

Committee of Governors of the
Central Banks of the Member States
of the European Economic Community

Committee of Alternates

DRAFT STATUTE OF THE EUROPEAN MONETARY INSTITUTE

22nd OCTOBER 1991

Article 1 - Constitution and name

1.1 The European Monetary Institute established pursuant to Article 109D of the Treaty (hereinafter called "the EMI") shall perform its functions and carry out its activities in accordance with the provisions of the Treaty and of this Statute.

1.2 The members of the EMI shall be the central banks of the Member States of the Community (hereinafter referred to as "the national central banks"). For the purpose of this Statute, the Institut Monétaire Luxembourgeois shall be regarded as a national central bank.

1.3 Pursuant to Article 109D of the Treaty, the Committee of Governors shall be dissolved and the European Monetary Co-operation Fund (hereinafter called "the EMCF") shall cease to exist. All assets and liabilities of the EMCF shall pass on automatically and in their entirety to the EMI.

Article 2 - Objectives

The EMI shall contribute to the realisation of the conditions necessary for the move to the final stage of Economic and Monetary Union (called hereafter "EMU"), in particular by:

- strengthening the co-ordination of monetary policies with a view to ensuring price stability;
- making the technical preparations required for the conduct of a single monetary policy in the final stage and for the creation of the single currency;
- overseeing the development of the ecu.

Article 3 - General principles

3.1 The EMI shall carry out the tasks and functions conferred upon it by the Treaty and this Statute without prejudice to the responsibility of the national authorities for the conduct of the monetary policy within their respective Member States.

3.2 The EMI shall act consistently with the objectives and principles stated in Article 2 of the Statute of the European System of Central Banks (hereinafter called "the ESCB") and the European Central Bank (hereinafter called "the ECB").

Article 4 - Primary tasks

4.1 The EMI shall strengthen the co-operation between the national central banks and shall promote the co-ordination of the monetary policies of the national central banks with the aim of achieving price stability. It shall hold regular consultations concerning the course of monetary policies and the use of monetary policy instruments. The EMI shall normally be consulted before national monetary authorities take decisions which may alter the course of monetary policy as established in the context of the common framework for ex ante co-ordination.

4.2 The EMI shall oversee the functioning of the European Monetary System (called hereafter "the EMS"). In this context, it shall perform the functions referred to in Articles 6.1 to 6.3.

4.3 The EMI shall prepare the technical conditions necessary for the ESCB to perform its functions in the final stage of EMU, respecting the principles of free and competitive markets. It shall in particular:

- prepare the instruments and the procedures necessary for carrying out the single monetary policy in the final stage of EMU;
- prepare the rules for standardising the accounting and reporting of operations to be undertaken by the national central banks in the framework of the ESCB;
- promote the harmonisation, where necessary, of the conditions governing the collection, compilation and distribution of statistics in the areas within its field of competence;
- promote the efficiency of cross-border payments consistent with the requirements of the final stage;
- oversee the technical preparation of ecu bank-notes and be consulted on the preparation of the issue of ecu coins.

4.4 [The EMI shall oversee the development of the ecu and of the ecu clearing system.] [The EMI shall oversee the development of the ecu. It shall, in particular: promote the development of the ecu; and ensure the smooth functioning of the ecu clearing system.]

4.5 The EMI shall hold consultations on issues falling within the competence of the central banks and affecting the stability of credit institutions and financial markets.

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Comments

The two alternatives of Article 4.4 reflect divergent views about the involvement of the EMI in the ecu market. The following wording was proposed as a compromise solution:

4.4 The EMI shall oversee and facilitate the development of the ecu, including the smooth functioning of the ecu clearing system.

Article 5 - Advisory functions

5.1 The EMI may formulate opinions on the overall orientation of monetary policy and exchange rate policy as well as the respective measures introduced in a Member State. It may also formulate opinions when consulted in accordance with Article 4.1. The EMI may express opinions to governments and the Council on policies which might affect the internal and external monetary situation in the Community and, in particular, the functioning of the EMS.

5.2 The EMI may make recommendations to the national central banks concerning the conduct of their monetary policy.

5.3 In accordance with Article 109D (4) of the Treaty, the EMI shall be consulted regarding any proposed Community act in the monetary, prudential or financial field; it shall also be consulted by national authorities regarding draft legislative provisions within its field of competence, in particular with regard to Article 4.3.

