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Final

MINUTES
OF THE 249th MEETING OF THE COMMITTEE OF GOVERNORS
OF THE CENTRAL BANKS OF THE MEMBER STATES
OF THE EUROPEAN ECONOMIC COMMUNITY
HELD IN BASLE ON TUESDAY, 13th NOVEMBER 1990 AT 9.30 a.m.

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The Chairman asked the members of the Committee to pause for a brief moment to express their deep sense of loss for their friend and former colleague, Renaud de la Genière, who had died in October 1990. The Chairman said that everyone had come to admire and respect Renaud de la Genière's statesmanlike qualities both when he served as Governor of the Banque de France (1979 - 1984) during a challenging period for the French economy, and more recently in his new career in the private sector as Chairman of Compagnie Financière de Suez.

Introductory remarks

The Chairman suggested a change to the order of the items on the draft agenda. It was agreed that the discussion should focus on the draft Statute of the European System of Central Banks and that the remaining items would be dealt with if time permitted.

I. Approval of the minutes of the 248th meeting

The Committee approved the minutes of the 248th meeting.

II. Draft Statute of the European System of Central Banks (version dated 25th October 1990, see extract attached)

The Chairman congratulated the Committee of Alternates and the Secretariat on the excellent work that had been accomplished since September on the draft Statute. He said that if, on this occasion, the Committee of Governors was unable to reach full agreement on each Article, the various options and perspectives would have to be detailed in the Articles and accompanying texts; in this event, the final decisions would be left to the political authorities. The Committee of Governors was not a negotiating body.

Mr. Rey was asked to summarise the position reached and highlight those issues which remained the subject of disagreement or were undecided.

1. Statement by Mr. Rey

Mr. Rey said that there were three documents for consideration; the draft Statute (dated 25th October 1990), the draft Introductory Report and the draft Commentary (both dated 2nd November 1990).

He pointed out that there were two areas in which the draft Statute differed considerably from the version last reviewed by the

Committee in September. Firstly, the work undertaken by the Legal Experts and assessed by the Committee of Alternates had resulted in the addition of a number of items, for example the provisions grouped under Chapter VII (General provisions). These Articles had been included in order to preserve the autonomous nature of the System and to identify areas where general EEC Treaty provisions relating to Community institutions would not automatically apply. More importantly, however, the legal structure of the System had been modified to ensure that its decision-making bodies would benefit from the legal personality conferred on the European Central Bank (ECB). This modification affected neither the balance of power within the System nor the relationship between the central institution and the national central banks. Its purpose was to ensure that the responsibility for acts and decisions of the decision-making bodies would remain within the System. In this context, it was noted that one Alternate had expressed a reservation regarding the modification, which was felt to have presentational disadvantages.

Secondly, on the basis of the Committee's discussion in September, a more comprehensive set of provisions in Chapter VI (Financial arrangements) was proposed. These had been drafted in the light of a most constructive report produced by the Sub-Committee on Foreign Exchange Policy. Briefly, the provisions included the establishment of a consolidated balance sheet of participating national central banks together with the ECB - which would be used for both analytical and operational purposes; the endowment of the ECB with capital; the pooling of official reserves in the ECB; and a procedure for income allocation - which took account of the consequences of operating a single monetary and exchange policy in an integrated Community-wide market. Several of these provisions implied a weighted distribution of rights and obligations according to a single key which would also be used as a basis for weighting votes when the Council was required to discuss financial matters. The Alternates had not attempted to elaborate the key but had suggested some criteria; a mandate could be given for further work in this connection.

The Banking Supervisory Sub-Committee had presented a set of draft provisions on Chapter V (Prudential supervision) and these were included in Article 25. However, this Article remained controversial.

The text still contained a number of items in brackets in areas in which there was disagreement. If agreement was reached on the

controversial points, the dissenting views at present reflected in the comments would be deleted. It was assumed that the draft Statute would only contain the Articles and would be supplemented by a separate Commentary and Introductory Report. Should the Governors be unable to reach consensus on certain aspects of the Statute, it would be necessary to devise an acceptable format to accommodate the differing views or opinions.

The Commentary and Introductory Report had been drafted to accompany the Statute when it was transmitted to the Intergovernmental Conference. It was felt that the Governors would not wish to review these two documents in detail since they had already been considered by the Committee of Alternates; however, they might wish to comment on their format and general tone. The reports would of course be re-examined in the light of the Committee's discussion.

There were a number of issues which would have to be addressed with regard to the follow-up. In brief, and by way of example, there were the questions of translation, to whom the Statute should be addressed, publicity, the letter of transmittal, and possible further work to be undertaken by the Committee of Alternates and other Sub-Committees.

2. Examination of the draft Statute

It was agreed that the draft Statute would contain no comments and that any explanation or clarification regarding the text would be given in the accompanying Commentary and Introductory Report. The Chairman hoped that the Statute could be streamlined, if possible, without highlighting the individual preferences of national central banks, unless, of course, such differences were substantial.

Chapter I (Constitution of the System)

Article 1 (The System)

With regard to "participation", and following a suggestion from the Chairman, it was agreed that the Commentary would describe the issues and options in full. The issue of participation should remain open since it was one which should more appropriately be discussed by political authorities.

Mr. Leigh-Pemberton said that the Bank of England would withdraw its objection concerning the legal structure of the System.

Chapter II (Objectives and Tasks of the System)

Article 2 (Objectives)

Mr. Duisenberg questioned the need for Article 2.3, since some of the actions undertaken by central banks could always be regarded as inconsistent with free and competitive markets; for example, the setting of key official interest rates could be seen as an exogenous act which might not be in conformity with local market conditions. Mr. de Larosière agreed with this view and felt that the Governors should be careful not to limit the scope of the System. He said that the System should be evolutionary and designed to deal with unforeseen circumstances.

The Chairman supported the inclusion of Article 2.3 because it prevented the use of, say, direct controls. He felt that the System should not be able to set quantitative limits for controlling credit or suspend the use of market-oriented instruments. Mr. Doyle, Mr. Ciampi and Mr. Leigh-Pemberton also wished to retain Article 2.3.

Article 3 (Tasks)

a) Third indent: Mr. Rey explained that in some countries all or part of official foreign exchange reserves were held by the Treasury and not by the central bank; for example, in France, Italy and the United Kingdom. Removing the square brackets from the text would not pose any problem for France or Italy, but for the United Kingdom Mr. Leigh-Pemberton said that the Bank of England had no control over the reserves and that the Treasury was not prepared to cede all or part of them to a central institution. He was obliged, therefore, to register the British Government's point of view.

