Parliament.

With regard to relations with the Government, the Minister of Economic Affairs in his/her capacity as Royal Bank Commissioner supervises the Bank's fulfilment of its obligations under the National Bank of Denmark Act, and under the ordinances and provisions made pursuant to the Act. The Royal Bank Commissioner and the Minister of Finance are entitled to participate in deliberations on changes in the official discount rate, but without voting rights.

The Bank is statutorily obliged to publish its annual accounts once they have been approved by the Board of Directors and endorsed by the Royal Bank Commissioner, together with an Annual Report.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

Protocol No. 12 of the Treaty on certain provisions relating to Denmark states that the Danish government shall notify the Council of its position concerning participation in Stage Three before the Council makes its assessment under Article 109j (2) of the Treaty. Denmark has already given notification that it will not participate in Stage Three and, in accordance with Article 2 of the Protocol No. 12, Denmark will therefore be treated as a country with a derogation. The implications thereof were elaborated in a Decision taken by the Heads of State or Government at their Edinburgh Summit meeting on 11 and 12 December 1992. This Decision states that Denmark will retain its existing powers in the field of monetary policy according to its national laws and regulations, including the powers of Danmarks Nationalbank in the field of monetary policy. In the light of this situation, there are no adaptations of the statute of the Bank or of other legislation envisaged with a view to Stage Three.

DEUTSCHE BUNDESBANK

1. Legal basis

The legal basis for the establishment of the Deutsche Bundesbank is contained in the Bundesbank Act of 26 July 1957 as amended. Further provisions can be found in the Bundesbank Statute of 27 November 1958, which is based on Section 34 of the Bundesbank Act. The Bank is a Federal corporation under public law. Its capital is held by the Federal Government.

2. Organisational structure

The decision-making bodies of the Bank are the Central Bank Council, the Directorate and the Managing Boards of the Land Central Banks.

The Central Bank Council consists of the President and the Deputy President of the Bundesbank, the other members of the Directorate and the Presidents of the Land Central Banks.

The Directorate comprises the President, the Deputy President and up to six further members. All members of the Directorate are appointed by the President of the Federal Republic on a proposal of the Federal Government, after consultation with the Central Bank Council.

The Managing Boards of the nine Land Central Banks consist of the President, the Vice-President and in six cases one further member. The Presidents of the Land Central Banks are appointed by the President of the Federal Republic on a proposal of the Bundesrat (the Upper Chamber of Parliament), following the submission of a proposal from the authority designated under the laws of the Land or Länder concerned and after consultation with the Central Bank Council.

Members of the governing bodies are appointed for a period of eight years. In exceptional cases, however, appointments may be for a shorter period, but with a two-year minimum. Generally, appointments are renewable. The members of the governing bodies can be dismissed by the President of the Federal Republic. The grounds for such dismissal are defined in the individual contracts with the Bank. Dismissal would, moreover, have to follow general principles of German civil service law, under which the grounds for dismissal must be well founded (e.g. inability to perform the duties).

3. Objectives and tasks

The Bundesbank Act defines the main function of the Bank as the safeguarding of the currency and the execution of domestic and external payments. Safeguarding of the currency implies the objective of price stability. Without prejudice to the performance of its functions, the Bank is required to support the general economic policy of the Federal Government.

Monetary and credit policy is determined by the Central Bank Council on its own authority, based on the instruments of monetary policy determined by the Bundesbank Act. In exercising the powers conferred on it by the Bundesbank Act, the Bank is independent of instructions from the Federal Government. The monetary powers conferred on the Bank are the issuing and recalling of banknotes; discount, credit, open market and minimum reserve policies and the right to order and

collect statistics from credit institutions. Within this statutory framework the Bank may employ, develop and refine the monetary policy instruments at its discretion.

4. Relations with political bodies

There are no institutional statutory relations between Parliament and the Bank.

With regard to relations with the Government, the members of the Federal Government are entitled to attend the meetings of the Central Bank Council. They have no right to vote, but may propose motions. At the request of a member of the Federal Government, a decision of the Central Bank Council can be deferred for up to two weeks. This right has not been used to date. In addition, the Government is involved in the appointment procedure as described above.

Finally, the Bank publishes Monthly and Annual Reports. Its annual accounts are verified by auditors and by the Federal Court of Auditors.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Prospective changes

The German Government and the Bank have acknowledged in the past that the above structure requires adaptation of the Bank's statute in the light of Treaty and Statute requirements for Stage Three. This resulted in a draft Act amending the Bundesbank Act which was submitted to the EMI for consultation on 12 May 1997 and on which the EMI delivered an opinion (CON/97/10) on 30 May 1997. The EMI welcomed the draft Act as it strengthens the independence of the Bank and acknowledges the Bank's integration in the ESCB in Stage Three of Monetary Union with a view to Article 108 of the Treaty. In its opinion, the EMI noted the following:

- The EMI welcomes the timely and efficient legislative action to clarify the legal situation of the German central bank in the light of requirements of the Treaty and Article 108 thereof. This applies in particular with regard to the reorganisation of the responsibility for monetary policy resulting from the entry into the third stage of monetary union.
- With regard to the specific provision the EMI appreciates that Section 3 of the draft Act on the primary objective and task of the Bundesbank incorporates the concept of price stability of Article 105(1) of the Treaty and confirms the principle of the national central banks being an integral part of the European System of Central Banks as laid down in Article 14.3 of the Statute of the ESCB. It takes note that the revised wording of Section 3 reflects the legal acknowledgement of obligation of the Bundesbank to implement, within the framework of the ESCB, the monetary policy adopted by the Governing Council of the ECB. The EMI also agrees that the pledge of secrecy provided for in Section 32 of the Bundesbank Act does not obstruct communications with the ECB on monetary developments and measures.
- The amendment of Section 6(1) reflects the transfer of the responsibility of the Central Bank Council for determining monetary policy to the Governing Council of the ECB and confirms the conformity of actions of the Bundesbank with guidelines and instructions of the ECB in accordance with Article 14.3 of the Statute of the ESCB. The EMI does not see any interference with that principle by the Central Bank Council determining the Bundesbank's business policy or by the mention of discussions of implications of monetary policy by this

body. It acknowledges that in these respects no organisational change of the Bundesbank is intended.

- The EMI acknowledges that the amendments to Section 7 and Section 8 fully reflect the requirements concerning the minimum term of office of the Governor of a national central bank according to Article 14.2 of the Statute of the ESCB. It welcomes that the minimum term of office also of the other members of decision-making bodies of the Bundesbank has been increased to five years.
- The EMI welcomes the repealing of Section 13(2), sentence 3, in the Bundesbank Act which provision was not in line with the institutional independence of the national central bank in accordance with Article 107 of the Treaty.
- The decision to repeal the provisions of Sections 15 and 16 of the Bundesbank Act on the discount, lending, open market and minimum reserve policies reflects the availability, for the ESCB, of monetary policy instruments under the Treaty and the Statute of the ESCB to fulfil its tasks.

The functions of the Bundesbank are defined according to the revised section 3.

Furthermore, the EMI noted the following in relation to the draft law:

- The draft amendment does not touch upon Section 4 which entitles the Bank to participate in the Bank for International Settlements and, subject to the approval of the Federal Cabinet, inter alia in other institutions serving the purposes of supranational monetary policy. It is understood that Section 4 is to be read in the light of the prevailing Article 6.2 of the Statute which states that NCBs may participate in international institutions, subject, however, to the approval of the ECB. It would be welcome, for reasons of legal certainty and clarity, that this legal situation is adequately mirrored.
- Section 12 has remained unchanged and provides for the support of the Bank, without prejudice to the performance of its functions, to the general economic policy of the Federal Cabinet. The functions of the Bundesbank are defined according to the revised Section 3. As the Bank will be an integral part of the ESCB which according to Article 105(1) of the Treaty and Article 2 of the Statute entails that it shall support the general economic policies in the Community, 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. The EMI noted that it would be welcome if Section 12 would explicitly address this issue in order to avoid any misinterpretation of this provision.
- The EMI noted also that, whereas it had no objections with regard to Article 108 of the Treaty to maintaining at this stage the provisions in Sections 19 to 21, once the ECB has adopted the operational framework for its monetary policy at a later stage, it may result in incompatibilities with that operational framework and legal clarity would require at that stage adaptation.
- Section 27 containing a provision on the distribution of profit has remained unchanged. The EMI would like to emphasise that this provision will have to be applied in the context of Article 32 of the Statute of the ESCB on the allocation of monetary income of NCBs.

5.2 Other legislation

59 Laws and Decrees: Reference to discount rate of the Bundesbank.

BANK OF GREECE

1. Legal basis

The formation, powers and functions of the Bank of Greece are contained in the Statute of the Bank of Greece of 1928 as amended. The Bank is established as a corporation (“société anonyme”). The Greek State and State undertakings are limited to holding, directly or indirectly, shares which in aggregate amount to no more than one-tenth of the issued share capital of the Bank. Otherwise limits are not placed on who may become a shareholder.

2. Organisational structure

The governing body of the Bank is the General Council. The General Council is entrusted with the general operational, administrative and financial affairs of the Bank. On issues relating to monetary and exchange rate policies, authority rests with the Governor, who consults an internal committee on monetary and credit affairs.

The General Council is accountable to the General Meeting of shareholders. The General Meeting has certain specific powers reserved to it. In particular, the General Meeting has the power, inter alia, to approve the Annual Report and the accounts of the Bank, to appoint members of the General Council and to propose amendments to the Statute, which, subsequently, must be ratified by Parliament as a Law. Every person registered as holding twenty-five or more shares in the share capital of the Bank is entitled to attend and vote at the General Meeting.

The General Council consists of the Governor, the Deputy Governors and nine non-executive Councillors. The Governor and the Deputy Governors are appointed by the President of the Republic of Greece, following a proposal by the General Council which is endorsed by the Government, for renewable four-year terms. The nine Councillors are elected by the General Meeting for renewable three-year terms.

The Governor and Deputy Governors are required to devote exclusive service to the Bank except in cases where they are on the Board of Directors of Legal Entities of Public Law, of State Undertakings, or of State Advisory Bodies. No such requirement for exclusive service applies to the non-executive Councillors.

The Governor or, in his/her absence, a Deputy Governor presides over the General Council, legally represents the Bank and, on behalf of the General Council, decides on matters which are not specifically reserved to the General Council or the General Meeting.

A non-voting Government Commissioner may be nominated by the Minister of Finance. He/she attends the General Meeting and the meetings of the General Council and can veto decisions if he/she considers them to be contrary to the Statute or any other laws of the State. However, the final arbiter of any such veto challenge initiated by the Government Commissioner is a Commission of three persons appointed to rule on such matters. One member of this Commission is chosen by the Government, one by the Bank and the third is agreed upon between the Government and the Bank or, failing such agreement, by the President of the Supreme Court.

3. Objectives and tasks

The statutory objective of the Bank is to control the currency in circulation and credit. This is considered to imply that monetary stability is the ultimate objective of the Bank.

The main tasks are the implementation of monetary and exchange rate policies.

The Bank formulates monetary policy in accordance with the Government's macroeconomic objectives, particularly those relating to inflation, output and exchange rate policy. Interest rates applying to government paper are, however, set by the Government, albeit in consultation with the Bank.

Exchange rate policy is formulated by the Government in consultation with the Bank, which is responsible for its implementation.

The Bank has the exclusive right to issue banknotes. It also manages official reserves. In addition, the Bank is the banking supervisory authority and plays a key role in the country's payment system.