5.4 The EMI shall be entitled to offer advice to and to be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Community legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

5.5 The EMI may publish its opinions and its recommendations.

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Comments

1. While, as confirmed in Article 14.2, opinions and recommendations have no binding force in a legal sense, they differ in their connotation. A recommendation may be more specific than an opinion, and need not be in response to an action or proposal by the party to whom the recommendation is addressed. Opinions provide an assessment of issues, whereas recommendations present an invitation to take some action.

2. Article 5.3: The German Alternate expressed a reservation regarding the consultative role for the EMI in the prudential and financial fields.

3. Whereas under Article 5.3 the EMI would be consulted in the context of the adoption of legislation, under Article 5.4 (which mirrors Article 21.1 of the Statute of the ECB) the EMI would play an advisory role in the application of such legislation.

Article 6 - Operational and technical functions

6.1 The EMI shall:

- provide for the multilateralisation of positions resulting from interventions by the national central banks in Community currencies and the multilateralisation of intra-Community settlements;
- administer the very short-term financing mechanism provided for by the Agreement between the central banks of the Community of 13th March 1979 and the short-term monetary support mechanism provided for in the Agreement between the central banks of the Community of 9th February 1970, as amended;
- perform the functions referred to in Article 11 of Council Regulation (EEC) No. 1969/88 of 24th June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments.

6.2 The EMI may receive monetary reserves from the national central banks and issue ecus against such assets for the purpose of implementing the EMS agreements. These ecus may be used by the EMI and the national central banks as a means of settlement and for transactions between them and the EMI. The EMI shall take the necessary administrative measures for the implementation of this paragraph.

6.3 The EMI may grant to the monetary authorities of third countries and to international monetary institutions the status of "Other Holders" of ecus and fix the terms and conditions under which such ecus may be acquired, held and used by Other Holders.

6.4 Subject to a decision by the Council of the EMI, the EMI may hold and manage foreign exchange reserves as an agent for and at the request of national central banks.

Article 7 - Other tasks

7.1 Once a year the EMI shall transmit a report to the Council on the state of the technical preparations for the final stage of EMU. This report shall cover in particular the adaptation of monetary policy instruments and the preparation of the procedures necessary for carrying out the single monetary policy in the final stage as well as the statutory requirements to be fulfilled for central banks to become an integral part of the ESCB.

7.2 The EMI may perform additional tasks conferred upon it by the Council, acting unanimously on a proposal from the Commission and following consultation with the EMI and in co-operation with the European Parliament. The Council decision shall be in accordance with Articles 2 and 3.

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Comments

Article 7.2 uses a similar wording as the present Article 109D of the Treaty, which also calls for unanimity. However, some Alternates expressed concern about the veto right given to individual Member States.

The representative of the Commission suggested that one of the additional tasks to be conferred upon the EMI under Article 7.2 might be the function of fiscal agent for the Community. If decisions under Article 7.2 were subject to unanimity and not to qualified majority, this task should be mentioned separately in Article 6.

Article 8 - Independence

The members of the Council of the EMI who are the representatives of their institutions shall act, with respect to their activities, according to their own responsibilities. In exercising the powers and performing the tasks and duties conferred upon them by the Treaty and this Statute, neither the EMI nor any member of its Council may seek or take any instructions from Community institutions or bodies or governments of Member States. The Community institutions and bodies as well as the governments of the Member States undertake to respect this principle and not to seek to influence the members of the Council of the EMI in the performance of their tasks.

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Comments

The Dutch Alternate feels that it would be useful to make reference to a political commitment to strengthen the autonomy of national central banks in Stage Two. This commitment could be mentioned by way of a recital in the following form:

"The high contracting parties,

Desiring to lay down the Statute of the European Monetary Institute provided for in Article 109D,

Undertaking to enable their national central banks to ensure price stability as the primary objective of monetary policy,

Have agreed upon the following provisions, which shall be annexed to this Treaty."

Article 9 - Administration

ALTERNATIVE A

- 9.1 The EMI shall be directed and managed by the Council of the EMI.
- 9.2 The Council of the EMI shall comprise the Governors of the national central banks. If a Governor is unable to attend a meeting, he/she may nominate another representative of his/her institution.
- 9.3 The Council of the EMI shall appoint a President and a Vice President from among its members for a period of three years. Should the President or Vice President not complete his/her term, the Council shall choose a new President or Vice President, as the case may be, for the remainder of the term.
- 9.4 The President, or, in his/her absence the Vice President, shall chair the meetings of the Council of the EMI and, without prejudice to Article 21, present the views of the EMI externally.