Mr. de Larosière said that he had conceptual difficulties in accepting the position of the United Kingdom; although many of the provisions described in the Statute were contrary to existing practices and legislation, the present arrangements had to be framed to meet the future needs of the System. Mr. Duisenberg felt that it was unacceptable to leave outside the System official foreign reserve assets which might be used for transactions which could run counter to the policies of the ECB. Following a brief discussion, the suggestion to delete the word "the" from the indent - thus removing the exclusivity - was not accepted but it was agreed that the word "the" should be left in square brackets. The words "of the

Community" were changed to "of the participating countries" and the square brackets around these words were deleted.

b) Fifth indent: Mr. Rey explained that there was a link between this provision and Articles 25 (Prudential supervision) and 18 (Open market and credit operations). With regard to Article 18, Mr. Rey mentioned that he had received a letter from the Chairman of the Monetary Policy Sub-Committee, in which Mr. Raymond stated that, in order not to prejudice the Council's future ability to fulfil its monetary policy obligations, it was necessary to leave open the capacity of the System to undertake operations without collateral; such a restriction would mean that the ECB would be able neither to lend to nor to borrow from banks or market operators without collateral. The Chairman said that this point also raised the question of whether the ECB was an institution for monetary policy or whether it had functions which went beyond this role. This clause also had a bearing on the sixth indent; here he felt that the ECB should participate in the formulation of banking supervision policy but the question of whether the ECB should be in charge of it remained unresolved. There should be no assumption whatsoever that the ECB or national central banks were prepared to be the guarantors of individual financial institutions. Mr. de Larosière said that the square brackets around the fifth indent should be removed since it referred to a fundamental role of a central bank. He agreed that the word "support" might indeed be too strong.

Following an exchange of views, the Committee agreed that the fifth indent should be deleted and the sixth indent redrafted on the following lines: "to participate as necessary in the formulation and execution of policies relating to prudential supervision and the stability of the financial system" (see also the amendment proposed following the discussion of Article 25 in which the word "co-ordination" was added after the word "formulation" in this indent).

Article 4 (Advisory functions)

a) Article 4.3: The Chairman commented that the exchange rate policies and operations of the System should never conflict with the priority of price stability. He therefore suggested deleting the sentence in square brackets and include an additional phrase to the effect that "the commitment to exchange rate policies should not be in contradiction to the task of maintaining price stability". He said that the System should not be obliged to intervene in the foreign exchange markets when such action would

be incompatible or interfere with the monetary policy objectives of the System.

Mr. de Larosière could not agree to deleting the section in square brackets. If it was the consensus of the members of the Committee to make such a change then he would have to insist that the Commentary indicated that the exchange rate regime included the points listed in the text. He could agree to the proposed amendment if a sentence was added to the effect that decisions of Member States on exchange rate relationships had to be consistent with the conduct of monetary policy. In order to accommodate the Chairman's position, Mr. de Larosière suggested adding a sentence to the Article which stated that the consultations aimed at reaching a consensus should be guided by the overriding principle of price stability. He felt that any further elaboration would be politically unacceptable.

Mr. Doyle considered that Article 4.3 was not strictly necessary since Article 4.1, in conjunction with the objectives of the System described in Article 2, adequately covered the concerns of the Chairman.

Following suggestions from Mr. Leigh-Pemberton and Mr. Tavares Moreira, the Committee agreed to include the words "consistent with the objective of price stability" after the word "consensus". It was agreed that the square bracket before the word "including" should be deleted, but following a request made by the Chairman it was repositioned before the word "or". The Chairman said that the Commentary should reflect the fact that one Governor was of the opinion that the exchange rate policy could not be decided without the consent of the ECB.

b) Article 4.4: Mr. Duisenberg's suggestion that the word "may" be changed to "shall" was not accepted since the majority of Members considered that it imposed too onerous a burden on the ECB.

Article 5 (Collection of Statistical Information)

The contents of this Article were agreed without amendment.

Article 6 (International co-operation)

Mr. Doyle observed that the two sentences of Article 6.1 were contradictory. It was agreed that the clause should be amended along the following lines: "In the field of international co-operation involving the tasks entrusted to the System, the ECB shall decide whether the System shall be represented by the ECB and/or the national central banks". In

Article 12 a reference would be made to the Council taking the decisions referred to in this Article.

Chapter III (Organisation of the System)

Article 7 (Independence)

The contents of this Article were agreed without amendment.

Article 8 (General principle)

The contents of this Article were agreed without amendment.

Article 9 (The European Central Bank)

The contents of this Article were agreed without amendment.

Article 10 (The Council)

Article 10.2: Mr. de Larosière felt that the sentence dealing with the quorum required further elaboration since it materially affected the decision-making capabilities of the ECB. After an exchange of views, the Committee adopted the following additional sentence: "If the quorum is not met, the President may convoke an extraordinary meeting at which decisions may be taken without regard to the quorum referred to above."

It was confirmed that the requirement "present in person" could be met by a teleconference; it was agreed that this aspect would be covered in the Rules of Procedure.

Following comments by Mr. Duisenberg, it was agreed that a sentence would be added to the effect that the Rules of Procedure would provide that a member of the Council who is prevented from voting for a prolonged period may appoint an alternate as a member of the Council.

Article 11 (The Executive Board)

a) Articles 11.2 and 11.3: The Committee agreed that the Vice President be appointed according to the same procedure as the President; the wording of Articles 11.2 and 11.3 was made consistent.

b) Article 11.4: At the suggestion of the Chairman, this Article was deleted because the age limit for the members of the Executive Board was considered to be inconsistent with the fact that the term of office of other Council Members would not be subject to the same restriction.

c) Article 11.5: Bearing in mind the principle of democratic accountability, it was agreed to formulate this provision as follows: "The terms and conditions of employment of the Members of the Executive Board,

in particular their salaries, pensions and other social security benefits, shall be laid down in contracts with the ECB and shall be fixed by the Council on the proposal of a Committee comprising three Members appointed by the Council and three Members appointed by the Council of the European Communities. The Members of the Executive Board shall not have the right to vote on matters referred to in this paragraph."

The idea of establishing a specific "supervisory board", as suggested in the Delors Report, was not favoured by the majority of members.

Article 12 (Responsibilities of the decision-making bodies)

The Chairman expressed concern about the use and meaning of the word "delegate" and preferred the formulation proposed by the German Alternate in the comments to Article 12.1, where the first sentence of the second paragraph would be replaced by "The Executive Board shall implement monetary policy in accordance with the decisions and guidelines laid down by the Council."