4. Relations with political bodies

In addition to the Government Commissioner, there is a competent parliamentary committee which expresses an opinion regarding the suitability of candidates for appointment as Governor. Accountability is ensured by the publication of the Bank's Annual Report and certain financial statements.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Prospective changes

The Greek Government and the Bank have acknowledged in the past that the above structure requires adaptation of the Bank's statute in the light of the Treaty and Statute requirements for Stage Three. This resulted in a draft law containing provisions relating to the Bank which was submitted to the EMI for consultation on 10th July 1997 and on which the EMI delivered an opinion (CON/97/15) on 27 August 1997. The main objective of the draft law is to establish the independence of the Bank, as defined in Article 107 of the Treaty, and to ensure compatibility of relevant national legislation with the Treaty and the Statute as required by Article 108 of the Treaty. In addition, the draft law aims at updating the existing legislation relating to the Bank (for instance on issues concerning payment systems and prudential supervision). The draft law also abolishes a number of existing legal provisions which are either obsolete or contrary to more recent legislation or to the draft law itself.

In its opinion, the EMI noted the following:

- The EMI welcomes the timing and scope of the adaptation of national legislation relating to the Bank and of other legislation. This enables the EMI to fulfil its reporting requirements under Article 109j of the Treaty and Article 7 of its Statute in a timely manner for Greece.

In its 1995 and 1996 Convergence Reports, the EMI stressed the importance of timely adaptation of national legislation to the Treaty and Statute requirements for Stage Three of EMU, distinguishing between requirements on:

- central bank independence which would need to become effective at the latest at the date of the establishment of the ESCB/ECB;
- integration of NCBs in the ESCB which would need to become effective at the date of adoption of the single currency by the Member State concerned; and
- special features of the transitional period, i.e. the period between the date of adoption of the single currency and the date of introduction of euro banknotes and subsequent disappearance of national banknotes in the participating Member States.

The draft law acknowledges and accommodates this distinction.

- The EMI welcomes that the Greek authorities are using the opportunity for a more general review of relevant legislation with a view to the requirements of Stage Three. Indeed, Article 108 of the Treaty requires, irrespective for instance of the supremacy of Community law over national law or of the question whether national statutory provisions become obsolete, to remove incompatibilities between national legislation on the one hand and the Treaty on the other, in order to ensure legal clarity and certainty. Again, the draft law acknowledges and accommodates this principle, except as far as provisions concerning the integration of the Bank within the ESCB are concerned once Greece adopts the single currency (which will be further examined below).
- In the area of central bank independence, the EMI notes with satisfaction that the draft law contains several provisions improving the institutional, personal and functional independence of the Bank. Price stability is mentioned as primary objective (Article 1). The definition and implementation of monetary policy will be a responsibility of the Bank, i.e. the Monetary Policy Council which will be established under the law upon its entry into force (Article 2). A prohibition of external influence is explicitly provided for (Article 3). Finally, the term of office of all members of the Monetary Policy Council will be six years (but see below on the initial and replacement terms of the members other than the Governor and the two Deputy Governors), whilst the grounds for dismissal for the Governor and the two Deputy Governors are in conformity with those mentioned in Article 14.2 of the Statute. The above elaboration of the principle of central bank independence generally corresponds in a straight-forward and transparent manner with features of central bank independence which the EMI has developed in its 1995 and 1996 Convergence Reports.

There are, however, three issues which require further attention. The first two remarks relate to the security of tenure of members of the Monetary Policy Council other than the Governor and the two Deputy Governors.

Firstly, the grounds for dismissal for such other members as laid down in Article 6.3 of the draft law do not fully correspond with those mentioned in Article 14.2 of the Statute. They contain an addition ("in particular of violation of the duties and obligations conferred upon him under the provisions in force, the provisions of the present law and the Statute of the Bank of Greece") which, also in view of the current wording of Articles 22 and 24 of the statute of the Bank, are not in line with Article 14.2 of the ESCB Statute. For reasons set out in the EMI's 1995 and 1996 Convergence Reports (see, for example, Chapter II, paragraph 2.2, of the 1996 Convergence Report), the security of tenure for all members of NCB's decision making bodies involved in the performance of ESCB-related tasks should be compatible with those mentioned in Article 14.2 of the Statute, unless the degree of actual involvement in the performance of such tasks would justify a certain differentiation.

Secondly, Article 6.3 provides that the initial and replacement terms of office of members of the Monetary Policy Council other than the Governor and the Deputy Governors are below the minimum term of office of five years referred to in Article 14.2 of the Statute. The EMI appreciates that the initial term of office may be inspired by the wish to create a rotation scheme in order to strengthen independence from political authorities. At the same time the EMI would like to emphasise that each individual member of a decision-making body involved in the performance of ESCB-related tasks should, in accordance with Article 14.2 of the Statute, have the same security of tenure.

Thirdly, it is noted that the competence of the Monetary Policy Council is restricted to monetary policy and exchange rate policy matters and does not extend to all ESCB-related tasks as listed in Article 3 of the Statute. The EMI understands from Article 5.3, second paragraph, of the draft law that the remaining ESCB tasks will be executed by the Governor which does not encounter any legal difficulties. However, the Greek legislative authorities may nevertheless wish to make this more explicit in the draft law as the sentence "... the Governor shall retain the responsibilities conferred upon him by the Statute of the Bank and the legislation in force" in Article 5.3 may not be precise enough to avoid misunderstandings, particularly where the division of powers between the Monetary Policy Council, the Governor and the General Council is concerned.

- As far as the integration of the Bank in the ESCB is concerned, the EMI notes that the draft law attempts, through a general provision in Article 2.3, to eliminate any incompatibilities which may in this area exist between the draft law on the one hand and the Treaty and the Statute on the other once Greece adopts the single currency in accordance with the Treaty. The EMI acknowledges, as it did in its 1995 and 1996 Convergence Reports, that there is no standard method for adaptation, particularly not in the area of legal integration of NCBs in the ESCB. The EMI also appreciates that there may be practical or political considerations for the Greek authorities to postpone a more detailed elaboration of statutory integration provisions until the moment arrives that Greece adopts the single currency. However, Article 108 of the Treaty requires for reasons of legal clarity and certainty, the removal of incompatibilities and this, in the view of the EMI, cannot be accomplished through a general provision abolishing incompatible provisions without at the same time identifying them. The draft law contains various examples of provisions which would need to be reviewed from a perspective of full integration of the Bank in the ESCB, in spite of the general provision of Article 2 (3) of the draft law, for instance:

- The reference to the general economic policy of the Greek Government (Article 1) would need to take account of Article 2 of the Statute.
- Paragraphs (a), (b) and (f) of Article 2 on the Bank's tasks should recognise the ECB's powers; likewise, the power of the Monetary Policy Council to define and implement monetary policy (Article 6) would need to be adapted to be compatible with ECB's competences in this field.
- The need to produce an annual report on the monetary policy of the previous and the current year (Article 4.1) would need to be reviewed in the light of the ECB's reporting obligations.
- Article 7.4 of the draft law contains a definition of monetary financial institutions which intends to be in line with definitions at a Community level as they have, inter alia, been developed within the EMI. However, a uniform definition has not been developed yet as far as institutions subject to minimum reserve requirements are concerned, whilst such definition may also change overtime. In order to avoid the need to amend the definition in the future, the Greek legislative authorities may therefore wish to refer to monetary financial institutions "as defined by the EMI/ECB or in Community law".
- The provision that the exchange rate policy framework shall be determined by the Greek Government after consultation with the Bank (Article 12.2) will have to be adapted once Greece adopts the single currency in order to reflect the competence of Community bodies in this field.

The EMI recognises that there may be various methods to accommodate the full integration of the Bank in the ESCB in the process towards adoption of the single currency: a revision of the Bank's statute, amendments through Presidential Decrees or a combination thereof.

- Finally, the EMI notes with satisfaction that the draft law reflects the current state of thinking in relation to issues such as the Statute requirement on lending against adequate collateral and the abolition of the zero hour rule (retro-active effect of insolvencies) for payment systems. Incidentally, it is noted that the abolition of the zero hour rule should, under the Directive on Settlement Finality and Collateral Security as it is expected to be adopted, also extend to payment systems other than the one operated by the Bank as well as to securities settlement systems, but this may of course also be accomplished through legislation other than the draft law, particularly if the Bank is at this juncture the only relevant party in these areas.

5.2 Other legislation

The EMI has not been notified that adaptation of legislation other than the statute of the Bank is envisaged at this juncture with a view to Treaty and Statute requirements for Stage Three.

BANCO DE ESPAÑA

1. Legal basis

The statute of the Banco de España is contained in Law 13/1994 dated 1 June 1994 on the "Autonomy of the Banco de España". This Law was enacted with the purpose of adapting the statute of the Bank to the provisions of the Treaty on European Union. The Bank is statutorily defined as a "public law entity with separate legal personality and full legal capacity". The capital of the Bank belongs to the State.

2. Organisational structure

The governing bodies comprise the Governor, the Deputy Governor, the Governing Council and the Executive Commission.

The Governor is appointed by the Crown following a proposal by the President of the Government. The term of office is for a non-renewable period of six years. The Governor manages the Bank and presides over the Governing Council and the Executive Commission.

The Deputy Governor is appointed by the Government following a proposal by the Governor. The term of office is for a non-renewable period of six years. The Deputy Governor is assigned powers under internal Bank rules which are delegated to him by the Governor.

The Governing Council is composed of the Governor, the Deputy Governor, six elected Council members and two ex officio members: the Director-General of the Treasury and Financial Policy and the Vice-President of the National Stock Market Commission - with the latter two not having voting rights when monetary policy matters are under discussion. The six elected Council members are appointed by the Government following a proposal by the Economy and Finance Minister, after consultation with the Governor. Elected Council members serve a four-year term and may be reappointed once. The main functions of the Governing Council are to approve general guidelines for action by the Bank to fulfil its assigned functions and to supervise the implementation of monetary policy by the Executive Commission.

The Executive Commission is made up of the Governor, the Deputy Governor and two elected Council members. The Directors General of the Bank attend the meetings in a participatory but non-voting capacity. The Executive Commission is in particular responsible for implementing monetary policy subject to the guidelines of the Governing Council.

The two elected members of the Executive Commission are appointed by the Governing Council from the Council's elected members, on a proposal by the Governor.

Members of the Governing Council are subject to a strict regime of professional exclusivity.

3. Objectives and tasks

The primary objective of the Bank, as stated in Law 13/1994, is achieving price stability. Furthermore, without prejudice to the objective of price stability, monetary policy shall support the general economic policy of the Government.

The Bank's main tasks are to define and implement monetary policy; hold and manage reserves; implement exchange rate policy; promote the smooth operation and the stability of the financial system and, in particular, of the payment system; issue banknotes and put coins into circulation; act as fiscal agent for the Government and supervise credit institutions. The Bank may require credit institutions to immobilise funds by setting a reserve requirement. However, the use of monetary policy instruments imposing obligations on entities other than credit institutions requires clearance by the Government.

The Banco de España is fully independent in the formulation and implementation of monetary policy. Article 1 of Law 13/1994 states that "the Bank shall pursue its activities and fulfil its objectives with autonomy from the Administration". Furthermore, Article 10 establishes that "neither the Government nor any other public authority may give instructions to the Bank regarding either the objectives or the implementation of monetary policy".

With regard to the formulation of exchange rate policy, Article 11 provides that "following consultation with the Banco de España, the Government shall adopt the exchange rate system and the parity for the peseta against other currencies, which must be compatible with the objective of price stability". It is also statutorily provided that the Bank is responsible for implementing exchange rate policy and, to that end, the Bank may conduct the operations it deems suitable.

4. Relations with political bodies

The Bank is obliged to report to both Parliament and the Government on the objectives and implementation of monetary policy. It is explicitly provided that neither of these constitutional organs may give instructions to the Bank on monetary policy. Moreover, every year the Bank is under the obligation to publish the objectives of monetary policy for the year and the implementation methods to attain these objectives.

The Governor may be required to attend the meetings of the Fiscal and Financial Policy Council, a co-ordination body on which all regional autonomous governments and the central government are represented, the purpose of which is to set the rules for the financial discipline of the regional governments, although without any competence in monetary policy-related issues.