ALTERNATIVE B

- 9.1 The EMI shall be directed and managed by the Council of the the EMI.
- 9.2 The Council of the EMI shall comprise the President, Vice President, and the Governors of the national central banks. If a Governor is unable to attend a meeting he/she may nominate another representative of his/her institution.
- 9.3 The President and the Vice President shall be appointed for a period of three years, by the European Council after consultation with the European Parliament Council and, as the case may be, the Committee of Governors or the Council of the EMI. The President and the Vice President shall be selected among persons of recognised standing and professional experience in monetary or banking matters.
- 9.4 The President and the Vice President shall perform their duties on a full-time basis. Without approval of the Board they shall not occupy any other office or employment,

whether remunerated or not, except as a nominee of the EMI.

9.5 The President shall prepare and chair the meetings of the Council of the EMI, present, without prejudice to Article 21, the views of the EMI externally, be responsible for the day-to-day management of the EMI, and be the Chief of Staff of the EMI. In the absence of the President, his/her duties shall be performed by the Vice President.

9.6 The terms and conditions of employment of the President and the Vice President shall be the subject of contracts with the EMI and shall be fixed by the Council of the EMI on the proposal of a Committee comprising three members appointed by the Council of the EMI and three members appointed by the Council. [The President and the Vice President shall not have the right to vote on matters referred to in this paragraph.]

9.7 If the President or the Vice President no longer fulfils the conditions required for the performance of his/her

duties or if he/she has been guilty of serious misconduct, the Court of Justice may, on application by the Council of the EMI, compulsorily retire him/her.

9.5 The Rules of Procedure of the EMI shall be adopted by the Council of the EMI.

9.8 The Rules of Procedure of the EMI shall be adopted by the Council of the EMI.

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Comments

1. The brackets in Article 9.6 of Alternative B indicate that this provision would not be needed if the President and Vice President were not permitted to vote in the Council of the EMI (see also Comments to Article 10.2).

2. Article 9.4 in Alternative A and Article 9.5 in Alternative B: While accepting the President should present the views of the EMI externally, this would not preclude other Governors on the EMI Council from expressing their views publicly.

3. A significant majority of Alternates favours a compromise according to which Alternative A would be combined with the appointment of a "Managing Director". However, views differ with respect to:

- the appointment procedure, i.e. whether the Managing Director should be appointed by the EMI Council or the Council of Ministers upon proposal from the EMI Council;
- the position of the Managing Director in the EMI Council, i.e. whether he/she would preside over the EMI Council or simply have a seat in the EMI Council; either way the Managing Director would have no vote.

These views can be expressed by the following alternative draft Articles:

ALTERNATIVE I

Managing Director not presiding
over the Council

- 9.1 The EMI shall be directed and managed by the Council of the EMI.
- 9.2 The Council of the EMI shall comprise the Governors of the national central banks and a Managing Director. If a Governor is unable to attend a meeting, he/she may nominate another representative of his/her institution. The Managing Director shall not have the right to vote.
- 9.3 The Council of the EMI shall appoint a President and a Vice President from among its members for a period of three years. Should the President or Vice President not complete his/her term, the Council shall choose a new President or Vice President, as the case may be, for the remainder of the term. The Managing Director shall be appointed for a period of three years, [by the Council of the EMI] [by the Council upon a proposal from, as the case may be, the Committee of Governors or the Council of the EMI]. The Managing Director shall be selected among persons of recognised standing and

ALTERNATIVE II

Managing Director presiding over
the Council

- 9.1 The EMI shall be directed and managed by the Council of the the EMI.
- 9.2 The Council of the EMI shall comprise the Governors of the national central banks and a Managing Director. If a Governor is unable to attend a meeting, he/she may nominate another representative of his/her institution. The Managing Director shall not have the right to vote.
- 9.3 The Managing Director shall be appointed for a period of three years, [by the Council of the EMI] [by the Council upon a proposal from, as the case may be, the Committee of Governors or the Council of the EMI]. The Managing Director shall be selected among persons of recognised standing and professional experience in monetary or banking matters.

professional experience in monetary or banking matters.

9.4 The President, or, in his/her absence the Vice President, shall chair the meetings of the Council of the EMI and, without prejudice to Article 21, present the views of the EMI externally. The Managing Director shall be responsible for the day-to-day management of the EMI, shall prepare the meetings of the Council of the EMI and shall be the Chief of Staff of the EMI.