Mr. de Larosière strongly supported the present wording. He considered that the Council should always retain the right to withdraw the delegated powers of the Executive Board and to re-delegate them on different terms. He felt that this was an important political and constitutional issue. This view was supported by the majority of members. The suggestion that the word "delegate" be replaced by the word "transfer" was not accepted either. It was considered essential that the Council should be seen as the supreme governing body of the ECB and should retain the right to give to or take away from the Executive Board powers as it saw fit. Mr. Leigh-Pemberton was of the firm opinion that the members of the Executive Board should not enjoy rights or functions independent of those of the Council. The Chairman said that he would ask his legal experts about the precise implication of the word "delegate".

The first sentence of the original text after the word "Board" was amended to include the words "such operational powers as it thinks fit for". It was agreed to include both suggestions in square brackets and give an explanation in the Commentary.

The word "normally" was deleted from Article 12.3.

Article 13 (The President)

The contents of this Article were agreed without amendment.

Article 14 (National central banks)

a) Article 14.1: The Committee recognised that the entry into force would require changes not only in the central banks' statutes but also in other parts of national legislation. Accordingly, the words "national legislation including" were inserted after the word "that" in this Article.

b) Article 14.2: Mr. Rey explained that some of the Alternates favoured the second option. The Committee agreed upon the first option as it was felt that it would be more appropriate for such a decision to be referred to the Court of Justice. Following a suggestion by Mr. de Larosière, the words "by the Governor concerned or the Council" were added to the end of the text; the second bracketed option was deleted.

Mr. Ciampi felt that the phrase "cause resting in his person" was too weak and ambiguous and should be strengthened and made compatible with the term for members of the Executive Board. Following a brief discussion, however, it was decided not to amend the text.

c) Article 14.4: The Chairman considered that the alternative version contained in comment c), which stated: "To the extent possible, the national central banks shall execute the operations arising out of the System's tasks" was not a workable solution. It was again a question of the conceptual interpretation of the role and powers of the Council and Executive Board. Mr. de Larosière said that the Statute as drafted contained only a limited number of instances where the principle of subsidiarity was specifically apparent. Since this was a cornerstone of the Delors Report, he was convinced of the need to include the alternative version. This was a constitutional matter and, as such, should guide the decisions of the Council. It was essential not to create an organisation at the centre which would duplicate or assume the existing functions of the national central banks. Mr. de Larosière said that the principle of subsidiarity should be paramount and that it should not be left to the governing bodies of the System to determine what should or should not be delegated to national level; the national central banks should be the executive arms of the System. This view was fully supported by Mr. Leigh-Pemberton. Since no agreement was reached, the Committee decided to place the alternative version (which was amended by the words "full" and "in the judgement of the Council") alongside the original clause.

d) Article 14.5: With a view to simplifying and clarifying the text, the words "continue to" were deleted, the word "described" was changed to

"specified" and the final sentence was deleted. It was confirmed that a qualified majority in the Council would be required to prevent a national central bank from carrying out its existing activities.

Article 15 (Inter-institutional co-operation and reporting commitments)

a) Article 15.1: The word "ECOFIN" was deleted; a reference to ECOFIN would now be made in the Commentary.

b) Article 15.3: At the end of the first sentence the words "at a date to be established in the Rules of Procedure" were added. In the second sentence, the word "may" was changed to "shall", thus making it an obligation to present the annual report to the European Council as part of the process of democratic accountability.

c) Article 15.5: It was agreed that the consolidated financial statement of the System should be published each week to keep the public regularly informed.

Chapter IV (Monetary functions and operations of the System)

Article 16 (Notes and coins)

a) Article 16.1: Mr. Duisenberg pointed out that in the Netherlands current accounts with commercial banks were legal tender. As a result, it was agreed that the second sentence would be amended as follows: "The notes issued by the ECB and the national central banks shall be the only notes to have legal tender status".

b) Article 16.3: It was agreed that coins "shall" be put into circulation by the System and that the word "circulation" was synonymous with "distribution".

Article 17 (Accounts with the ECB and the national central banks)

The contents of this Article were agreed without amendment.

Article 18 (Open market and credit operations)

Mr. Ciampi suggested that it should be a decision of the Council acting by qualified majority as to whether credit operations should be supported by adequate collateral. Mr. Duisenberg said that he wished always to have such operations supported by collateral and this was the legal requirement in a number of Community countries. Mr. Jaans suggested that the Council should prescribe limits for such operations. Mr. de Larosière

said that this Article referred to both the lending and borrowing functions of the ECB. If collateral was required when the ECB was, for example, reducing the market's liquidity, it could jeopardise such operations; he was opposed to stipulating such a rigid principle in the Statute. The Chairman said that the aim was to prevent the ECB from lending without adequate collateral and thereby running a credit risk. He said that the requirement of a qualified majority would be an unworkable solution in an operational market environment and would be a misuse of the voting procedure.

It was agreed that the square brackets would remain and the phrase ",with lending being based on adequate collateral" be added to the end of the sentence.

Article 19 (Minimum reserves)

Mr. Chalikias suggested that the provision should mention remuneration. However, it was generally felt that such a statement would be potentially problematic. The clause did not prevent the ECB from paying interest. The words "in severe cases" were deleted.

Article 20 (Other instruments)

Mr. Doyle challenged the comment that the provision of Article 20 - in conjunction with Article 2.3 - would prevent the System from resorting to methods of direct control. He felt that it would be extremely unwise to restrict the arsenal of instruments available to the System as potential measures of control. He said that the System's operations should not be restricted at this stage as future requirements could not be predicted. Following a brief discussion, it was agreed to delete any reference in the Commentary.

It was agreed that a qualified majority would be two-thirds of the votes cast.

Article 21 (Operations with public entities)

The contents of this Article were agreed without amendment.

Article 22 (Clearing and payment systems)

The contents of this Article were agreed without amendment.

Article 23 (External operations)

The contents of this Article were agreed without amendment.

Article 24 (Other operations)

The contents of this Article were agreed without amendment.

Chapter V (Prudential supervision)

Article 25 (Supervisory tasks)

The Chairman said that since there was a difference in concept the whole Article should remain in square brackets and the decision as to whether this was a central banking function left to the political authorities. He felt that this issue was one to which the principle of subsidiarity was directly applicable. It was the Deutsche Bundesbank's view that the ECB should not be burdened with tasks which were not directly related to the monetary policy function.

Mr. de Larosière considered that the ECB should play a role in the co-ordination of prudential supervision of financial institutions in the national systems. There was no need for a vast supervisory organisation to be developed within the ECB. However, it would be entirely appropriate for the ECB to co-ordinate such supervisory functions.