The budget of the Bank is submitted to Parliament for approval. It is estimative in nature (i.e. non-binding) and cannot be consolidated with the General State Budget nor is it subject to Government approval. The yearly balance sheet and profit and loss accounts are submitted to the Government for approval, and are subject to an audit by the Court of Auditors. The estimative nature of the budget submitted to Parliament for approval and the fact that the Bank's budget is not subject to Government approval are to be understood as avoiding any political interference in the Bank's autonomous performance of its tasks and as implying that the General Budget Law does not contain provisions binding upon the Bank.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Central bank independence

Institutional independence

Article 20.3 - The exclusion of voting rights for the Director-General of the Treasury and Financial Policy and the Vice-President of the National Stock Market Commission extends to monetary policy issues but not to all ESCB-related tasks.

Personal independence

Article 25.2 - Term of office of members of the Governing Council other than the Governor and the Deputy Governor is four years rather than minimally five years.

5.2 Integration in the ESCB

Statutory objectives

Article 7

1. The Bank's powers to define and implement monetary policy do not recognise the ECB's powers in this field.
2. The Bank's secondary objective to support the general economic policy of the Spanish Government does not conform with the ESCB's statutory objective.

Tasks

1. Banknote issuance
Articles 7.3 (c) and (d) and 15 - The Bank's exclusive right to issue banknotes and to fix the amount of coins does not recognise the ECB's competences in this field.
2. Monetary policy
Articles 8 and 9 - The Bank's powers with regard to the formulation and implementation of monetary policy do not acknowledge the ECB's powers in this field.
3. Foreign exchange policy
Article 11 - The power of the Spanish Government to adopt the exchange rate system and the parity for the peseta against other currencies does not recognise the Community's competence in exchange rate arrangements and does not envisage the introduction of the euro.

Operations

1. Article 9 - The rules on minimum reserves do not recognise that the content thereof will be determined by the ECB.
2. Article 12 - The Bank's competence to implement the Government's exchange rate system does not recognise the ECB's competence in this field.

5.3 Other legislation

Law 10/1975 of 12 March 1975 on coinage, restates that the currency of Spain is the peseta and establishes a regime for minting coins in a manner incompatible with the Treaty.

5.4 Prospective changes

For the time being, no prospective changes of the Bank's statute have been notified to the EMI.

BANQUE DE FRANCE

1. Legal basis

The statute of the Banque de France is contained in Law 93-980 of 4 August 1993 "Relative au statut de la Banque de France et à l'activité et au contrôle des établissements de crédit" as amended. The capital of the institution is fully owned by the State.

2. Organisational structure

The Bank is directed by the Governor. Responsibility for monetary policy functions is vested in the Monetary Policy Council. A General Council administers the Bank and decides in any matter beyond the competence of the Monetary Policy Council.

The Governor and the two Vice-Governors are appointed for a renewable term of six years by the Government and cannot be dismissed before the expiry of their term except for reasons of incapacity or serious misconduct. The Governor chairs the Bank's decision-making bodies.

The Monetary Policy Council includes the Governor, two Vice-Governors and six other members appointed by Government. The six other members have a non-renewable term of nine years. Members of the Monetary Policy Council cannot be dismissed before the expiry of their term except for reasons of incapacity or serious misconduct and they are subject to a strict regime of professional exclusivity. The Monetary Policy Council is responsible for formulating and implementing monetary policy. It can neither seek nor accept instructions from the Government or any other person in the performance of its duties.

The Bank's activities other than monetary policy are governed by the General Council. The General Council includes the members of the Monetary Policy Council plus one member elected by the employees of the Bank. A censor or his/her alternate, appointed by the Minister of Economic Affairs and Finance, attends General Council meetings. He/she may submit proposals for the approval of the Council and oppose any decision taken by it.

3. Objectives and tasks

The Bank has the objective of formulating and implementing monetary policy with the aim of ensuring price stability within the framework of the general economic policy of the Government. Its main tasks are the conduct of monetary and exchange rate policy; the management of official reserves; European and international monetary co-operation; and the safeguarding of the smooth functioning of the payment systems. Other tasks are conferred on the Bank under specific legislative provisions, which include balance of payments statistics, and prudential supervision is entrusted to a Banking Commission chaired by the Governor of the Bank to which the Bank provides administrative support.

The Bank conducts monetary policy in the context of the exchange rate regime which is determined by the Government.

The Bank can use a wide range of monetary policy instruments, including the establishment of minimum reserves.

4. Relations with political bodies

The Governor must present an Annual Report, which includes a description of monetary policy operations and perspectives, to the President of the Republic and to Parliament. The Governor may ask to be heard by the Finance Committees of the two Chambers of Parliament, and he may also be asked by these Committees to appear. Financial accounts are submitted yearly to the Finance Committees of the two Chambers of Parliament.

The Prime Minister and the Minister for Economy and Finance (or a representative) may attend meetings of the Monetary Policy Council. They may present proposals but have no voting rights.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Central bank independence

Institutional independence

Articles 1, 7 and 11 - The prohibition of external influence is restricted to the Governor, Deputy Governors and the members of the Monetary Policy Council, which is responsible for monetary policy issues, and does, as a consequence, not extend to all ESCB-related tasks.

5.2 Integration in the ESCB

Statutory objectives

Article 1

1. The Bank's powers to formulate and implement monetary policy do not recognise the ECB's powers in this field.
2. The Bank's obligation to carry out these activities within the framework of the Government's overall economic policy does not conform with the ESCB's statutory objective.

Tasks

1. Banknotes issuance
Article 5 - The Bank's exclusive right to issue banknotes does not recognise the ECB's competence in this field.
2. Monetary policy
Article 7 - The power of the Monetary Policy Council to define (the terms and conditions of) monetary policy operations do not recognise the ECB's powers in this field.

3. Foreign exchange policy

Article 2

- a. The Government's powers to determine the exchange rate regime and the parity of the franc, and the task of the Bank to regulate the exchange rates between the franc and other currencies on behalf of the Government and within the framework of the general exchange rate policy guidelines formulated by the Minister of Economic Affairs and Finance do not envisage the introduction of the euro and do not recognise the Community's competence in exchange rate matters.
- b. The provisions on the Bank's task to hold and manage the State's gold and foreign exchange reserves do not acknowledge the fact that a part of such reserves will be transferred to the ESCB, which entails that the involvement of the Government in this field is not in line with the Treaty and Statute.
- c. The Bank's right to participate in international monetary agreements with the permission of the Minister of Economic Affairs and Finance does not recognise the Community's competences in this field.

Operations

1. Article 2 - See the observation under "Tasks" on foreign exchange policy (second indent).
2. Article 7 - See the observation under "Tasks" on monetary policy.
3. Article 18 - The Bank's right to enter into financial operations should be without prejudice to the Bank's ESCB-related obligations and particularly ECB approval and collateral requirements.

5.3 Other legislation

Under review:

1. Decree no 93-1278 of 3 December 1993 on the Banque de France whether this Decree is compatible with Articles 27, 32 and 33 of the Statute.
2. Law no 84-46 of 24 January 1984 whether all provisions are compatible with the Treaty and the Statute.
3. Decree no 94-708 of 24 July 1984, in particular Article 13.
4. Regulations on coinage.

5.4 Prospective changes

For the time being, no prospective changes of the Bank's statute have been notified to the EMI.

CENTRAL BANK OF IRELAND

1. Legal basis

The formation, powers and functions of the Central Bank of Ireland are set out in the Central Bank Acts, 1942-1997. The Bank is an institution established by statute whose capital is wholly owned by the State.

2. Organisational structure

The Bank is governed by the Board of Directors, which consists of the Governor and up to nine non-executive Directors.

The Governor is appointed by the President of Ireland on the advice of the Government and the appointment is for a renewable term of seven years. He/she may be removed from office by the President on the advice of the Government because of incapacity due to ill-health, or following a unanimous vote of the Board of Directors requesting that the President remove the Governor from office "for cause stated".

Members of the Board of Directors other than the Governor and "service directors" are appointed by the Minister for Finance for a term of five years. Up to a maximum of two Directors can be appointed from among civil servants by the Minister for Finance, one of whom is usually the Secretary of the Department of Finance; such service directors have full voting powers and the length of their term of office is set at the discretion of the Minister for Finance.

While responsibility for policy formulation and implementation rests with the Board of Directors, the latter has, in practice, delegated the day-to-day exercise and performance of this function to the Governor.

3. Objectives and tasks

The primary statutory objective of the Bank is to safeguard the integrity of the currency, which is interpreted as being the maintenance of price stability. Safeguarding of the currency implies the objective of price stability. The main tasks of the Bank are the formulation and implementation of monetary policy; the implementation of foreign exchange rate policy; the holding and managing of the official external reserves; managing the financial markets and overseeing the payment system; issuing currency; and acting as fiscal agent for the Government and as registrar of Government securities. The Bank is responsible for licensing and supervising credit institutions. Its supervisory responsibilities also cover a range of securities-related activities, including the Stock Exchange, financial futures and options exchanges, money brokers, collective investment schemes and certain investment intermediaries and all entities in the International Financial Services Central.

The Bank has full autonomy to formulate and implement monetary policy and exercises full discretion in its choice and use of monetary policy instruments. The Minister for Finance can request that the Governor, on behalf of the Board, or the Board itself consult and advise with him in relation to the execution and performance by the Bank of its objectives and tasks in relation to monetary policy. This power has never been used.

While the determination of exchange rate policy is ultimately a matter for the Government, the Minister for Finance is obliged, by statute, to consult the Bank before making any alteration in the general exchange rate arrangements or any specific exchange rate adjustments.

4. Relations with political bodies

The Bank is required to prepare an Annual Report and send it to the Minister for Finance, who, in turn, has the duty to present it to both Houses of the Oireachtas (Parliament). Similarly, the Bank's annual Statement of Accounts is submitted to the Comptroller and Auditor General, who, in turn, after audit and certification, is obliged to send it to the Minister for Finance, who presents it to Members of the Houses of the Oireachtas. The Bank's freedom to publish reports on money and credit issues and on the economic situation, outlook and policies provides a vehicle for communicating its views to the wider public. The Annual Report on its activities and the annual Statement of Accounts are published by the Bank. Moreover, the Governor attends meetings of a Select Committee of Dáil Eireann (House of Representatives).

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Central bank independence

Institutional independence

1. Section 5.4 of the Central Bank Act 1942 - The right of service directors to participate in meetings of the Board of Directors with a right to vote is incompatible with the requirement of central bank independence.
2. Section 6.2 of the Central Bank Act 1942 - The obligation of the Governor or the Board of Directors to consult with the Minister of Finance if requested is an explicit statutory mechanism which may be used to influence the decision-making process within the Bank and is, therefore, considered to be incompatible with the requirement of central bank independence.
3. The attendance of the Governor at meetings of a Select Committee of the Dáil Eireann should respect the confidentiality regime of the ESCB.

Personal independence

Section 21(2) of the Central Bank Act 1942 - The grounds for dismissal of the Governor and members of the Board of Directors should be brought into line with those mentioned in Article 14.2 of the Statute, and this applies in particular to the grounds for dismissal of the Governor who may currently be dismissed "for cause stated". It should also be ensured that no conflicts of interest might arise in relation to the other functions of non-service directors to the extent that they are involved in the performance of ESCB-related tasks.

Functional independence

Section 6.1 of the Central Bank Act 1942 - The statutory objective of the Bank to safeguard the integrity of the currency does not unambiguously reflect the primacy of maintaining price stability and should therefore be adapted at the latest at the date of the establishment of the ESCB/ECB.

Financial independence

Section 23 of the Central Bank Act 1989 - The power of the Minister for Finance to regulate the periodical determination and distribution of surplus income should be adapted with a safeguard clause that this may not impede the proper performance of ESCB-related tasks.

5.2 Integration in the ESCB

Statutory objectives

The Bank's statutory objective to safeguard the integrity of the currency does not unambiguously correspond with the ESCB's statutory objective.