9.5 The Managing Director perform his/her duties on a full-time basis. Without approval of the Board, he/she shall not occupy any other office or employment, whether remunerated or not, except as a nominee of the EMI.

9.6 The terms and conditions of employment of the Managing Director, shall be the subject of contracts with the EMI and shall be fixed by the Council of the EMI on the proposal of a Committee comprising three members appointed by the Council of the EMI and three members appointed by the Council.

9.4 The Managing Director shall prepare and chair the meetings of the Council of the EMI, present, without prejudice to Article 21, the views of the EMI externally, be responsible for the day-to-day management of the EMI, and be the Chief of Staff of the EMI.

9.5 The Managing Director shall shall perform his/her duties on a full-time basis. Without approval of the Board, he/she shall not occupy any other office or employment, whether remunerated or not, except as a nominee of the EMI.

9.6 The terms and conditions of employment of the Managing Director, shall be the subject of contracts with the EMI and shall be fixed by the Council of the EMI on the proposal of a Committee comprising three members appointed by the Council of the EMI and three members appointed by the Council.

9.7 If the Managing Director no longer fulfils the conditions required for the performance of his/her duties or if he/she has been guilty of serious misconduct, the Court of Justice may, on application by the Council of the EMI, compulsorily retire him/her.

9.8 The Rules of Procedure of the EMI shall be adopted by the Council of the EMI.

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4. Without the compromise mentioned above a majority of Alternates would lean towards Alternative A.

Article 10 - Meetings of the Council of the EMI and voting procedures

10.1 The Council of the EMI shall meet at least ten times a year. The proceedings of the meeting shall be confidential. The Council of the EMI may decide to make the outcome of its deliberations public.

10.2 [Subject to Article 10.5] [each member of the Council of the EMI or his/her nominee] [each Governor or his/her nominee] shall have one vote.

10.3 Save as otherwise provided for in the present Statute, the Council of the EMI shall act by simple majority [of its members] [of the Governors].

10.4 Decisions to be taken in the context of Articles 4.3, [5.5,] 6.2, 6.3 and [6.4] shall require unanimity among the [Governors] [members of the Council of the EMI]. The adoption of recommendations in the context of Article 5.2 and of guidelines in the context of Article 4.3 shall require a qualified majority of two-thirds of the [Governors] [members of the Council of the EMI].

[10.5 For any decision to be taken under Articles 15 and 16, the votes in the Council of the EMI shall be weighted according to the national central banks' shares in the subscribed capital of the EMI. A decision by a qualified majority shall be approved if the votes cast in favour represent at least [70%] of the subscribed capital of the EMI.]

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Comments

1. Articles 10.2, 10.3 and 10.4 provide for the following possible voting arrangements:

- whenever the text between brackets refers to "members" of the Council this would be consistent with an EMI Council composed solely of Governors or with an EMI Council which would include outside appointees with the right to vote.
- whenever the text between brackets refers to "Governors" this would be the correct wording for a situation in which the EMI Council included outside appointees without voting power.

2. Article 10.4: the French Alternate expressed a reservation about the requirement for unanimous voting with respect to a decision taken under Article 5.5 and 6.4 (publication of opinions and recommendations and management of foreign exchange reserves).

3. The definition of guidelines referred to in Article 10.4 is given in Article 14.4.

4. Article 10.5 would be necessary if the EMI had its own capital base, i.e. under Alternative B of Article 15.

Article 11 - Inter-institutional co-operation and reporting requirements

11.1 A member of the Commission may take part in the proceedings of the Council of the EMI but not in the voting.

11.2 The President of the EMI shall be invited to participate in meetings of the Council whenever it deals with matters relating to the tasks and functions of the EMI.

11.3 At a date to be established in the Rules of Procedure, the EMI shall prepare an annual report on its activities and on the monetary and financial conditions in the Community. The annual report, together with the annual accounts of the EMI, shall be transmitted to the European Council, the Council, the European Parliament and the Commission. The President of the EMI may be invited to appear before the European Parliament on this occasion and also before the competent Committees of the European Parliament where the circumstances so justify.

11.4 Reports published by the EMI shall be made available to interested parties free of charge.

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Comments

Articles 11.1 and 11.2 mirror the present arrangements with respect to the Committee of Governors.

Articles 11.3 and 11.4 mirror Articles 15.3 and 15.6 of the draft Statute of the ESCB.

