

BANCO DE ESPAÑA
EL GOBERNADOR

Madrid, December 28, 1988.

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M. Jacques Delors
President
E.E. Commission,
Brussels

① enquirer
② att. JMx
L'Etat union des P

Cabinet du Président	
6 -01- 1989	
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J Delors
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Dear President Delors,

Please find attached herewith a brief note on the Bank's of Spain legal status that you requested as part of the on-going work of the Committee for Economic and Monetary Union. The note is accompanied by two annexes where relevant articles referred to in the note are transcribed in Spanish.

Although the previous material fully covers the points of interest to the Committee work, for the sake of completeness I am also enclosing full-copies of the two legal texts which regulate the Bank of Spain, namely two laws of 1962 and 1980, respectively.

Needless to say the two laws contain miscellaneous or outdated regulations, specially the law of 1962 which was later amended by the law of 1980. In those circumstances, their reading should be made easier by the note I mentioned in the first place.

Yours sincerely,

Antonio Ruiz

lettre n°

THE LEGAL STATUS OF THE BANK OF SPAIN

INTRODUCTION

The Bank of Spain is a legal entity under public law pursuant to

- (i) The Decree-Law 18/1962, of June 7, 1962, on the Nationalisation and Reorganisation of the Bank of Spain(a).
- (ii) The Law 30/1980, of June 21, 1980, on the Governing Bodies of the Bank of Spain(b).

While the Law of 1962 first establishes the Bank of Spain as a nationalised Central Bank, defines its legal status, and sets its functions, duties and organisations, the Law of 1980 brings to the former some amendments, redefining the Bank's functions and granting it more autonomy.

THE BANK OF SPAIN'S STATUTORY DUTIES

. Both article 2 of the Decree-Law of 1962(a) and article 3 of the Law of 1980(b) list a number of functions of the Bank of Spain which are characteristic of the Central Bank traditional role.

. Additionally, article 3 of the Law of 1980(b), entrusts the Bank of Spain with a specific role with regard to monetary policy.

1. THE BANK OF SPAIN AS CENTRAL BANK

. As already mentioned, the Bank of Spain is entrusted with the fullfilment of traditional Central Bank functions, namely,

- (i) Legal bank-note issuer
- (ii) State's banker

(a) See annex 1

(b) See annex 2

(iii) Banker's bank and lender of last resort

(iv) Holder and manager of foreign exchange reserves

(v) Supervisor of the banking system.

. All these Central Bank functions of the Bank of Spain are regulated in the way which is common to most European central banks, except for one specific arrangement with regard to the Bank of Spain's role as banker to the State.

. Under the particular arrangement of the Bank's operations with the Treasury set forth in articles 20 of the Law of 1962(a) and 101.4 of the Budgetary Principles Law of 1988, the Treasury is legally entitled to direct access to a credit line from the Bank of Spain on which the former may draw. Under the Budgetary Principles Law of 1988, the Treasury's outstanding borrowing from the Bank at the end of each fiscal year may reach up to 12% of the year's total budget outlays.

2. THE BANK OF SPAIN AND MONETARY POLICY

. With respect to monetary policy, the aforementioned article 3 of the Law of 1980(b), entrust the Bank of Spain with "carrying-out internal and external monetary (ie. exchange rate) policy in accordance with the general objectives set by the Government".

. Under the same aforementioned articles, the Bank is not however seen as a mere executor. Independence is granted to the Bank for the conduct of monetary policy, both internal and external (exchange rate policy). More specifically, article 3 of the Law of 1980 states: "... (monetary policy) shall be implemented (by the Bank of Spain) in the way deemed more appropriate (by the Bank) to meet the set objectives, and especially to safeguard the value of money".

GOVERNING BODIES OF THE BANK OF SPAIN AND APPOINTMENT PROCEDURES

. Independence and autonomy of the Bank are not issues explicitly addressed by the Law of 1980; they rather stem from the independence and

autonomy of the management of the Bank, a result itself of its appointment procedure and the fixity of its term in office.

. Article 4 of the Law of 1980, defines as Governing Bodies of the Bank of Spain

- (i) The Governor
- (ii) The Deputy Governor
- (iii) The General Council.

. The Governor (i) is empowered with the representation of the Bank of Spain vis a vis the Government, and the Parliament; (ii) acts as Chief Executive officer of the Bank and (iii) presides over the General Council (article 7 of the Law of 1980).

. The Governor is appointed by the Chief of State (The King) under a proposal of the Government. The Governor has a four-year fixed term appointment which is renewable (article 5 of the Law of 1980).

. The General Council is the highest body of the Bank of Spain entrusted with setting the policy of the Bank in the areas of the Bank's responsibilities (article 15 of the Law of 1980). The General Council is composed of the following members:

- (i) the Governor, acting as Chairman
- (ii) the Deputy Governor
- (iii) six Councillors elected by the Government
- (iv) Two ex-officio members from the Ministry of Economy and Finance: the Budget Director and the Treasury Director

(v) up to four General Managers of the Bank of Spain elected by the Governor.

. Elected Councillors are appointed by the Government for a fixed 3-year term which is also renewable (article 13 of the Law of 1980).

BUDGETARY INDEPENDENCE

d) Pursuant to article 2 of the Law of 1980(b), the Bank of Spain is also independent of the Government as to its budget. Apart from the power to create money, it acquires its funds from its operations. Net profit of the Bank is allocated to different types of reserves. The remainder accrues to the State as ownership income. Approval of the Bank's balance sheets and accounts corresponds to the Government as set forth in article 2 of the Law of 1980(b) and article 10 e) of the Law of 1962(a).

COOPERATION AND CONSULTATION WITH THE GOVERNMENT

. In compliance with an autonomy principle, article 3 of the Law of 1980(b) finally regulates the relationship between the Government and the Bank of Spain in its role of advisor and consultant in financial and monetary matters.

. The Bank must advise the Government about matters relating to financial and or monetary policy.

. It may be noted that the duty to advise the Government is not dependent on a request to that effect from the Government. Actually, the Bank of Spain has discharged itself from this advisory duty even when it knew or had reason to assume that the content or the timing of its advice would be unwelcome.