Tasks

It is necessary to confer new specific powers on the Bank in order to enable it to participate in the ESCB and give effect to obligations imposed by the Treaty.

Banknotes issues

The Bank's exclusive right to issue banknotes, and the right of the Ministry of Finance with respect to coinage, do not recognise the ECB's competences in this field.

Exchange Rates

Provisions in the Central Bank Acts 1942 and 1989 give power to Minister of Finance to set exchange rates and do not recognise Community competences in this field.

5.3 Other legislation

Coinage Act - This Act attributes powers to the Minister of Finance in relation to the issuance of coins which do not respect the ECB's powers in this field.

5.4 Prospective changes

The Central Bank Act 1997 provides for rules on the Bank's involvement in payment systems (e.g. oversight, realisation of collateral, netting, finality of payments), the collection of statistics and prudential supervision. It also introduces in effect the prohibition on public financing as contained in Article 104 of the Treaty in the Bank's statute. Furthermore, it provides for an obligation for the Bank's Governor to appear before a Select Committee of Dáil Eireann, prohibits the Governor from being a director of or holding shares in credit and financial institutions, and also fixes the term of office of directors at a standard period of five years. The EMI was consulted on the draft Act in 1996 and delivered its opinion (CON/96/04) on 28 May 1996. The Act came into effect in April 1997.

Further legislative provisions have been proposed which are aimed to address the issues raised in paragraphs 5.1 and 5.2 above in addition to certain statutory provisions including those relating to: statistical information, where expansion is proposed to ensure that reporting agents designated by the ECB are covered; disclosure of information; accounts and records of the Bank; insertion of the euro as the currency to provide for the Irish Pound's role as a national currency unit sub-division of the euro and to provide for the legal tender status for both the Irish Pound and the euro in accordance with the euro regulations, with a specific provision for the currency in which contracts etc, are made during the transitional period, the transfer of assets, income or liabilities to the ECB, and the application of minimum reserves in accordance with Article 19.1 of the Statute.

BANCA D'ITALIA

1. Legal basis

The statute of the Banca d'Italia is contained in Royal Decree No. 1067 of 11 June 1936 as amended. Other important provisions are the 1910 codified law on the Banks of Issue (Royal Decree No. 204 of 28 April 1910 as amended) and Title III of the 1936 Banking Law (Royal Decree Law No. 375 of 12 March 1936 as amended). The Bank is an institution (“istituto di diritto pubblico”) the capital of which can only be owned by certain specific categories of credit institutions, social security institutions and insurance institutions. The Bank's structure reflects its original status as a joint stock company.

2. Organisational structure

The Bank is directed by the Governor, assisted by the General Manager and two Deputy General Managers, and administered by the Board of Directors and the Committee of the Board of Directors. Financial supervision is exercised by the Board of Auditors. A government inspector must take part in the meetings of the General Assembly and those of the Board of Directors.

The Governor is appointed by the Board of Directors acting by a qualified majority for an unlimited period of time; the appointment must then be approved by decree of the President of the Republic on a proposal by the President of the Council of Ministers and in agreement with the Minister of the Treasury, the Council of Ministers having been heard. The Governor can be dismissed by the Board of Directors following the same procedure and with the same majority. The statute of the Bank does not contain any grounds for dismissal. The Governor presents monetary policy objectives to be included in the Government's annual policy planning. The Governor is in charge of the conduct of monetary policy.

The General Manager is responsible for the ordinary administration of the Bank and for implementing the resolutions of the Board; in the performance of these tasks he/she is assisted by two Deputy General Managers. The General Manager and the two Deputy General Managers assist the Governor and act in his/her place when absent or prevented from performing his/her functions. They are appointed for an unlimited period of time and can be dismissed by the Board following the same procedure as in the case of the Governor.

The Board of Directors is composed of the Governor and thirteen independent members, one of whom is elected for each of the main branches of the Bank; they must neither be members of the Chambers, nor hold a political office, nor be administrators, agents, auditors, managers or employees of credit institutions. The members of the Board are elected for a renewable term of three years by the Shareholders' Assembly. No specific provision regarding their dismissal from office is included in the Bank's statute. The task of the Board is to administer the Bank; the Board does not have any powers with respect to monetary policy measures. The General Manager and the two Deputy General Managers also attend the meetings of the Board of Directors.

The Committee of the Board of Directors is composed of the Governor and four members of the Board, elected for a term of one year, renewable by the Board itself. It assists the Board in the administration of the Bank.

The Board of Auditors includes five auditors and two substitutes, nominated by the General Assembly for a renewable term of three years. Besides controlling the administration of the Bank with regard to compatibility with laws, regulations and the statute, it examines the balance sheet as proposed by the Board of Directors and expresses its opinion on the distribution of the annual dividend.

3. Objectives and tasks

The Italian Constitution states that the Republic has a duty to protect savings, and this constitutional principle is understood, and applied by the Bank, as entailing the objective of price stability. No explicit reference to the objective of price stability is contained in the statutory provisions concerning the Banca d'Italia.

The main tasks of the Bank are the issue of banknotes (in agreement with the Government, insofar as their production is concerned); the conduct of monetary policy; the fixing of discount rates and compulsory reserves; the oversight of payment systems; the supervision of banks and other financial institutions; acting as fiscal agent for the Government; and managing official reserves jointly with the Ufficio Italiano dei Cambi (UIC). The latter is a public entity with legal personality and operational autonomy, whose endowment fund was conferred by the Bank. It is managed by a Board chaired ex officio by the Governor of the Bank. It shares with the Bank the management of foreign currency reserves and is also responsible for collecting and processing balance of payment statistics.

4. Relations with political bodies

The Governor may be invited to appear before parliamentary commissions. With regard to relations with the Government, each year, within the framework of the adoption of the economic and financial programme, the Governor presents the objectives of monetary policy to be incorporated in the annual economic plan to the Government. Monetary policy actions are taken by the Bank with full autonomy. The Governor may be invited to meetings of the inter-ministerial committee for economic planning (CIPE).

The Treasury has supervisory powers over the issue of banknotes, and the administration and accounting of the Bank. The Minister of the Treasury has the power to suspend and annul only the deliberations of the General Assembly and of the Board which are contrary to laws, regulations or the statute of the Bank.

An Annual Report and other documents are published on a regular basis.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Central bank independence

Institutional independence

1. Article 2 of Royal Decree Law 1284 of 23 November 1914 and Article 5 of Royal Decree 1377 of 17 June 1928 - The power of the Minister of the Treasury to fix interest rates on certain interest-bearing current account deposits with the Bank (with the exception of those on compulsory reserves) is incompatible with Treaty and Statute requirements on central bank independence.
2. To the extent that the Board of Directors decides on the issuance of banknotes and the conditions of the Bank's operations, the term of service of its members should be raised from three to five years to comply with Article 14.2 of the Statute of the ESCB.

5.2 Integration in the ESCB

Tasks

1. Banknotes issuance
Various Articles (Article 1 and Article 20, second paragraph, points 1 and 2, of the Statute of Banca d'Italia; Articles 4 and 142 of the Bank of issues decree; Presidential Decree 811 of 9 November 1981) do not recognise the ECB's competences in this field.
2. Control of the amounts of coins and notes held by the Bank
 - a. Articles 110 and 111, first paragraph, point 1, and 111, last paragraph of the Bank of issue decree - Consultative duties assigned to a parliamentary committee chaired by the Minister of the Treasury in matters concerning the control of the currency issued by the Treasury and the Bank does not recognise the ECB's powers in this field.
 - b. Articles 120, 122, 124(b) of the Bank of issue decree - Power of the Minister of the Treasury to control, inter alia, by means of inspections, compliance with the rules governing the movement of notes, the amounts of coins and notes held by the Bank, the actual quantities of notes in circulation, held by the Bank's cashiers department and in stock and of those withdrawn because worn but not yet destroyed does not acknowledge the ECB's competence in this field.
 - c. Article 130 of the Bank of issue decree - Obligation for the Minister of the Treasury to submit a report to Parliament on the banknote issue in the previous year does not recognise the ECB's powers in this field.
3. Formulation and implementation of monetary policy
 - a. Law 82 of 7 February 1992 - Power of the Governor of the Bank to vary the official discount rate and the rate on fixed term advances for the purpose of controlling market liquidity does not recognise the ECB's powers in this field.
 - b. Article 10 of the Law 483 of 26 November 1993 - power of the Bank to establish reserve requirements for banks and related rules does not recognise the ECB's powers in this field.

4. Dealing in foreign exchange and management of the official reserves
Article 4, 1st and 2nd paragraph of the Presidential Decree 148 of 31 March 1988 - Power of the Bank and the UIC to manage the official foreign exchange reserves and to conduct foreign exchange operations in pursuit of their institutional aims on the basis of the powers they have been assigned to do not envisage the transfer of such reserves to the ESCB and do not recognise the ECB's powers in this field.

Operations

1. Articles 26, 27, 29, 60, 62 of the Bank of issue decree and Articles 41, 42, from 45(2) to 53 of the Statute of the Banca d'Italia as well as various other laws on securities - These Articles specify and regulate the operations, classified by type, that the Bank may engage in and the securities which it may accept on an exhaustive basis and do not recognise the ECB's powers in this field.
2. Article 20, second paragraph, points 3 and 5 of the Statute of the Banca d'Italia - Power of the Governing Board to establish rules and terms for the Bank's operations and to appoint the Bank's domestic and foreign correspondence do not recognise the ECB's powers in this field.
3. Articles 124(e), 128 and 131 of Bank of issue decree - The power of the Minister of the Treasury to control compliance with the binding restrictions of the operations conducted by the Bank and the application of the official rate for such operations does not recognise the ECB's powers in this field.

Financial provisions

Article 11 of law 483 of 26 November 1993 - The obligation for Banca d'Italia to pay a contribution to the Ministry of Treasury related to the income accruing from the management of the compulsory reserves does not recognise the ECB's powers in this field.

5.3 Other legislation

On 23 July 1997, the EMI has been consulted on draft legislation delegating legislative powers to the Italian Government concerning the introduction of the euro, contract continuity, conversions, redenomination of financial instruments, currency for accounting reporting, payment systems, and the changeover in the public sector. The EMI welcomes the timing and scope of the prospective legislation and will issue its opinion in due course.

5.4 Prospective changes

For the time being, no prospective changes concerning the statute of the Bank have been notified to the EMI.

INSTITUT MONÉTAIRE LUXEMBOURGEOIS

1. Legal basis

The statute of the Institut Monétaire Luxembourgeois (IML) is contained in the Law of 20 May 1983 establishing the Institut Monétaire Luxembourgeois as amended. The IML is a legal entity organised under public law whose capital is wholly owned by the State.

2. Organisational structure

The governing bodies of the IML are the Management and the Council.

The Management is a collegiate body, comprising the Director General and two Directors. They are appointed by the Grand-Duke on a proposal by the Council of Ministers for a renewable six-year term. The Management is the executive body of the IML, responsible for the fulfilment of the IML's objectives. If there is a fundamental disagreement between the Government and the Management on the IML's policy and the execution of its tasks, the Government, with the consent of the Council of the IML, may propose to the Grand-Duke the collective, and only the collective, dismissal of the Management. Without prejudice to this provision, members of the Management are not subject to instructions from political authorities.

The Council has seven members appointed by the Council of Ministers for renewable four-year terms. The Council provides guidelines and gives opinions on specified activities of the IML, and approves its annual accounts and yearly budget, but has no competence in the field of prudential supervision. The members of the Council are not subject to instructions from political authorities.

3. Objectives and tasks

Luxembourg is linked to Belgium in an economic union comprising a monetary association dating back to 1922. The IML, created in 1983, does not at this stage exercise all the attributes of a fully-fledged central bank, as the National Bank of Belgium currently performs a series of tasks for both members of the association.

The tasks of the IML are to issue banknotes and coins; promote the stability of the currency and, to that effect, oversee the proper functioning of financial markets; execute obligations and exercise rights resulting from international agreements in the monetary and financial field; and exercise the prudential supervision of the financial sector.