Article 12 - Currency denomination

The operations of the EMI shall be expressed in ecu.

Article 13 - Legal capacity

13.1 Pursuant to Article 109 D of the Treaty, the EMI is endowed with legal personality.

13.2 In each of the Member States the EMI shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular acquire or dispose of movable or immovable property, recruit personnel and may be a party to legal proceedings.

13.3 Disputes between the EMI, on the one hand, and its creditors, debtors or any other person, on the other, shall fall within the jurisdiction of the competent national courts, save where jurisdiction has been conferred upon the Court of Justice.

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Comments

Article 13 mirrors Article 9 of the draft Statute of the ESCB.

Article 14 - Legal acts

14.1 In the performance of its tasks, the EMI shall deliver opinions and, under the conditions laid down in this Statute, make recommendations, take decisions and adopt guidelines which shall be addressed to the national central banks.

14.2 Opinions and recommendations shall have no binding force.

14.3 In the context of Article 4.3, the Council of the EMI may adopt guidelines laying down the methods for the implementation of the technical conditions necessary for the ESCB to perform its functions in the final stage of EMU. These guidelines shall have not binding force; they shall be submitted for decision to the ECB.

14.4 Without prejudice to Article 3.1, a decision shall be binding in its entirety upon those to whom it is addressed. Articles 190 and 191 of the Treaty shall apply in all respects to decisions taken by the EMI.

Article 15 - Financial resources (Alternative A)

Expenditure incurred in the performance of the tasks and functions of the EMI shall be covered by contributions to be made by national central banks in proportion to the quotas of their respective countries in the medium-term financial assistance mechanism.

Article 15 - Financial resources (Alternative B)

15.1 The amount of capital of the EMI shall be decided by the Council of the EMI, acting by a qualified majority, to ensure that it is sufficient to generate the income deemed necessary to cover the expenditure incurred in the performance of the tasks and functions of the EMI.

15.2 The capital of the EMI shall be subscribed by the national central banks in proportion to the quotas of their respective countries in the medium-term financial assistance mechanism.

15.3 The Council of the EMI, acting by a qualified majority, shall determine the form in which capital shall be paid up.

15.4 The shares of the national central banks in the subscribed capital of the EMI may not be transferred, pledged or attached.

15.5 The Council of the EMI shall take all other measures necessary for the application of this Article.

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Comments

There was broad agreement among the Alternates that the financial provisions were not a matter of fundamental importance for the performance of the tasks and functions of the EMI, although some Alternates emphasised that the endowment with capital had a symbolic value and was an important feature distinguishing the EMI from the Committee of Governors.

The Chairman proposes, as a compromise, to combine the two Alternatives. The general rule would be a financing by way of contributions but, in addition, the Council of the EMI acting by qualified majority could call up capital subscriptions.

Article 16 - Annual accounts and auditing

16.1 The financial year shall be the calendar year.

16.2 The Council of the EMI shall adopt an annual budget before the beginning of each financial year.

16.3 The annual accounts shall be drawn up in accordance with the principles established by the Council of the EMI. The annual accounts shall be approved by the Council of the EMI.

16.4 The annual accounts shall be audited by an independent external auditor appointed by the Council of the EMI. The provisions of Articles 203 and 206a of the Treaty shall not apply to the EMI.

[16.5 A surplus of the EMI shall be transferred in the following order:

- (a) an amount to be determined by the Council of the EMI shall be transferred to the general reserve fund of the EMI;
- (b) the remaining surplus shall be distributed to the shareholders of the EMI in proportion to their subscribed shares.

16.6 In the event of a loss incurred by the EMI, the shortfall shall be offset against the reserve fund of the EMI. A remaining shortfall shall be made good, by contributions from the national central banks, in proportion to their subscribed shares.]

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Comments

Articles 16.5 and 16.6 would only be applicable if the EMI had its own capital base.

Article 17 - Staff

17.1 The Council of the EMI shall lay down the conditions of employment of the staff of the EMI.

17.2 Disputes between the EMI and its staff may be brought before the Court of First Instance provided for in Article 168A of the Treaty which shall have jurisdiction.

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Comments

This Article is similar to Article 36 of the draft Statute of the ESCB.

Article 18 - Judicial control and related matters

18.1 The acts of the EMI shall be open to review and interpretation by the Court of Justice under the conditions laid down for the legal control of the acts of Community institutions. The EMI may institute proceedings under the same conditions as Community institutions. Articles 173 to 178, 183 and 184 of the Treaty shall be applicable accordingly.