It was subsequently agreed that the word "co-ordinate" would be inserted in the sixth indent of Article 3, as amended.

The Chairman said that the Deutsche Bundesbank had serious reservations about the contents of Articles 25.3 and 25.4, especially in the context of maintaining the stability of the banking and financial system and the delicate question of moral hazard. These two Articles could be misinterpreted as a lender of last resort function.

Mr. Duisenberg said that he would prefer to retain the entire Article as proposed; however, in order to reach a compromise Articles 25.3 and 25.4 could be deleted. Mr. Ciampi agreed with this proposal.

Mr. de Larosière said that Article 25.3 was not contentious as it simply related to the offering of advice. The Chairman pointed out that such a function could already be performed under the provision of Article 4 (Advisory functions).

Mr. Leigh-Pemberton said that he would be reluctant to delete Articles 25.3 and 25.4. He suggested that the position of Germany vis-à-vis the Bundesaufsichtsamt was adequately protected by the wording of the provisions relating to competence in Articles 25.2 and 25.4.

Mr. Ravasio said the EC had two main difficulties with the text as proposed. Firstly, it tended to assign to the ECB some regulatory and

legislative powers which were regarded as falling within the competence of the Commission, the Council and the Parliament. Secondly, with respect to the principle of subsidiarity, it appeared to challenge the existing function of national bodies and, in the Commission's view, the only function of the ECB should be the co-ordination of supervision which was necessary for the conduct and implementation of monetary policy.

It was agreed that the square brackets around Article 25.2 should be deleted and Articles 25.3 and 25.4 should be omitted.

Chapter VI (Financial provisions of the system)

Article 26 (Financial accounts)

The contents of this Article were agreed without amendment.

Article 27 (Auditing)

Mr. Rey said that it should be decided whether the Council or Community legislation would stipulate the number of auditors and their status.

Mr. Duisenberg was somewhat reluctant to subject the auditing function to a political process, but it was agreed that the text as drafted should remain unchanged as it advanced the concept of democratic accountability.

Article 28 (Voting on financial matters)

It was agreed that it would not be appropriate at this juncture to define either the key or the criteria - which might for instance be based on GNP and possibly population and financial criteria - or to establish the basis for the qualified majority. It was also agreed that the whole matter required further study and assessment.

Article 29 (Capital of the ECB)

Mr. Duisenberg said that he would favour introducing the concept that part of the capital should be subscribed in gold. It would lend weight to the ECB and credibility to the System. The Chairman said that this could be decided by the Council in due course and questioned whether it had to be specifically stated in the Statute.

Mr. Rey said that the purpose of the square brackets in Article 29.3 was to enable the Council to call only part of the total capital, which some felt to be necessary if the System was to be

established in Stage Two, before the ECB assumed full responsibility for executing monetary policy. It was, however, also true that the System had to have sufficient capital to ensure credibility. The Committee agreed that the square brackets should be removed in order to leave it to the Council to decide the extent of the capital required.

Mr. Doyle asked whether any provision had been made for the possible enlargement of the System by the accession of new Members, especially with respect to the financial consequences. Mr. de Larosière thought that this would have to be dealt with through an amendment to the Statute.

Article 30 (Transfer of foreign assets to the ECB)

Mr. Leigh-Pemberton said that while he did not feel it justifiable to ask for Articles 30 and 31 to be placed in square brackets, in view of the position of the British Government, the Treasury and the Bank of England, he nevertheless wished to introduce a general reservation concerning the transfer of foreign assets to the ECB. He asked that the qualifications described in the comments to the Articles be included as part of the specific reservations contained in the Commentary note.

In response to a question from the Chairman, Mr. Rey said that the Article had been drafted on the assumption that a fairly large amount of foreign convertible currencies would be subject to pooling and that these would be pooled by tranches. A significant amount of reserves was deemed appropriate in order to provide the ECB with the necessary degree of credibility; a figure of ecu 80-100 billion had been suggested. Community legislation would be required if the ECB wished to call in additional reserves above the limit specified in Article 30.1.

Mr. de Larosière said that the present wording of Article 30.1 excluded the possibility of pooling gold, and this posed a problem for the Banque de France. He considered that there should be an option available for national central banks to contribute gold to the reserve pool. Mr. Jaans observed that the inclusion of gold would make the issue of profit distribution extremely cumbersome. Mr. Doyle pointed out that reserves were pooled primarily for intervention purposes and therefore he could not see the value of including gold under the terms of Article 30. The Committee agreed to change the words "foreign convertible currencies" to "foreign reserve assets" and to refer to the point made by Mr. de Larosière in the Commentary.

Article 31 (Foreign reserve assets held by national central banks)

The contents of this Article were agreed without amendment.

Article 32 (Distribution of income of the System and allocation of net profits and losses of the ECB)

Mr. de Larosière said that income deriving from reserves which were retained by national central banks should be centralised and consolidated in the accounts of the System. He appreciated that this was a sensitive issue. If the intention was to create a Union and if a national central bank kept its reserves outside the System, this would be a source of revenue which belonged to the System as a whole.

Mr. Duisenberg said that the entire Article required further study and at this juncture the Committee was not in a position to debate the issue further. Mr. Doyle felt that Mr. Duisenberg's comment could also apply to the whole of Chapter VI; when the contents of Article 32 were agreed, then the Committee might have to reconsider the whole issue of the financial provisions.

Given the delicate nature of the Article, it was agreed that all the provisions should be deleted. The Commentary would contain a statement to the effect that Article 32 would still be under consideration by the Committee of Governors and that the other financial provisions contained in Chapter VI might subsequently be reviewed in the light of decisions taken in respect of Article 32.

Chapter VII (General provisions)

Article 33 (Regulatory power)

The contents of this Article were agreed without amendment.

Article 34 (Enforcement)

Although it was initially suggested that the Article might be deleted, it was generally felt that the System needed some powers to impose sanctions, which were regarded as a necessary measure to enforce regulations and decisions issued pursuant to Article 33. It was decided that the square brackets should be removed and the words "according to the Community legislation" omitted, since national authorities already enjoyed powers which went beyond those permitted by Community legislation.

Article 35 (Judicial control and related matters)

The words "reviewed and interpreted" were replaced by "open to review and interpretation".

Article 36 (Staff)

The contents of this Article were agreed without amendment.

Article 37 (Seat)

The contents of this Article were agreed without amendment.

Article 38 (Professional secrecy)

The contents of this Article were agreed without amendment.

Article 39 (Signatories)

It was agreed that this Article more appropriately belonged in the Rules of Procedure; it was therefore deleted from the draft Statute.

Article 40 (Privileges and immunities)

It was agreed to delete the square brackets.