The "last word" in monetary and exchange rate policy decisions belongs to the Government, and the IML only avails itself of a limited number of monetary policy instruments. Although the IML has the authority to regulate the use of the banking system's franc-denominated liabilities, it has never used this facility.

4. Relations with political bodies

The Management of the IML has a statutory obligation to submit an Annual Report, financial accounts and a budget for the approval of the Government. These documents are forwarded to Parliament. The Government-appointed auditor of the IML also draws up an annual report which is submitted to the Council of the IML, the Government and Parliament. In addition, the Director General of the IML traditionally meets for a twice-yearly exchange of views with the Parliamentary Committee for Budgetary and Financial Matters.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Prospective changes

Moving to the final stage of Monetary Union will entail the dissolution of the monetary association with Belgium, with the Institut Monétaire Luxembourgeois taking over the full functions of the central bank of Luxembourg. A draft law on the Institut Monétaire Luxembourgeois and the Monetary Status of the Grand Duchy of Luxembourg was submitted to Parliament in December 1993, the enactment of which is still pending. The draft law was submitted to the EMI for consultation on 18 February 1994 and the EMI delivered its opinion (CON/94/1) on 12 March 1994.

The draft states in its "Exposé des Motifs" that its purpose is to implement all Treaty provisions concerning Stage Two and also to introduce some features of NCBs which are to be put in place before Stage Three. In accordance with the draft law, the principal objective of the IML will be to ensure price stability, while supporting the economic policy of the Luxembourg Government. A clear definition of the basic tasks of the IML is also given. These include the definition and implementation of monetary policy. The IML is to conduct its affairs in accordance with the principle of a market economy. However, the monetary association between Belgium and Luxembourg will remain unchanged during Stage Two. The draft declares that additional legislation will be required in due time for Stage Three.

Taking the existing law and the draft law together, the following Articles require further attention with a view to the requirements of Stage Three of Monetary Union.

Institutional independence

Article 5(2) of the draft law - The prohibition of external influence covers monetary policy issues but does not extend to all ESCB-related tasks.

Personal independence

Article 12.3 of the draft law - The grounds for dismissal for members of the Board of Directors ("incapacité durable" and not fulfilling the condition of "honorabilité personnelle") are not fully in line with those mentioned in Article 14.2 of the Statute.

5.2 Integration in the ESCB

Statutory objectives

Article 2(2) of the draft law

1. The IML's secondary statutory objective to support the general economic policy of the (Luxembourg) Government does not conform with the statutory objectives of the ESCB.
2. The first indent of this Article regarding the definition and implementation of monetary policy by the IML does not recognise the ECB's powers in this field.

Tasks

Articles 17(1) and 19(1) of the draft law - The IML's right to issue banknotes does not recognise the ECB's competences in this field.

Administration

Article 6(a) and (i) of the draft law - The Council's competences in the monetary field and on banknotes do not recognise the ECB's competences in this area.

Financial provisions

Article 18 of the draft law - This provision on the transfer of monetary income resulting from the issuance of banknotes does not recognise the arrangements on monetary income within the ESCB as laid down in Article 32 of the Statute.

5.3 Other legislation

Laws relating to the monetary association between Luxembourg and Belgium.

DE NEDERLANDSCHE BANK

1. Legal basis

The statute of De Nederlandsche Bank is contained in the Bank Act 1948 and its Articles of Association as amended. The Bank is a limited liability company (“Naamloze Vennootschap”) organised under private law and is therefore also subject to general rules of company law, insofar as the application of such rules has not been explicitly excluded or would be incompatible with the Bank’s special status, while at the same time certain laws governing public entities are also applicable to the Bank, which reflects the public nature of its main activities. The State is the only shareholder.

2. Organisational structure

The Governing Board and the Supervisory Board are the governing bodies of the Bank and the Bank Council is an advisory body.

The Governing Board consists of the President and the Secretary, as well as no less than two (the current number) and no more than five Executive Directors. They are nominated by a joint meeting of the Governing Board and the Supervisory Board, which presents nominations for appointments to the Crown. The latter takes a decision after the Cabinet has discussed the matter. All appointments are for a renewable seven-year term. Non-compliance with directions from the Minister of Finance (see Section 3) is a ground for dismissal, with no other grounds being explicitly mentioned in the statute of the Bank. All policy decisions of the Bank are made by the Governing Board, which is also fully responsible for the management of the Bank.

The Supervisory Board consists of twelve members, appointed by the Minister of Finance for a renewable term of four years. It supervises the Bank’s business affairs and adopts the annual balance sheet and profit and loss account. A Royal Commissioner supervises the affairs of the Bank on behalf of the Government. The Royal Commissioner has the right to attend all meetings of the Bank’s shareholders (i.e. the State), the Supervisory Board and all joint meetings of the Governing Board and the Supervisory Board (but not of the Governing Board itself) in an advisory capacity.

The Bank Council consists of sixteen members and the Royal Commissioner. Its role is to offer advice to the Bank and the Minister of Finance on matters of the Bank’s policy. Four members are appointed by and from the members of the Supervisory Board. The other twelve are appointed by the Crown, and include financial experts and representatives of industry and labour.

3. Objectives and tasks

The statutory objective of the Bank is to safeguard the value of the currency. This is generally interpreted as implying the objective of maintaining price stability.

The Bank’s main tasks are to issue banknotes; facilitate domestic and external money transfers; manage official reserves; and supervise banks and other financial institutions. The Bank was entrusted with the supervision of exchange offices by an Act of 15 December 1994. A draft of this Act was submitted to the EMI for consultation under Article 109f (6) of the Treaty and Article 5.3 of

the EMI's Statute on 16 February 1994 and the EMI delivered its opinion (CON/94/2) on 16 March 1994.

The Bank has full freedom regarding the formulation and implementation of domestic monetary policy. As the Minister of Finance is responsible to Parliament for the conduct of monetary policy, regular consultation takes place between the Bank and the Minister.

In the event of major disagreement, the Minister of Finance has the authority to give such directions to the Governing Board as he/she deems necessary for the Bank's policy to be properly coordinated with the Government's monetary and financial policies. The Governing Board, however, can state its objections to these directions and appeal to the Crown. The Crown's decision can only be taken by the Council of Ministers meeting in plenary session. If it is decided that the Governing Board has to comply with the directions, the reasoned decision of the Crown, as well as the Bank's objections, are published in the official gazette. However, until now the Minister of Finance has never exercised this statutory right to give directions; this was intended by the legislator, and has continued to be considered by policy-makers, as an ultimate remedy only.

Participation in exchange rate arrangements as well as the acceptance of changes in central rates is determined by the Government, after consultation with the Bank. Within the constraints imposed by the EMS arrangement and with due respect to the bilateral agreement between the Netherlands and Germany on the fluctuation margins between the guilder and the Deutsche Mark, the Bank has full freedom in the formulation of the strategy with respect to exchange rate policy and in the use of instruments (interest rates, intervention, the fluctuation margin).

4. Relations with political bodies

There are no institutional statutory relations between the Bank and Parliament. The Minister of Finance is accountable to Parliament for the conduct of monetary policy. As required by the Bank Act, the Governing Board publishes a weekly summary balance sheet of the Bank. Furthermore, the Bank publishes an Annual Report (including the annual accounts) on its activities.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Prospective changes

The Netherlands Government and the Bank have acknowledged in the past that the above structure requires the adaptation of the Bank's statute in the light of the Treaty and Statute requirements for Stage Three. This resulted in a draft Bank Act 1998 containing new provisions on the Nederlandsche Bank N.V. The draft act was submitted to the EMI for consultation on 15 April 1997 and the EMI delivered an opinion (CON/97/08) on 4 June 1997. The EMI welcomed the draft Act as a comprehensive piece of legislation, both on central bank independence as well as on integration of the Bank in the ESCB. The draft law recognises that:

- central bank independence would need to be achieved at the latest at the date of the establishment of the ECB/ESCB;
- integration provisions would need to become effective at the start of Stage Three; and

- certain provisions would need to reflect the practicalities of the transition from Stage Two to Stage Three, such as the envisaged date for the introduction of euro banknotes.

In its opinion, the EMI noted particularly the following:

- The EMI welcomes the timely and accurate adaptation of the statute of the Bank. As mentioned in the EMI's 1995 and 1996 reports on "Progress towards convergence" (the "1995 and 1996 Convergence Reports"), timely adaptation is necessary to enable the EMI and other Community institutions to assess, pursuant to their reporting obligations under the Treaty, progress made towards the fulfilment of the legal requirements for Stage Three.
- The EMI notes with particular satisfaction that the Bank's independence will now be *de jure* formalised through a deletion of the Minister of Finance's right to give instructions to the Bank as from the date of the establishment of the ESCB/ECB. This is in line with the EMI's views on central bank independence as expressed in the 1995 and 1996 Convergence Reports.
- The EMI also welcomes that the supervisory powers of a Government representative in the Supervisory Board and his/her ancillary competence to obtain information have been restricted to non-Treaty related activities of the Bank. However, this restriction has to be derived from the reference in Article 13, section 1, to Article 2, section 1, of the draft Act and may be less clear than intended. It seems, on the one hand, obvious that this reference, *inter alia*, embraces Article 3 but not Article 4. However, as both Articles refer to payment systems, it may, on the other hand, be questioned where the borderline of the Government representative's powers lies in this respect. Such uncertainty may be resolved through reference in Article 13, section 1, to "activities performed in the framework of the ESCB" or similar words rather than to "activities performed in order to achieve the objective described in Article 2, section 1".
- Furthermore, the EMI notes with satisfaction that the recitals of the draft Act explicitly mention that the Bank will become an integral part of the ESCB. This is such an important observation that it might merit an explicit reference in the draft Act itself, for example in Article 2, Section 1, although, admittedly, the last sentence of Article 5 covers this point as well, but in a more general, less explicit sense.
- An explicit reference to the integration of the Bank in the ESCB may also accommodate the following concern. As mentioned in the 1995 and 1996 Convergence Reports, there is no prescribed method of adaptation. Adaptations may range, in a spectrum, from deletions, to references to Treaty Articles, to incorporations of (parts of texts) of Treaty Articles into statutes of national central banks. The method which has been chosen in the present case has an advantage and a disadvantage. An advantage is that the draft Act provides for a full text of the new statute of the Bank without cross-references to Treaty Articles. This supports legal clarity. The disadvantage of this method is that it may sometimes seem that national legislators or national central banks would still have an own responsibility in areas which have actually been transferred to the competence of the ESCB/ECB. An example of this disadvantage might be Article 3, section 1a, of the draft Act which states that the Bank "in the implementation of the Treaty" shall, *inter alia*, "co-define and implement monetary policy". With a view to the fact that in accordance with Article 12.1 of the ESCB/ECB Statute:

- the Governing Council will define monetary policy;
 - the Executive Board will implement such policy; and
 - the national central banks may be involved in the execution of monetary policy operations, the words “co-define and implement monetary policy” may, certainly when read in isolation, be confusing. It is recognised that the level of confusion is expected to be low as the recitals, the first sentence of Article 3, Section 1, the last sentence of Article 5 and the Explanatory Memorandum are clear and unambiguous as far as the Bank’s status is concerned. However, legal clarity would nevertheless be supported if:
 - Article 2.1 would also refer to the integration of the Bank in the ESCB;
 - the word “co-define” in Article 3, Section 1(a), would be replaced by an expression which better reflects the actual situation; and
 - the last four words of Article 3, Section 1(a), would read “execute monetary policy operations”, it being recognised that the Dutch text of the draft Act already uses the word “execute” (“tenuitvoerleggen”) rather than implement.
- Finally, the EMI notes that the draft law contains in Article 8, section 3, an obligation for the Bank to provide uncollateralised intra-day credit to Government. Although this is presently not in contradiction with rules at a Community level and particularly not with the Council Regulation of 13 December 1993 (EC/3603/93), it may not be excluded that such rules will be amended in this respect in the future. Such an amendment would imply that Article 8, section 3, of the draft Act would have to be adapted. The need for such an adaptation may be avoided by deletion of Article 8, section 3, which would in any case not prevent Government and the Bank to act as they deem fit, provided that Treaty requirements are being respected.