18.2 In the case of non-contractual liability, the provisions of Article 215 of the Treaty shall apply to damage or loss caused by the EMI or by its staff in the performance of their duties.

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Comments

Article 18 mirrors the corresponding paragraphs of Article 35 of the draft Statute of the ESCB. Given the transitory nature of the EMI and the limited obligations of national central banks in Stage Two, it is not felt necessary to make provision for a situation in which a national central bank fails to fulfil its obligations under the Statute of the EMI.

Article 19 - Professional secrecy

19.1 Members of the Council of the EMI and the staff of the EMI shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

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

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Comments

Article 19 mirrors Article 38 of the draft Statute of the ESCB.

Article 20 - Privileges and immunities

The Protocol on the privileges and immunities of the European Community shall apply to the EMI, the members of its Council and its staff to the extent necessary for the performance of the tasks of the EMI.

Article 21 - Signatories

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

Article 22 - Liquidation of the EMI

22.1 Pursuant to Article 109G of the Treaty, the EMI shall go into liquidation on the establishment of the ECB. The liquidation shall be terminated by the beginning of the final stage of EMU.

22.2 The mechanism for the creation of ecus against gold and US dollars as provided for by Article 17 of the EMS Agreement shall be unwound by the first day of Stage Three of EMU in accordance with the provisions of Article 20 of the said Agreement.

22.3 All claims and liabilities arising from the very short-term financing mechanism and the short-term monetary support mechanism, as provided for by the Agreements referred to in Article 6.1, shall be settled by the first day of Stage Three of EMU.

22.4 All remaining assets of the EMI shall be disposed of and all remaining liabilities of the EMI shall be settled.

22.5 The proceeds of the liquidation in accordance with Article 22.4 shall be distributed to the national central banks in proportion to [the quotas of their respective countries in the medium-term financial assistance mechanism.

22.6 The Council of the EMI shall take the measures necessary for the application of Articles 22.4 and 22.5.

22.7 Upon the establishment of the ECB, the President and the Vice President of the EMI shall relinquish their office, [without prejudice to their contractual rights.]

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Comments

1. Articles 22.2 to 22.6 deal with the rules and procedures for the liquidation of the EMI which has to be terminated before the beginning of the final stage of EMU. The unwinding of the mechanism for the creation of ecus (Article 22.2) is necessary to enable the national central banks whose countries have entered into Stage Three of EMU, to fulfil their obligations under Article 30 of the draft Statute of the ESCB. The unwinding of outstanding transactions under the very short-term financing and the short-term monetary support mechanisms does not preclude a

refinancing under the revised EMS Agreement in Stage Three (see transitional provisions of the draft Statute of the ESCB).

2. The wording between brackets in Article 22.7 would be necessary only if the President and Vice President were outside appointees.

CHAPTER IX - TRANSITIONAL PROVISIONSArticle 43 - Transitional provisions for the Executive Board

43.1 By way of derogation from Articles 11.2 and 11.3, the Governors of the central banks of Member States without derogations or exemption status, instead of the Council of the ECB, shall be consulted when, in accordance with Article 109G of the Treaty, the first President, the first Vice President and the first members of the Executive Board are appointed.

43.2 In accordance with Article 109G of the Treaty, the number of members of the Executive Board may be smaller than that foreseen in Article 11.1 if there are Member States with derogations or exemption status, but in no circumstance may it be less than four.

43.3 The terms of office of the initial members of the Executive Board shall be staggered. The term of office of the President shall be eight years and no member of the Executive Board shall be appointed for less than five years.

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Comments

1. Article 43.1: in accordance with Article 11.2 of the draft Statute, the Council of the ECB will have to be consulted prior to the appointment of the members of the Executive Board of the ECB. This provision cannot be met when the first members of the Executive Board are appointed. Article 43.1, therefore, specifies that the Governors of the central banks of Member States without derogations or exemption status would have to be consulted instead of the Council of the ECB at the start of the ESCB.

2. Article 43.2 mirrors in essence Article 109G(9) of the EEC Treaty, as drafted in document UEM/70/1/91. It tries to preserve a "numerical balance" between Governors and Executive Board members on the Council of the ECB in the event that some Member States enjoy derogations or exemptions.

3. Article 43.3 provides for the possibility of setting terms of office of unequal length for the initial members of the Executive Board. If all the members of the Executive Board were appointed for a period of eight

years, Article 11.2 would imply that the entire Executive Board would have to be appointed every eight years, unless members of the Executive Board relinquished their office before the end of their term.