Chapter VIII (Transitional provisions for the System)

It was decided that the contents of this section should be deleted and that a reference to the transitional arrangements would be made in the Commentary and the Introductory Report.

Chapter IX (Amendment and Complementary provisions for the System)

Mr. Rey said that Article 41 provided for a simplified amendment procedure which would be used principally to amend Articles which were largely of a technical nature. It was felt unwarranted to involve national parliaments in such a process. It should be decided whether a positive or negative list of Articles should be compiled: a positive list would state those Articles which would be subject to the simplified amendment procedure; a negative list would detail those Articles which were not subject to such a procedure. Following the advice of the Alternates, the Committee agreed to draw up a negative list of Articles. The list would be compiled after the outcome of the Intergovernmental Conference on Political Union was known.

3. The Introductory Report and Commentary

Mr. Leigh-Pemberton asked for the following statement to be included in the Introductory Report in the Section "Principal considerations underlying the Statute":

"The Governor of the Bank of England records that the UK authorities do not accept the case for a single currency and monetary policy. He has nevertheless participated fully in the discussions of the Governors' Committee on this draft Statute. He recognises that it is the desire of the other Governors to define the responsibilities and functions of a possible future European System of Central Banks, before the Intergovernmental Conferences are convened in December 1990."

Mr. de Larosière said that the draft Introductory Report should be updated by the Secretariat in the light of the Committee's discussions. The Report should not introduce any new ideas or concepts, it should simply record the main issues discussed by the Committee of Governors. Furthermore, if the Introductory Report contained any references to points of debate or controversy that were not covered in the Commentary, they should be deleted. There should be nothing in the Introductory Report which had not been agreed. The Report should be neutral and low-key.

A number of specific drafting amendments and general observations were suggested by other members of the Committee.

Mr. Jaans said that mention should be made in the list of provisions to be introduced into the Treaty of the need for convertibility of the single currency in Stage Three and that no restrictions would exist at the border of the Community vis-à-vis third countries.

It was agreed that Mr. Rey in collaboration with the Secretariat would redraft the Introductory Report and Commentary and that the members of the Committee would comment on the texts by written procedure.

4. Publication

Bearing in mind that the document was not yet finalised, and that it was a document prepared for the Intergovernmental Conference, it was agreed that the draft Statute would not, at this stage, be published by the Committee of Governors or by any of its individual Members.

It was agreed that Mr. Pöhl, in his capacity as Chairman of the Committee of Governors, would, after transmitting the text to the President

of ECOFIN, explain to the media in broad terms the main elements and points of consideration of the draft Statute largely along the lines of the Introductory Report.

5. Translation

It was agreed that equal treatment should be given to all the languages of the Community, while precedence would be given to the English text on a provisional basis. All language versions should be mutually consistent. It was agreed that Mr. Rey would consult the Secretariat in order to make the necessary arrangements.

6. The Intergovernmental Conference

It was agreed that the draft Statute should be sent to the President of the ECOFIN Council and to all the Ministers of Finance and the President of the EC Commission. The Chairman reminded members of the Committee of the provision of Article 102a of the EEC Treaty that the Committee of Governors has to be consulted on institutional matters in the monetary area. Mr. Doyle suggested that the Committee of Governors should be represented at the Conference by the Secretariat acting as observer.

Mr. Christophersen said that, although it was still uncertain how the Intergovernmental Conference would be organised, it was likely that a number of working parties would be established to deal with the various key issues under discussion. He suggested that the Commentary and any other technical papers be submitted directly to the working parties.

III. Adoption of the Committee's report to the EEC Ministers of Finance on developments on the foreign exchange markets of the nineteen countries participating in the concertation procedure during September and October and the first few days of November 1990

The Committee adopted this report, which would be sent to the EEC Ministers of Finance in the usual way.

IV. Exchange rate arrangements with third countries

The Committee took note of the Norwegian authorities' desire to extend bilateral co-operation between Norges Bank and the Community central banks. In order to prepare the discussion on this topic at the Committee's forthcoming meeting, the Foreign Exchange Policy Sub-Committee was given the following mandate:

"Following the recent exchange rate policy measures taken by the Norwegian authorities and their desire to extend bilateral co-operation between Norges Bank and the Community central banks, the Committee of Governors requests the Foreign Exchange Policy Sub-Committee to study questions relating to such co-operation. The Sub-Committee shall, in particular, propose the terms and conditions of a currency swap agreement which might be used as a model for the bilateral contracts between the Community central banks and Norges Bank. The proposed agreement should also be suitable for arrangements with central banks of other countries which in the future may wish to establish closer relationships with Community countries in the field of exchange rate policy.

The Sub-Committee shall submit its report and proposals to the Committee of Governors in time for its December 1990 meeting."

V. Date and place of next meeting

The Committee's next regular meeting would be held in Basle on Tuesday, 11th December 1990 at 9.30 am.

249th MEETING OF THE COMMITTEE OF GOVERNORS

13TH NOVEMBER 1990

Those present were:

Chairman of the Committee of Governors	Mr. Pöhl
Banque Nationale de Belgique	Mr. Verplaetse Mr. Rey Mr. Michielsen
Danmarks Nationalbank	Mr. Hoffmeyer Mrs. Andersen
Deutsche Bundesbank	Mr. Tietmeyer Mr. Rieke
Bank of Greece	Mr. Chalikias Mr. Papademos Mr. Karamouzis
Banco de España	Mr. Rubio Mr. Linde Mr. Durán
Banque de France	Mr. de Larosière Mr. Lagayette Mr. Cappanera
Central Bank of Ireland	Mr. Doyle Mr. Coffey Mr. Reynolds
Banca d'Italia	Mr. Ciampi Mr. Dini Mr. Santini
Institut Monétaire Luxembourgeois	Mr. Jaans
Nederlandsche Bank	Mr. Duisenberg Mr. Szász
Banco de Portugal	Mr. Tavares Moreira Mr. Borges Mr. Amorim
Bank of England	Mr. Leigh-Pemberton Mr. Crockett Mr. Foot
Commission of the European Communities	Mr. Christopherson Mr. Pons
Chairman of the Monetary Policy Sub-Committee	Mr. Raymond
Chairman of the Foreign Exchange Sub-Committee	Mr. Dalgaard
Secretariat of the Committee of Governors	Mr. Baer Mr. Scheller Mr. Giles

25th October 1990

DRAFT STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS
AND OF
THE EUROPEAN CENTRAL BANK

ARTICLES AND COMMENTS

CHAPTER I - CONSTITUTION OF THE SYSTEM

Article 1 - The System

Pursuant to Article ... of the Treaty, a system, consisting of a central institution to be known as "The European Central Bank" (hereinafter "the ECB") and of the participating central banks of the Members States of the Community (hereinafter "national central banks"), is hereby established and shall be known as the "European System of Central Banks" (hereinafter the "System").