5.2 Other legislation

1. **Coinage Act**
This Act, which states that the guilder is the unit of account in the Netherlands, does not envisage the introduction of the euro.
2. **Archives Act 1995**
This Act grants citizens the right of access, under certain restrictions and conditions, to information contained in the archives of public bodies and entities. This Act is also applicable to the Bank with a view to its public function and will therefore need to be reviewed in the light of the confidentiality regime within the ESCB.

The EMI has recently been consulted by the Dutch Ministry of Finance on a draft law which serves three purposes:

- it revokes the Act on the exchange rate of the guilder and replaces it by a legislative provision authorising the Minister of Finance to conclude, on behalf of the Netherlands and jointly with the Member States of the future euro area, arrangements on the exchange rate of the euro in relation to the currencies of those members which are not yet part of the euro area;
- it amends the 1994 Act on external financial relations in order to ensure that obligations of De Nederlandsche Bank to comply with general guidelines from the Minister of Finance and to exchange information with the Minister do not contravene the Bank’s Treaty obligations as well in order to ensure that the Bank will be able to exchange information with the future European Central Bank; and

- finally, it amends the Act on the supervision of securities traffic 1995 in such a manner that the ECB, just as De Nederlandsche Bank, will not be subject to the supervisory regime applicable to securities institutions, implying that rules on the issuance of debt certificates would also not apply to the ECB.

The EMI, in its opinion dated 4 June 1997 (CON/97/08), welcomed the above legislation.

OESTERREICHISCHE NATIONALBANK

1. Legal basis

The statute of the Oesterreichische Nationalbank is contained in the National Bank Act 1984 of 20 January 1984 as amended. The Bank is a joint stock company with special status. Among the shareholders half of the capital is subscribed by the Republic.

2. Organisational structure

As a consequence of the Bank's legal form as a joint stock company with special status, the governing bodies of the Bank include the General Meeting of shareholders, the General Council and the Board of Executive Directors.

The General Meeting discharges the General Council and the Board of Executive Directors from responsibility for its administration during the preceding year, approves the annual statement of account, decides on the allocation of profits and elects six members of the General Council and four auditors. Only Austrian citizens or legal persons and enterprises having their seat in Austria may be shareholders. Half of the capital was subscribed initially (and is still held) by the Federal Republic, which then also decided on those persons and enterprises to be permitted to subscribe the remaining capital of the Bank.

The General Council decides on the general guidelines for monetary and credit policy, is charged with the supreme direction and supervision of the conduct of all the Bank's business, and gives its opinion on draft legislation. It consists of the President, two Vice Presidents and eleven other members, the latter performing this duty as an honorary office. The President is appointed by the President of the Republic on nomination by the Federal Government. The Vice Presidents, as well as the five other members not elected by the General Meeting, are appointed by the Federal Government. The term of office in all cases is a five-year period which can be renewed.

The Board of Executive Directors is responsible for the overall administration of the Bank and conducts the business of the Bank in accordance with the National Bank Act and the general guidelines set by the General Council. The Board of Executive Directors appoints the Bank's staff and represents the Bank both in courts of law and extrajudicially. It is composed of the Chief Executive Director, his/her deputy and up to four Executive Directors appointed by the General Council for a term of not more than five years.

The President can be dismissed by the President of the Republic if he/she ceases to meet the requirements set for his/her appointment or if he/she is prevented from performing his/her duties for more than a year.

3. Objectives and tasks

The Bank Act states that the Bank "shall ensure ... that the value of the Austrian currency is maintained with regard both to its domestic purchasing power and to its relationship with stable foreign currencies". This is interpreted as implying the objective of maintaining price stability. With regard to the credit policy of the Bank, due regard has to be given to the country's economic needs. Furthermore, the Bank Act states that "in determining the general lines of monetary and credit

policy” to be followed by the Bank in this field, “due regard shall be paid to the economic policy of the Federal Government”.

The Bank’s monetary policy instruments comprise discount and lending transactions, open market operations, minimum reserve requirements, transactions in foreign bills and foreign exchange.

4. Relations with political bodies

The Bank has no reporting requirements to Parliament or other entities. With regard to relations with the Government, according to the Bank Act, the “Federal Minister of Finance shall see to it that the Bank acts in accordance with the law and shall appoint a State Commissioner and a deputy for the purpose of exercising this right of supervision”. The State Commissioner is entitled to attend General Meetings and meetings of the General Council in an advisory capacity and to examine the conduct of the Bank’s business. Finally, he/she has the right to raise objections against decisions of the General Council if he/she considers any such decision to be in conflict with existing legislation. Such an objection has suspensive effect and is examined by an Arbitration Tribunal regarding its substance if the objection is not revoked by the Federal Minister of Finance within seven days.

No person who is in the active service of the Republic, or of a Land, or who is a member of the Nationalrat, the Federal Council, a Parliament of a Land, the Federal Government or the Government of a Land may be a member of the General Council. Apart from the participation of the State Commissioner as described above, no right is foreseen for members of the Government to attend meetings of the decision-making bodies.

Finally, the Bank publishes an Annual Report and an annual statement of account as well as a weekly return.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank’s statute and other legislation

5.1 Central bank independence

Institutional independence

1. Article 45(4) - Right of State Commissioner to raise - with suspensive effect - objections to a decision of the General Council is incompatible with Treaty and Statute requirements on central bank independence.
2. Article 22, section 3 - The General Council is currently a decision-making body in monetary policy matters, whilst it is, at the same time, largely composed of representatives of various branches of industry who fulfil their duties towards the Bank on a non-exclusive basis. This combination of responsibility for monetary policy, on the one hand, and the representation of the interests of third parties, on the other, creates a potential for conflicts of interest and is, therefore, incompatible with Treaty and Statute requirements on central bank independence.

Personal independence

Article 21.14 - The members of the Board of Executive Directors do not have a minimum term of office of five years which is incompatible with Treaty and Statute requirements on central bank independence.

Functional independence

The Bank's statutory objective to maintain the value of the Austrian currency with regard both to its domestic purchasing power and to its relationship with stable foreign currencies with due regard to the country's economic needs does not unambiguously reflect the primacy of maintaining price stability.

5.2 Integration in the ESCB

Statutory objectives

Article 4 - The provision that the Bank, in determining monetary policy, shall pay due regard to the economic policy of the Federal Government does not conform with the ESCB's statutory objective.

Tasks

Article 3 - The provision on the Bank's participation in international institutions concerned with monetary co-operation does not recognise the ECB's competence in this field.

Operations

1. Article 61 - The Bank's exclusive right to issue banknotes as well as the requirement of a permission of the Federal Minister of Finance concerning the face value of the notes do not recognise the ECB's competences in this field.
2. Article 41 - The provision that public authorities are prohibited to draw on the funds of the Bank without providing the counter-value with an exception with regard to the discount of short-term Federal Treasury certificates is in contradiction with Article 104 of the EC Treaty.
3. Article 43 - The provision on minimum reserve requirements does not acknowledge the ECB's powers in this field.
4. Articles 47-60 - These Articles on the operations in which the Bank is allowed to enter into do not recognise the ECB's power in this field.

5.3 Other legislation

Article 3, Law on the Schilling (Schillinggesetz). - The provision that the Schilling is the only unit of account in Austria does not envisage the introduction of the euro.

5.4 Prospective changes

A draft of a new Central Bank Act is under consideration within the Ministry of Finance. It is envisaged that the draft will be submitted to the EMI for consultation during the summer of 1997 and will subsequently be forwarded to Parliament.

BANCO DE PORTUGAL

1. Legal basis

The statute of the Banco de Portugal is contained in the Organic Law approved by Decree-Law No. 337/90 of 30 October 1990 amended by Decree-Law 231/95 of 12 September 1995 and by Law 3/96 of 5 February 1996. Article 105 of the Constitution refers to the Banco de Portugal.

2. Organisational structure

The Bank is managed by the Governor and the Board of Directors. It is supervised by the Board of Auditors and assisted by an Advisory Board.

The Governor is appointed for a renewable term of five years by the Government on a proposal by the Ministry of Finance. The Board of Directors includes the Governor, one or two Deputy Governors, and three to five members, all appointed by the Government on a proposal by the Ministry of Finance for a renewable term of five years. The Board manages the Bank. The Governor has a casting vote and the right to suspend Board decisions and submit them to the Government. Directors are subject to a strict regime of professional exclusivity. The statute of the Bank does not contain any provisions regarding the dismissal for the Governor or other members of the Board of Directors.

The Board of Auditors includes four members, three appointed by the Minister of Finance and one appointed by the Bank's employees, all for three-year renewable terms. The Board of Auditors monitors all the activities of the Bank, and one of its members must attend, without voting or vetoing rights, all meetings of the Board of Directors.

The Advisory Board includes representatives from the financial and economic sector and regions and has advisory functions.

3. Objectives and tasks

The primary objective of the Bank is to maintain price stability taking into account the general economic policy of the Government. Its main tasks are to conduct monetary policy; co-operate with the Government in the definition of the exchange rate policy and implement the latter; hold and manage the official reserves; act as intermediary in the State's international monetary relations; regulate, promote and supervise the payment systems; regulate and implement the regime for monetary, financial, foreign exchange and balance of payments statistics; and oversee the stability of the national financial system. In this latter respect the Bank has responsibility for banking supervision.

To implement monetary policy the Bank has full freedom in setting policy instruments. However, "Avisos" relating to some of the features of the reserve requirements framework and the discount rate (the latter not currently being in use for monetary policy purposes) are signed by the Minister of Finance and published in the Official Journal ("Diário da República").

The definition of the central exchange rate of the currency is the responsibility of the Government in co-operation with the Bank. The Bank is responsible for the management of the exchange rate within the fluctuation bands of the ERM.

4. Relations with public bodies

The annual budget of the Bank is forwarded to the Minister of Finance. The annual accounts are submitted, together with the opinion of the auditors, to the Minister of Finance for approval. The Bank is subject to the obligation to publish its accounts periodically. There is also a legal obligation for the Governor to inform Parliament (through one of its Committees) about monetary policy matters following the publication of the Annual Report by the Bank.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Prospective changes

The Portuguese Government and the Bank have acknowledged in the past that the above structure requires adaptation of the Bank's statute in the light of Treaty and Statute requirements for Stage Three. This resulted in a draft law amending the Organic Law of the Banco de Portugal which was submitted to the EMI for consultation on 25 July 1997 and on which the EMI delivered an opinion (CON/97/18) on 15 August 1997. In its opinion, the EMI noted the following:

- The EMI welcomes the timely and accurate adaptation of the statute of the Bank. As mentioned in the EMI's 1995 and 1996 reports on "Progress towards convergence" (the "1995 and 1996 Convergence Reports"), timely adaptation is necessary to enable the EMI and other Community institutions to assess, in accordance with their reporting obligations under the Treaty, progress made towards the fulfilment of the legal requirements for Stage Three.
- The EMI notes with particular satisfaction the comprehensive fashion in which the adaptation of the Bank's statute is foreseen in the draft law, whilst at the same time the different situations are accommodated which may occur dependent on the moment at which Portugal adopts the single currency. The draft law is basically in line with the EMI's views on the adaptation of statutes of the EU central banks to the Treaty and the ESCB/ECB Statute as expressed in the 1995 and 1996 Convergence Reports and the overall assessment of the present adaptation is therefore positive.
- Central bank independence needs to be achieved at the latest at the date of establishment of the ESCB. The draft law contains a number of articles providing for central bank independence, which are consistent with the EMI's views on this topic. These provisions will apply as from the enactment of the draft law and irrespective of whether Portugal adopts the single currency as from the starting date of Stage Three or at a later stage. This is welcomed by the EMI.
- The draft law provides for the integration of the Bank in the ESCB both if Portugal becomes a fully participating Member State at the starting date of Stage Three and if Portugal would not adopt the single currency at the starting date of Stage Three. The EMI welcomes this approach. For the situation in which Portugal becomes a fully participating Member State, the draft law provides for a complete new statute for the Bank, which in general complies with the EMI's views on measures required for national central banks to become an integral part of

the ESCB, and therefore deserves a positive appraisal. The EMI would, however, like to raise the following detailed comments:

(a) Article 4 of the new statute states that “*The capital of the Bank shall be 200 million escudos*”. If Portugal adopts the single currency, the Bank would have to comply with the requirement, laid down in Article 4 of the draft Council Regulation on the introduction of the euro, to have its unit of account in euro. Therefore, the EMI would favour that the Bank’s statute already anticipates the future denomination of its capital in euro.