Article 44 - Establishment of the System and of the ECB

Upon the appointment of the members of the Executive Board, the System and the ECB are established. The decision-making bodies of the ECB shall take all measures and decisions necessary to enable the System to perform its tasks and functions and to exercise its powers as from the first day of Stage Three of the EMU.

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Comments

Article 44 mirrors in essence Article 109G(4) of the Treaty (as drafted in document UEM/70/1/91). The wording makes it clear that the System will only exercise full monetary powers as from the start of Stage Three, i.e. after the irrevocable fixing of exchange rates, but in the meantime, the decision-making bodies of the ECB will be entitled to take all measures and decisions necessary to enable the System to perform its tasks and functions as from the first day of Stage Three.

Article 45 - Derogation to Article 32

45.1 If, following the entry into Stage Three, the Council of the ECB, acting by qualified majority, decides that the application of Article 32 results in significant changes in national central banks' relative income positions, the amount of income to be allocated pursuant to Article 32 shall be reduced by a uniform percentage which shall not exceed [60][30]% in the first financial year after the entry into Stage Three of EMU and which shall decrease by at least [20][10] percentage points in each subsequent financial year.

45.2 Article 45.1 shall be applicable for not more than three full financial years after the entry into Stage Three of EMU.

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Comments

1. The proposed enabling clause would permit the exemption - at the beginning of Stage Three - of a part of the monetary income from being allocated according to Article 32, in order to smooth out possible abrupt changes in income allocation following the implementation of the Statute and the application of Article 32 thereof.

The activation of the transitional reserve scheme would be subject to a decision taken by the Council, acting by qualified majority. The Council's margin for manoeuvre, however, would be limited in three respects. First, the activation would be conditioned by the Council's perception of significant changes in relative income positions of the national central banks resulting from the application of Article 32 (changes in income due to other reasons would be no justification for implementing the transitional arrangement). Second, upper limits would ensure that only part of the monetary income would be exempted from the allocation scheme. Third, the transitional arrangement would be limited to a period of three years after the entry into force of the Statute.

2. The wording of the transitional provision was supported by a large majority of the Committee of Governors at its meeting of April 1991. However, the Belgian Alternate re-emphasised the reservation of his central bank on the wording of Article 45. He considered that the derogation to Article 32 should apply automatically unless the Council of the ECB decided to the contrary. The Italian Alternate favoured a transitory period of five years.

Article 46 - Exchange of bank-notes in Community currencies

Following the irrevocable fixing of exchange rates, the Council of the ECB shall take the necessary measures to ensure that bank-notes denominated in currencies with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

* * *

Comments

Article 46 mirrors the text of Article 16.2 which had been removed by the IGC, given its transitional nature.

If at the start of Stage Three some Member States will have derogations or an exemption status, it will be necessary to deal with this situation in the transitional provisions. The following Alternatives are presented:

A (on pages 6-10) establishes a new deliberating body - the Assembly - in which all Community central banks participate.

B (on pages 11-14) differentiates between central banks and Member States with and without derogations or exemption status on the basis of their separate monetary policy responsibilities.

C (on pages 15-17) presents an attempt by the Chairman of the Alternates for a compromise between Alternatives A and B.

ALTERNATIVE A - ARTICLES 47, 48 AND 48a

Article 47 - Applicability of the Statute

47.1 If, pursuant to Article 109G of the Treaty, Member States have been granted derogations or exemption status (called hereafter "Member States with derogations or exemption status"), this Statute shall apply within the limits and under the conditions specified hereafter for as long as such derogations or exemptions remain in force.

47.2 [Save for Article 21.1] and Articles 48 and 49, the provisions of this Statute shall be solely applicable to, and within the territory of, the Member States without derogations or exemption status, as well as to their respective central banks and national authorities. [Save for Article 21.1,] the functions and powers conferred under their respective national legislation upon the central banks of Member States with derogations or exemption status shall not be restricted or extended by virtue of this Statute.

47.3 The central banks of Member States without derogations or exemption status shall be the sole subscribers to the capital of the ECB in accordance with Article 28.

47.4 Articles 41 and 42 shall be applied in accordance with Article 109G(5) of the Treaty.

47.5 The Governors of the central banks of Member States with derogations or exemption status shall be members of the Assembly referred to in Article 48.