CHAPTER II - OBJECTIVES AND TASKS OF THE SYSTEM

Article 2 - Objectives

2.1. The primary objective of the System shall be to maintain price stability.

2.2. Without prejudice to the objective of price stability, the System shall support the general economic policy of the Community.

2.3. The System shall act consistently with free and competitive markets.

Article 3 - Tasks

The basic tasks to be carried out through the System shall be:

- to formulate and implement the monetary policy of the Community;

- to conduct foreign exchange operations in accordance with the prevailing exchange rate regime of the Community as referred to in Article 4.3;
- to hold and manage [the] official foreign reserves [of the Community];
- to ensure the smooth operation of payment systems;
- [- to support the stability of the financial system];
- to participate as necessary in the formulation and execution of policies relating to prudential supervision.

Article 4 - Advisory functions

4.1. The ECB shall be consulted regarding any draft Community legislation and any envisaged international agreements in the monetary, prudential, banking or financial field. In accordance with Community legislation, the ECB shall be consulted by national authorities regarding any draft legislation within its field of competence.

4.2. The ECB may give opinions to any Community or national authority on matters within its field of competence.

4.3. The ECB shall be consulted with a view to reaching consensus prior to any decision relating to the exchange rate regime of the Community, [including, in particular, the adoption, abandonment or change in central rates or exchange rate policies] vis-à-vis third currencies.

4.4. The ECB may publish its opinions.

Article 5 - Collection of statistical information

5.1. In order to undertake the tasks of the System, the ECB, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes, it shall co-operate with the competent authorities of the Community, the Member States or third countries and with international organisations.

5.2. The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.

5.3. The ECB shall promote the harmonisation, where necessary, of the conditions governing the collection, compilation and distribution of

statistics in the areas within its field of competence. Community legislation shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6 - International co-operation

6.1. In the field of international co-operation involving the tasks entrusted to the System, the System shall be represented by the ECB or the national central banks. The ECB shall decide the methods of this representation.

6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

CHAPTER III - ORGANISATION OF THE SYSTEM

Article 7 - Independence

In exercising the powers and performing the tasks and duties conferred upon them by the Treaty and this Statute, neither the ECB nor a national central bank nor any member of their decision-making bodies may seek or take any instructions from Community institutions, governments of Member States or any other body. The Community and each Member State undertake to respect this principle and not to seek to influence the ECB, the national central banks and the members of their decision-making bodies in the performance of their tasks.

Article 8 - General Principle

The System shall be governed by the decision-making bodies of the ECB.

Article 9 - The European Central Bank

9.1. The ECB is hereby established and shall have legal personality.

9.2. In each of the Member States the ECB shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.3. The property of the ECB shall be exempt from all forms of requisition or expropriation.

Disputes between the ECB, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice.

9.4. The function of the ECB shall be to ensure that the tasks conferred upon the System under Article 3 shall be implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Article 14.

9.5. The decision-making bodies of the ECB shall be the Council and the Executive Board.

Article 10 - The Council

10.1. The Council shall comprise the President, the Vice President, the other members of the Executive Board and the Governors of the national central banks.

10.2. Subject to Article 10.3, only members of the Council present in person shall have the right to vote. Each member has one vote. Save as otherwise provided for in the Statute, the Council shall act by a simple majority. In the event of a tie, the President shall have the casting vote. In order for the Council to vote, there shall be a quorum of two-thirds of the members.

10.3. Weighted voting shall apply in accordance with the provisions of Article 28. If a Governor is unable to be present, he may nominate an Alternate to cast his weighted vote.

10.4. The proceedings of the meetings shall be confidential. The Council may decide to make the outcome of its deliberations public.

10.5. The Council shall meet at least ten times a year.

Article 11 - The Executive Board

11.1. The Executive Board shall comprise the President, the Vice-President, and 4 other members.

The members of the Executive Board shall be selected among persons of recognised standing and professional experience in monetary or banking matters.

The members shall perform their duties on a full-time basis. No member shall, without approval of the Council, receive a salary or other form of compensation from any source other than the ECB or occupy any other office or employment, whether remunerated or not, except as a nominee of the ECB.

11.2. The President shall be appointed for a period of 8 years by the European Council, after the Council has given its opinion, and after consultation with the European Parliament.

11.3. The Vice-President and the other members of the Executive Board shall be appointed, for a period of 8 years, by the European Council after consultation with the Council.

11.4. With the exception of the President, no member of the Executive Board shall hold office beyond the age of 65.

11.5. The terms of employment of the members of the Executive Board (see Comment b).

11.6. If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Executive Board, compulsorily retire him.

11.7. All members of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided in the Statute, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements will be specified in the Rules of Procedure.

11.8. The Executive Board shall administer the ECB.

Article 12 - Responsibilities of the governing bodies

12.1. The Council shall take the decisions necessary to ensure the performance of tasks entrusted to the System under the present Statute. The Council shall formulate the monetary policy of the Community including, as appropriate, decisions relating to intermediate monetary objectives, key

interest rates and the supply of reserves in the System, and shall establish the necessary guidelines for their implementation.

[The Council shall delegate to the Executive Board the necessary operational powers for implementing the monetary policy decisions and guidelines. The Council may delegate other powers as it may specify to the Executive Board.]

12.2. When implementing monetary policy in accordance with the decisions and guidelines established by the Council, the Executive Board shall give the necessary instructions to national central banks.

The Executive Board shall have responsibility for the preparation of Council meetings.

12.3. The advisory functions referred to in Article 4 shall normally be exercised by the Council.

12.4. The Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

Article 13 - The President

13.1. The President, or, in his absence, the Vice President shall chair the Council and the Executive Board of the ECB.

13.2. The President or his nominee shall represent the ECB externally.

Article 14 - National central banks

14.1. The Member States shall ensure that the statutes of the national central banks are compatible with this Statute and the Treaty.

14.2. The statutes of the national central banks shall in particular provide that the Governor of a national central bank is appointed by the national authorities of the Member State after consultation with the Council. The term of office shall be no less than 5 years. The Governor may be relieved from office only for serious cause resting in his person. A decision to this effect [may be referred to the Court of Justice] [shall be submitted for approval to the European Council].

14.3. Subject to Article 14.5, the national central banks are an integral part of the System and shall act in accordance with the guidelines and instructions of the ECB.

The Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

[14.4. The Executive Board shall, to the extent possible and appropriate, make use of the national central banks in the execution of the operations arising out of the System's tasks.]

14.5. National central banks may continue to perform on their responsibility and liability functions other than those described in this Statute unless the Council finds, by a qualified majority, that these interfere with the objectives and tasks of the System. Such functions shall not be regarded as being part of the System. The national central banks may assume new functions subject to the prior approval of the Council, acting by qualified majority.

14.6. For the purpose of this Statute, the Institut Monétaire Luxembourgeois shall be regarded as a national central bank.

Article 15 - Inter-institutional co-operation and reporting commitments

15.1. The President of the Council of the European Communities (ECOFIN) and a Member of the Commission may attend meetings of the Council. They may take part in the Council's deliberations but not in the voting.

15.2. The President of the ECB shall be invited to participate in meetings of the European Council and Council of the European Communities when matters relating to the System's objectives and tasks are discussed.

15.3. The ECB shall draw up an annual report on the activities of the System and on the monetary policy of both the previous and current year. The President may present the annual report to the European Council, the Council of the European Communities and the European Parliament. The President and members of the Executive Board may attend meetings of the European Parliament's specialised committees, if circumstances justify.

15.4. The ECB shall draw up reports on the activities of the System at regular intervals. These reports and statements are to be published and to be made available to interested parties free of charge.

15.5. A consolidated financial statement of the System shall be published each [month] [week].

CHAPTER IV - MONETARY FUNCTIONS AND OPERATIONS OF THE SYSTEM

Article 16 - Notes and coins

16.1. The Council shall have the exclusive right to authorise the issue of notes within the Community. The notes issued by the ECB and the national central banks shall be the only legal tender for any amount.

16.2. Provisions concerning the legal tender status of Community currencies shall be regulated according to the Community legislation. The Council shall make the necessary arrangements for the exchange of notes denominated in Community currencies by the national central banks at par value.

16.3. The volume and denomination of coins issued within the Community shall be subject to approval of the Council. The coins [shall] [may] be put into circulation by the System.

Article 17 - Accounts with the ECB and the national central banks

In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets including book-entry securities as collateral.

Article 18 - Open market and credit operations

18.1. In order to achieve the objectives of the System and to carry out its tasks, the ECB and the national central banks shall be entitled:

- to operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement claims and marketable instruments, whether in Community or in foreign currencies, as well as precious metals;
- to conduct credit operations with credit institutions and other market participants [on the basis of adequate collateral].

18.2. The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks including the announcement of conditions under which they stand ready to enter into such transactions.

Article 19 - Minimum reserves

The ECB shall be entitled to require credit institutions to hold minimum reserves on accounts with the ECB and national central banks. Regulations concerning the calculation and determination of the required minimum reserves shall be established by the Council. In cases of non-compliance the ECB shall be entitled to levy penalty interest and, in severe cases, to take steps to pursue the matter in the supervisory sphere.

Article 20 - Other instruments

The Council may decide [unanimously] [by qualified majority] upon the use of such other operational methods of monetary control as it sees fit.

Article 21 - Operations with public entities

21.1. The ECB and national central banks shall not grant overdrafts or any other type of credit facility to Community institutions, governments or other public entities of Member States or purchase debt instruments directly from them.

21.2. The ECB and national central banks may act as fiscal agents for Community institutions, governments or other public entities of Member States.

21.3. The function of fiscal agent shall comprise all banking transactions except those referred to in paragraph 1 of this Article.

21.4. Community institutions, governments and other public entities of Member States for which the ECB and national central banks act as fiscal agents shall issue debt instruments either through the System or in consultation with it.

21.5. The provisions under this Article shall not apply to publicly-owned credit institutions.

Article 22 - Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may issue regulations to ensure efficient and sound clearing and payment systems inside the Community and with third countries.

Article 23 - External Operations

The ECB and the national central banks shall be entitled:

- to establish relations with central banks and financial institutions in third countries and, where appropriate, with international and supranational organisations;
- to acquire and sell spot and forward all types of foreign exchange assets and precious metals. The term "foreign exchange asset" shall include securities and all other assets in currency of any country or units of account and in whatever form held;
- to hold and manage the assets defined above;
- to conduct all types of banking transactions in relation to third countries and international and supranational organisations, including borrowing and lending operations.

Article 24 - Other operations

In addition to operations arising from its tasks, the ECB and the national central banks may enter into operations that serve their administrative purposes or for their staff.

CHAPTER V - PRUDENTIAL SUPERVISION

Article 25 - Supervisory Tasks

25.1. The ECB shall be entitled to offer advice and to be consulted on the interpretation and implementation of Community legislation relating to the prudential supervision of credit and other financial institutions and financial markets.

25.2. [The ECB may formulate, interpret and implement policies relating to the prudential supervision of credit and other financial institutions for which it is designated as competent supervisory authority.]

25.3. [The ECB shall be entitled to offer advice to Community bodies and national authorities on measures which it considers desirable for the purpose of maintaining the stability of the banking and financial systems.]

25.4. [The ECB may itself determine policies and take measures within its competence necessary for the purpose of maintaining the stability of the banking and financial systems.]

CHAPTER VI - FINANCIAL PROVISIONS OF THE SYSTEM

Article 26 - Financial Accounts

26.1. The financial year of the ECB and the national central banks shall begin on the first day of January and end on the last day of December.

26.2. The annual accounts of the ECB shall be drawn up by the Executive Board in accordance with the principles established by the Council. The accounts shall be approved by the Council and shall thereafter be published.

26.3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the System, comprising the assets and liabilities of the ECB and those assets and liabilities of the national central banks that fall within the System.

26.4. For the application of this Article, the Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

Article 27 - Auditing

27.1. The accounts of the ECB and the national central banks shall be audited by independent external auditors recommended by the Council and approved by the Council of the European Communities. The auditors shall have full power to examine all books and accounts of the ECB and national central banks, and to be fully informed about their transactions.

27.2. The provisions of Articles 203 and 206a of the Treaty shall not apply to the ECB or to the national central banks.

Article 28 - Voting on financial matters

28.1. For any decisions to be taken under Articles 29 to 32, the votes in the Council shall be weighted according to the key attached to the Statute. A decision by a qualified majority shall be deemed to be approved if it carries [...] votes on the total of [...].

28.2. The key referred to in paragraph 1 shall be reviewed every [5] [10] years and may be modified in accordance with the simplified amendment procedure laid down in Chapter IX. The review shall take into consideration changes in the criteria on which the key was established.