(b) Article 6 retains for the Bank “*the exclusive right to issue banknotes*” and “*the exclusive right to put in circulation metal coins*”. The EMI notes that in Stage Three other participating national central banks and the ECB may also issue euro banknotes with legal tender status within the Community and thus also in Portugal, and that therefore the legal monopoly of banknote issuance should be adapted in all participating Member States so as to legally permit banknote issuance by other full ESCB participants (but only such participants; see Article 105a of the Treaty and Article 16 of the ESCB/ECB Statute) without this being contrary to existing national law. The legal monopoly for banknote issuance may, however, in the transitional period still be restricted to banknotes in national currencies and this restriction may be retained until such banknotes lose their legal tender status. The same would apply, *mutatis mutandis*, to the exclusive right granted in the draft law to the Bank with regard to metal coins.

(c) The provisions in Articles 8 and 9 of the draft law concerning banknotes should properly specify that these apply only to banknotes denominated in Portuguese Escudos; the regime to be applied to euro banknotes should be common to all participating Member States.

(d) Article 21 (a) suggests the possibility of exchange controls “*whenever required*”; for the sake of legal certainty the draft should make clear that such exchange controls may only be adopted in accordance with the Treaty.

(e) The EMI welcomes in particular Article 32.2 of the new statute of the Bank, which provides for the primacy of the ESCB responsibilities of the Governor and therefore constitutes an effective legal tool to achieve a smooth and complete integration of the Bank in the ESCB.

(f) Article 53 of the new statute does not appear to contemplate monetary income sharing within the ESCB; this provision will, of course, have to be applied in the context of Article 32 of the ESCB Statute on the allocation of monetary income of NCBs.

5.2 Other legislation

Decree of 22 May 1911 states that the Escudo is the monetary unit in the territory of the Portuguese Republic and does not anticipate the introduction of the euro.

Decree-Law 333/81 of 7 December 1981, which gives to Imprensa Nacional - Casa de Moeda (the national mint) the exclusive right to produce coins does not recognise the ECB’s powers in this field.

Decree-Law 293/86 of 12 September 1986 establishes the legal system of legal coins and some of its provisions, namely Article 9 which deals with legal acts authorising the mintage of commemorative coins (which are legal tender, according to Article 12 of the same Decree-Law) and defining their technical characteristics, designs, volume of issuance and liberatory power do not recognise the ECB's powers in this field.

Decree-Law 178/88 of 19 May 1988 has one provision (Article 4) which reproduces Article 9 of Decree-Law 293/86 and does, as stated above, not recognise the ECB's powers in the field of coins.

Decree-Law 13/90 of 8 January 1990, which rules on foreign exchange operations, will have to be reviewed in the light of the introduction of the euro. For example, the definition of "foreign currency" in Article 5.3, which includes "banknotes and coins which are legal tender in foreign countries" does not anticipate that euro banknotes and coins, notwithstanding their status as legal tender in all participating Member States, will not be "foreign" currency.

SUOMEN PANKKI

1. Legal basis

The statute of the Bank is contained in the Constitution and in the Act on Suomen Pankki of 21 December 1925 as amended. The Bank is an institution organised under public law. The part of the Bank's profit which is not employed to increase the Bank's own funds may be transferred to the State following a decision of Parliament to that effect. A new Act on the Bank of Finland has been approved by the Parliament on 13 June 1997. The new Act will enter into force on 1 January 1998.

2. Organisational structure

The governing bodies are the Parliamentary Supervisory Council and the Board.

According to the Constitution, the Bank operates under the guarantee and the care of Parliament and is supervised by the Parliamentary Supervisory Council. The nine members of the Council are appointed for the entire parliamentary term by Parliament from among members of Parliament, although the law does not prevent persons other than members of Parliament from being appointed. In the new Act the Council is mainly a supervisory authority with restricted decision-making powers in respect of the Bank's administration.

The Board of Suomen Pankki comprises the Governor, who is the Chairman, and a maximum of five members; all are appointed by the President of the Republic on a proposal by the Parliamentary Supervisory Council. The President is not bound to follow the proposal of the Council. The term of office of Board members is presently indefinite but, according to the new Act, the Chairman of the Board will be appointed for a seven-year term and the other members of the Board for a five-year term. In the new Act there are special provisions concerning the removal of a member of the Board from office to bring the Finnish statutory provisions on this aspect in line with the Treaty and the Statute. According to the new Act the Board has general decision-making powers; according to the Act in force, it decides on all matters which have not been expressly entrusted to the Council.

3. Objectives and tasks

The statutory objectives of the Bank are to maintain a stable and secure monetary system and to assist and facilitate the circulation of money in Finland. Thus, the Act on Suomen Pankki gives the Bank responsibility for pursuing the goal of monetary stability. According to the new Act, the objective of the Bank of Finland shall be to safeguard the value of money.

According to the new Act, the Bank's main tasks include formulating and implementing monetary policy; holding and managing foreign currency reserves; and participating in the oversight of payment and financial systems. The Bank has the sole right to issue legal tender. The Bank is not fiscal agent for the Government. Other tasks are conferred on the Bank under specific legislative provisions.

The Financial Supervisory Authority functions administratively in connection with the Bank, but acts independently in its decision-making.

Monetary policy is determined independently by the Bank. The Act in force does not impose any requirement on the Bank to negotiate monetary policy decisions beforehand with the Government. According to the new Act, the Bank of Finland shall not seek or take instructions from any outside entity concerning its tasks related to monetary policy.

The Bank is independent in the use of its monetary policy instruments (open market operations, credit operations, minimum reserves).

The decision-making procedure regarding changes in the external value of the markka is defined in the Currency Act. Under the Currency Act, the Council of State (the Government) takes decisions on the external value of the markka on a proposal by the Bank. The Parliamentary Supervisory Council decides whether to make such a proposal on the basis of a proposal by the Board. The Government can then either approve the proposal as it stands or reject it. This procedure will not be changed when the new Act enters into force.

If the fluctuation range has been determined for the Finnish markka, the Bank ensures that its external value remains within that range. Within that framework, the Bank has full freedom regarding its operations in the foreign exchange market. If a serious disturbance occurs in the foreign exchange market, the Bank is entitled to temporarily disregard the limits on the fluctuation range.

4. Relations with political bodies

The Parliamentary Supervisory Council supervises the administration and, according to the Act in force, it supervises also the management of the Bank. The Council submits an annual report to the Parliamentary Economic Committee on the position, business and management of the Bank and on important matters dealt with by the Council during the year.

A balance sheet of the Bank is published four times a month. The annual accounts and accounting and administration are audited by five auditors who are elected by Parliament. The Bank publishes an Annual Report.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Central bank independence

Personal independence

Articles 18 and 19 of the new Act - The President of the Republic may remove the Governor or other members of the Board from office if the Governor or such a member is guilty of misconduct in office or if his/her performance has otherwise shown that he/she is not suited to continue in office or he/she no longer fulfils the conditions required for the performance of his/her duties. These grounds for dismissal do not correspond with those laid down in Article 14.2 of the Statute.

5.2 Integration in the ESCB

Statutory objectives

Article 2 of the new Act - The statutory objective of Suomen Pankki shall be to safeguard the value of money. Without prejudice to that objective the Bank shall also support the attainment of other economic policy objectives and promote the stability of the financial system. This statutory objective does not conform with the ESCB's statutory objective.

Tasks

1. Banknotes issuance

Article 4 of the new Act - The Bank's exclusive right to issue banknotes does not recognise the ECB's competence in this field.

2. Monetary policy

Articles 3 and 6 of the new Act - The Bank's powers to define and implement monetary policy does not acknowledge the ECB's competence in this field.

Operations

Article 6 of the new Act - The Bank's power to determine the base rate and other interest rates which it applies and to determine and publish other rates of interest that are used as reference rates does not recognise the ECB's competence in this field.

5.3 Other legislation

Exchange Rates

The Government's competences regarding the exchange rate of the markka and the Bank's involvement in this matter, as stipulated by the Currency Act, do not recognise the Community's competences in exchange rate matters and do not envisage the introduction of the euro.

Coins

Article 7 of the Currency Act stipulates that the State has the exclusive right to mint coins for its own account and the Ministry of Finance, having requested an opinion on the matter from the Bank of Finland, decides on the face value and physical characteristics of coins. Coins shall be issued by the Bank of Finland and minted in such quantities as the Bank of Finland deems necessary for circulation. This arrangement does not recognise the need for approval by the ECB and the role of the EU Council referred to in Article 105a (2) of the Treaty.

5.4 Prospective changes

The Finnish legislative authorities and the Bank have acknowledged, and acted upon, the need for adaptations through the proposed new Act. The new Act was submitted to the EMI in draft form for consultation and the EMI delivered its opinion on 13 May 1996 (CON/96/5). The EMI noted in its opinion that the draft legislation is a step forward towards the fulfilment of the Treaty and Statute

requirements for Stage Three, but that further adaptations will be necessary for participation in Monetary Union. In the course of the legislative procedure, the draft legislation has profited from further analysis and developments - both within the EMI and in Finland - with regard to the appropriate legislative arrangements concerning Suomen Pankki in view of, inter alia, Article 108 of the Treaty. As a result, amendments to the draft legislation were made before Parliamentary approval of the new Act, which was approved by Parliament and signed by the President of the Republic on 24 July 1997 and will enter into force on 1 January 1998.

SVERIGES RIKSBANK

1. Legal basis

The statute of the Bank is contained in the Constitution, the Riksdag Act and the Sveriges Riksbank Act (1988:1385) as amended. The Bank is an institution organised under public law, whose capital is wholly owned by the State.

2. Organisational structure

The Riksbank is administered by a Governing Board with eight members. Seven of these are elected directly by Parliament (the Riksdag) for periods coinciding with the parliamentary term, which is normally four years. The eighth member is the Governor, who is elected by the other seven for a five-year term. Terms are renewable. Parliament may dismiss members of the Governing Board by refusing to discharge them from their responsibility for the administration of the Bank. The Governor may be dismissed by the other members of the Governing Board with no grounds being stated. The Governing Board is responsible for all decisions of major importance, but, apart from the Governor, Board members take no part in the day-to-day management of the Bank. Members of the Governing Board may not be members of the Cabinet or of the Board of Directors of a credit institution.

3. Objectives and tasks

The Swedish Constitution makes the Riksbank responsible for all matters of exchange rate and monetary policy. There is no statutory objective for monetary policy, but the Bank follows an inflation target which is compatible with the objective of maintaining price stability.

The Constitution also states that the Bank shall promote a safe and efficient payment system. This is reflected in the Riksbank Act, inter alia in rules mandating the Bank to act as lender of last resort to financial institutions which are under the supervision of the Financial Supervisory Authority. The Constitution assigns the Bank the sole right to issue banknotes and coins.

In addition to the tasks directly related to the constitutional mandate, the Riksbank Act states that the Bank shall receive and make payments for the Government. The Bank is not responsible for bank supervision.