Article 29 - Capital of the ECB

29.1. The capital of the ECB shall, upon its establishment, be ecu [x] million. The capital may be increased from time to time by such amounts as may be decided by the Council acting by qualified majority.

29.2. The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key attached to this Statute.

29.3. The Council, acting by qualified majority, shall determine [the extent to which and] the form in which capital shall be paid-up.

29.4. The shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached other than in accordance with a decision taken by the Council.

29.5. If the key attached to this Statute is modified in accordance with Article 28.2, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the revised key. The Council shall determine the terms and conditions of such transfers.

Article 30 - Transfer of foreign assets to the ECB

30.1. Without prejudice to the provisions of Article 29, the ECB shall be endowed by the national central banks with foreign convertible currencies, other than Community currencies and ecus, up to an amount equivalent to ecu (x). The Council shall decide about the proportion to be called up by the ECB at the entry into force of this Statute and the amounts called up at later dates.

30.2. The contributions of each national central bank shall be fixed in accordance with the key attached to this Statute.

30.3. Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Council shall determine the denomination and remuneration of such claims.

30.4. Further calls of reserve assets beyond the limit set in Article 30.1 may be effected by the ECB in accordance with Community legislation.

30.5. The ECB shall be authorised to accept the pooling of IMF reserve positions and SDRs.

30.6. The Council shall determine all other conditions required for the application of this Article.

Article 31 - Foreign reserves held by national central banks

31.1. The national central banks shall be allowed to perform transactions in fulfilment of the obligations towards international organisations in accordance with Article 23.

31.2. All other operations in foreign reserves remaining with the national central banks after the transfers referred to in Article 30 shall be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Community.

31.3. The Council shall issue guidelines with a view to facilitating such operations.

Article 32 - Distribution of income of the System and allocation of net profits and losses of the ECB

32.1. The Council shall establish uniform rules and procedures for determining the income of national central banks and the ECB resulting from their operations under this Statute. Such income shall be pooled to form the consolidated income account of the System. Income shall be defined as net interest income plus capital gains minus capital losses plus non-interest income.

32.2. [The following items are excluded from the consolidated income account of the System:

- income deriving from the use of gold;
- income deriving from the holding and management of exchange reserves, as long as they are not pooled in accordance with Article 30;
- other income as defined by the Council.]

32.3. The share of the ECB in the System's total income as defined in Articles 32.1 [and 32.2] shall be fixed by the Council taking into account the need for the ECB to cover its operating expenditure and to build up a general reserve.

32.4. The income of the System, excluding the share allocated to the ECB in accordance with Article 32.3, shall be distributed to the national central banks according to the key attached to the Statute.

32.5. Following transfers to the general reserve the remaining net profits of the ECB shall be distributed to its shareholders.

32.6. In the event of a loss incurred by the ECB, the shortfall may be offset against the own funds of the ECB and, if necessary, following a decision by the Council, against contributions from national central banks, according to the key attached to the Statute.

CHAPTER VII - GENERAL PROVISIONS

Article 33 - Regulatory power

33.1. The Council and the Executive Board shall, in accordance with their respective responsibilities, make regulations and take decisions, necessary for the performance of tasks entrusted to the System under the present Statute.

33.2. To be drafted.

Article 34 - Enforcement

[According to the Community legislation, the ECB and national central banks shall be entitled to impose sanctions on market participants and other economic agents which fail to comply with their obligations vis-à-vis (guidelines, instructions) regulations and decisions.]

Article 35 - Judicial control and related matters

35.1. The acts of the ECB shall be reviewed and interpreted by the Court of Justice under the conditions laid down for the legal control of the acts of Community institutions and in case of failure the ECB may institute proceedings in the same conditions as Community institutions. Articles 173 to 176, 178, 183 and 184 of the EEC Treaty shall be applicable accordingly.

35.2. The ECB shall be subject to the liability regime as provided for in Article 215 of the EEC Treaty.

35.3. The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law.

35.4. The decision of the ECB to bring action before the Court of Justice shall be taken by the Council.

35.5. The national central banks shall be liable according to their respective national laws.

Article 36 - Staff

36.1. The Council of the ECB, on a proposal from the Executive Board, shall lay down the Staff Regulations of officials and the Conditions of Employment of other servants of the ECB.

The Court of Justice shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment.

36.2. The regulations shall include the conditions of recruitment and promotion, the salaries, pensions and other social security benefits, the limitation of external activities, the Unions' rights and their relations with the Executive Board, the exchange of staff members from the national central banks.

Article 37 - Seat

The seat of the ECB shall be established at (....).

Article 38 - Professional secrecy

38.1. Members of the governing bodies, officials and other servants of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

38.2. Persons having access to data covered by specific secrecy Community legislation shall be subject to such legislation.

Article 39 - Signatories

The ECB shall be legally committed vis-à-vis third parties either by the signature of the President or by the signatures of two members of the Executive Board or two members of the staff of the ECB who have been duly authorised by the President to sign on behalf of the ECB.

Article 40 - Privileges and immunities

The Protocol on the privileges and immunities of the European Community shall apply to the ECB [the members of its decision-making bodies, its officials and other servants] to the extent necessary for the performance of the ECB's tasks.

CHAPTER VIII - TRANSITIONAL PROVISIONS FOR THE SYSTEM

Comments

The decisions to be taken concerning the contents of Stage Two and the transition from Stage Two to Stage Three will determine the transitional provisions relating to the establishment of the System and its functions. These transitional provisions may have to accommodate a number of hypotheses:

- Progressive establishment of Economic and Monetary Union

If the transfer of functions entrusted to the System is progressive, the Statute must accommodate this and stipulate that measures will be taken to ensure that the tasks are carried out.

- Participation in the Union

If the Union enters into force on different dates in the different Member States, the implications of these successive accessions should be accommodated by spelling out the restricted rights and obligations of those who join the Union at a later date (see comments on Article 1).

- Gradual adaptation of income distribution

In order to avoid major redistributive income effects, a transitional provision should lay down a procedure for a gradual adaptation of a distribution of income based on pre-Stage Three

income shares to a distribution based on the key attached to the Statute. Alternatively, a clause might be introduced to enable the Council to devise such a scheme.

- Start-up procedures

Start-up procedures should define, in particular, the role of the Committee of Governors of the EC Member States of the Community in the appointment of the first President of the System and the first members of the Executive Board. Mandates of unequal length should be considered to ensure successive rather than collective renewals of the membership of the Executive Board in the first period.

CHAPTER IX - AMENDMENT AND COMPLEMENTARY PROVISIONS FOR THE SYSTEM

Article 41 - Simplified amendment procedure

To be drafted.

Article 42- Complementary legislation

To be drafted.