The Bank has full responsibility for the formulation and implementation of monetary policy. The Riksbank Act specifies the available policy instruments, but the use of these instruments is determined exclusively by the Bank. Prior to taking decisions of major importance, the Bank must consult the Minister of Finance, but the latter does not have any powers to veto or delay a decision by the Bank. Consequently, the Bank is independent with regard to its goals and the instruments it uses to achieve them.

The rules for exchange rate policy are the same as those for monetary policy, i.e. the Bank has authority to decide on all matters of exchange rate policy, including the choice of the exchange rate regime and, under fixed exchange rates, the central parity rate. The Bank holds and manages the foreign exchange reserves.

The Bank can oblige financial institutions which are under the supervision of the Financial Supervisory Authority to provide the Bank with statistics that it considers necessary.

4. Relations with political bodies

The Bank is responsible to the Riksdag. This means, for example, that the Riksdag annually determines whether to discharge the Governing Board from responsibility for its administration during the preceding year. The Bank has a statutory obligation to submit an Annual Report on the administration of the Bank to Parliament and to the Parliamentary Auditors. The Riksbank's profit and loss account and balance sheet at the end of the financial year are approved by Parliament. The Bank's budget is decided by the Governing Board, giving the Bank budgetary independence.

In addition, the Governor appears before hearings of the Riksdag's Finance Committee three or four times a year at which information is given on the monetary situation. Recently, some of these hearings have been open to the public.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

5.1 Central bank independence

Institutional independence

Article 42 of Sveriges Riksbank Act - The provision that, prior to the Riksbank making a monetary policy decision of major importance, the Minister of Finance has to be consulted is incompatible with Treaty and Statute requirements on central bank independence.

Personal independence

1. Chapter 9, Article 12, of the Constitution Act - The possibility to refuse discharge of responsibility of Board members and the possibility for Board members to remove the Governor from his/her appointment without specification of grounds for dismissal do not conform with Article 14.2 of the Statute.
2. Chapter 8, Article 6, of the Riksdag Act - Term of office of other members of decision-making bodies is normally 4 years and should be increased to at least five years.
3. Chapter 9, Article 12, of the Constitution Act and Article 31 of Sveriges Riksbank Act - These provisions allow members of Parliament to be members of the Bank's Governing Board as well. Such an arrangement would be inconsistent with the Treaty and the Statute in Stage Three.

Functional independence

Article 4 of Sveriges Riksbank Act - The statute of the Bank does not unambiguously reflect the primacy of maintaining price stability.

5.2 Integration in the ESCB

Tasks

1. Monetary policy
Chapter 9, Article 12, of the Constitution Act and Article 4 of Sveriges Riksbank Act - The Bank's powers in this field do not recognise the ECB's powers.
2. Exchange rate policy
Chapter 9, Article 12, of the Constitution Act and Article 4 of Sveriges Riksbank Act - The Bank's powers in this field do not acknowledge the Community's and ECB's competences in this field.
3. Banknotes issuance
Chapter 9, Article 13, of the Constitution Act and Article 5 of Sveriges Riksbank Act - The Bank's exclusive right to issue banknotes and coins does not recognise the ECB's competences in this field.

Operations

Article 4 of Sveriges Riksbank Act - The Bank's powers relating to the implementation of monetary and exchange rate policy do not recognise the ECB's power in this field.

5.3 Other legislation

Work is underway to identify possible needs for adaptation of other legislation. So far, no major inconsistencies with the Treaty have been found.

5.4 Prospective changes

Legislation in order to comply with the requirements of the Treaty with a view to Stage Three of EMU will be proposed during the current legislative period. Amendments to the Constitution cannot enter into force before 1 January 1999 as such amendments require the endorsements of two consecutive Parliaments.

For information purposes it is to be noted that in May 1997 five political parties representing a majority in Parliament informally agreed on a number of statutory amendments concerning the future status of the Riksbank and its management structure. Also, a division of responsibilities in the field of exchange rate policy was clarified in this agreement. The EMI has been informed that a Bill to Parliament is expected in October/November 1997 preceded by a consultation procedure with the EMI. Without prejudice to the content of the draft Bill on which the EMI will be consulted and the EMI's opinion thereon, the EMI is aware that the above agreement between the five political parties contemplates the following:

Institutional independence

- Public authorities will be prohibited to give the Riksbank instructions on monetary policy matters through a provision in the Constitution. The Riksbank Act will prohibit higher officials of the Bank to seek or take instructions.
- The Riksbank will no longer be obliged to consult with, but to inform, the Minister of Finance prior to all important monetary and exchange rate policy decisions.

Personal independence

- An Executive Board of the Riksbank will be established with the task of independently taking, inter alia, all monetary policy decisions. One of its members shall be the Governor of the Bank, who will also be the President of the Executive Board. In addition, at least one other member of the Executive Board shall act as Deputy Governor. All members of the Executive Board will be appointed by the Governing Board of the Riksbank for six-year periods, full-time employed and subject to specific rules on conflicts of interest.
- The Governing Board will, in its new shape, have a supervisory function but no monetary policy competence. Members will be appointed by Parliament from persons - inside or outside Parliamentary circles - with broad experience in social life and economics. The chairman and deputy chairman of the Governing Board will have the right to attend meetings of the Executive Board with a right to take part in discussions but with no voting right.
- An amendment of the Constitution will provide for security of tenure of the Governor of the Riksbank and the other members of the Executive Board by regulating that they can be dismissed only if they no longer fulfil the conditions for performing their duties or in cases of serious misconduct.

Functional independence

- The prevailing objective for the Riksbank's monetary policy to maintain a fixed value of the money will be laid down by law in the Riksbank Act.

BANK OF ENGLAND

1. Legal basis

The Bank of England was originally formed as a corporation incorporated by Royal Charter in 1694. As a corporation, the Bank has powers to own property, has issued capital and can sue and be sued in its own name. Subsequently, much of the original Royal Charter was replaced by a further Royal Charter in 1946 together with the Bank of England Act 1946. The 1946 Act had the effect of nationalising the Bank, by transferring its capital to the Treasury.

In May 1997 the Government announced two initiatives which, when fully implemented by legislation in the current session of Parliament, will materially change the Bank's organisational structure, objectives and tasks and relations with political bodies. Paragraphs 2, 3 and 4 describe the position immediately prior to the announcements; paragraph 5 describes briefly the main features of the Government's proposals.

2. Organisational structure

The governing body of the Bank is the Court of Directors, which is responsible for managing the Bank's affairs and its internal administration. The Court of Directors consists of the Governor, the Deputy Governor and sixteen Directors, up to four of whom may have executive responsibilities within the Bank. The Governor, Deputy Governor and the executive Directors are required to render their exclusive service to the Bank. The non-executive Directors are not placed under any such obligation.

The Governor, Deputy Governor and Directors are appointed by the Crown on the advice of the Prime Minister. The Governor and the Deputy Governor are appointed for renewable five-year terms, and Directors for renewable four-year terms. A Governor may be dismissed during his/her period of office under certain, specified conditions.

Members of the Court of Directors are not individually subject to instructions from political authorities. However, the Treasury has the legal power to issue "directions" to the Bank "in the public interest" after consultation with the Governor, although this power has never formally been invoked.

3. Objectives and tasks

There are no explicit statutory objectives in the monetary policy field. The Banking Act 1987 gives the Bank, in its role as banking supervisor, the objective of protecting the interests of depositors. The Bank's overall objectives, in practice, are to maintain the integrity and the value of the currency; maintain the stability of the financial system, both domestic and international; and seek to ensure the effectiveness of the United Kingdom's financial services.

The main tasks of the Bank are to formulate advice on monetary policy; implement monetary policy; issue the currency; manage official reserves; supervise banks; and promote sound and efficient payment and settlement systems.

Monetary policy is determined with reference to the Government's target for retail price inflation. Monetary policy is effected through short-term interest rates, the Bank being responsible for advising on the appropriate interest rate level which will be required to achieve the inflation target. The Bank's advice is made known through the publication - two weeks after the subsequent meeting - of the minutes of regular (usually monthly) meetings on monetary policy between the Governor and the Chancellor of the Exchequer.

In the light of the advice received from the Governor, the Chancellor takes decisions on any changes to the interest rate. The precise timing of such changes is now delegated to the Bank. Interest rate objectives are pursued through the Bank's daily money market operations.

The Bank acts as fiscal agent for the Government.

Foreign exchange market activities are conducted by the Bank as agent for the Government, which owns the foreign exchange reserves. In carrying out this function, the Bank operates within guidelines set by the Treasury.

4. Relations with political bodies

The Bank presents an Annual Report to Parliament containing its accounts for the previous year. It also presents a second Annual Report to Parliament describing its conduct of banking supervision. In addition, the Bank publishes a quarterly Inflation Report, which describes progress towards achieving the Government's inflation target and the Bank's views on the future prospects for inflation. The Governor frequently appears before Committees of Parliament. Formally, however, the Chancellor of the Exchequer, or another Treasury Minister, answers for the Bank in Parliament.

As part of the monetary framework, which was adopted after the United Kingdom left the exchange rate mechanism of the European Monetary System, a number of measures have been taken to make the monetary policy process more transparent to the public. As noted above, these include the announcement of a quantitative Government target for inflation, the publication of a quarterly Inflation Report by the Bank, and the publication of the minutes of the regular meetings on interest rate policy between the Chancellor and the Governor. In addition, the Treasury publishes a monthly compendium of data relevant to monetary policy.

5. Inconsistencies with Treaty and Statute requirements and prospective changes to the Bank's statute and other legislation

By virtue of Article 5 of Protocol 11 to the Treaty, Article 108 does not apply to the United Kingdom as long as the United Kingdom has not expressed its wish to participate in Monetary Union. On 16 October 1996, the United Kingdom notified the EU Council that it did not intend to move to Stage Three of EMU. As a consequence, the United Kingdom does not need to adapt its legislation with a view to Stage Three of Monetary Union.

On 6 May 1997 the Chancellor announced several reforms covering the United Kingdom's monetary policy framework. In summary, these include:

- Giving the Bank operational responsibility for setting short-term interest rates to achieve an inflation target set by the Government. The Bank will have a specific monetary policy objective of delivering price stability (as defined by the inflation target) and, without prejudice to this objective, supporting the Government's economic policy. If, in extreme economic circumstances, the national interest demands it, the Government will have the power (exercisable through subordinate legislation approved by Parliament) to give instructions to the Bank on interest rates for a limited period. The Bank will be required to account for its monetary policy actions and to explain how it intends to meet the inflation target in its quarterly Inflation Report.
- Appointing a second Deputy Governor (so that there is one Deputy to support the Governor on monetary stability and another to support the Governor on financial stability) and establishing a new committee of the Bank, the Monetary Policy committee, comprising the Governor, the Deputy Governors and six members. Operational decisions on interest rate policy will be made by a vote of the Monetary Policy Committee. The Treasury will have the right to be represented on the Committee in a non-voting capacity.
- Reconstituting the Court of Directors so as to comprise the Governor, the two Deputy Governors and 16 non-executive members. Non-executive members will be appointed for three-year terms. One of the tasks of the non-executive members will be to review the performance of the Monetary Policy Committee.
- Giving the Bank its own pool of foreign exchange reserves which it may use at its discretion in support of its monetary policy objective.
- Transferring the Bank's role as the Government's agent for debt management, the sale of gilts, oversight of the gilts market and cash management to the Treasury or a debt management agency to be established.

On 20 May 1997 the Chancellor announced proposals to transfer the Bank's banking supervisory responsibilities to the Securities and Investments Board, but also noting that the Bank would remain responsible for the overall stability of the financial system as a whole.

It is currently proposed that the changes covering the monetary policy framework and the transfer of banking supervision will be introduced in the current session of Parliament. The Monetary Policy Committee, although not yet formally constituted, is already functioning in practice.

Further legislation on the Bank would be required if the United Kingdom were to notify the EU Council that it intends to move to Stage Three of EMU.