* * *

Comments

1. Article 47.2 makes clear that the Statute is only applicable to the Member States without derogations or an exemption status and to their respective central banks and authorities. Accordingly, the central banks of Member States with derogations or an exemption status would remain free to exercise their functions and powers in accordance with their respective national legislation, except for the commitment to "no monetary financing" - Article 21.1 - which all Community central banks are expected to respect

already in Stage Two. In addition, by stating that the Statute would not be applied in the territory of Member States with derogations or an exemption status, it is made clear that the bank-notes issued by the ECB and/or the central banks of Member States without derogations and exemption status would not be legal tender in the rest of the Community. Likewise, the powers conferred upon the ECB by virtue of Articles 19 and 22 would not extend to the territories of Member States with derogations or exemption status.

The brackets around "Save for Article 21.1" refer to a reservation by the UK Alternate relating to the definition of no monetary financing and the application of this provision before the start of Stage Three.

2. Article 47.3 supplements Article 47.2 by stating that the capital of the ECB should be held solely by the central banks of Member States without derogations or exemption status. This would imply that the other central banks would not be involved in the financial aspects of the ECB and would not participate in decisions for which weighted voting is prescribed by Article 10.3. Article 48a hereafter deals with the procedure to be followed when a Member State's derogations or an exemption status of a Member State are abolished and its central bank subscribes to the capital of the ECB.

3. Article 47.4 refers to Article 109G (5) of the Treaty which, as currently drafted by the Dutch Presidency, states that decisions referred to in Articles 41 and 42 of the Statute would be taken by the Member States without derogations or exemption status.

Article 48 - Relationship with central banks of Member States with
derogations or exemption status

48.1 Pursuant to Article 109 G (10) of the Treaty an "Assembly" shall be established. It shall be composed of the members of the Council of the ECB and the Governors of the central banks of Member States with derogations or exemption status.

48.2 The Assembly shall, in particular:

- strengthen the co-operation between the ECB and the central banks of Member States with derogations or exemption status;
- promote the co-ordination of the monetary policies within the Community with the aim of ensuring price stability;
- oversee the functioning of the European Monetary System in accordance with Article 49;
- make the necessary preparations for the irrevocable fixing of the exchange rates of the currencies of Member States with derogations against the currencies, or the single currency, of the Member States without derogations.

48.3 The meetings of the Assembly shall be chaired by a President chosen from among its members.

48.4 The Assembly shall adopt its own rules of procedure.

48.5 The Assembly shall be abolished when all derogations or exemptions have been abrogated by the Council in accordance with Article 109G (2) and (7).

* * *

Comments

Article 48 defines the relationship between the ECB and the central banks of Member States with derogations or exemption status. The institutional framework for co-operation will be the Assembly for which certain basic features have to be laid down in the Statute.

Article 48a - Deferred subscription to the capital of the ECB

48a.1 A central bank of a Member State whose derogations or exemption status is abrogated by the Council in accordance with Article 109G (2) and (7), shall subscribe to the capital of the ECB in accordance with the key referred to in Article 29 and shall pay up its subscribed share to the same extent as the other subscribers to the capital of the ECB.

48a.2 In addition to the payment to be made in accordance with Article 48a.1, the central bank concerned shall contribute to the reserves of the ECB, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31st December of the year prior to the subscription of its share in the capital of the ECB. The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the ECB, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already subscribed by the other central banks.

48a.3 The Council of the ECB shall take the necessary decisions for the application of this Article.

* * *

Comments

If Alternative A were to be adopted, it would be necessary to add a special Article governing the capital payment of latecomers.

Article 48a.1 makes it clear that a central bank shall subscribe to the capital of the ECB following the abolition of derogations or an exemption status of its respective Member State. It also ensures that this capital share is paid up to the same extent as that of the other subscribers to the capital of the ECB. The Council of the ECB will, in accordance with Article 48a.3, have to determine the form of such capital subscriptions.

Article 48a.2 prevents the latecomers from gaining an unjustified advantage from their deferred subscription to the capital of the ECB. It therefore obliges them to contribute to the reserves of the ECB which have been accumulated prior to their subscription to the capital of the ECB. The wording of Article 48a.2 in essence mirrors the provisions in

the Treaties of accession of Greece, Spain and Portugal to the EIB (see for instance Article 8 of Protocol No. 1 to the Treaty of accession of Greece, OJ L291 of 19th November 1979).

ALTERNATIVE B - ARTICLES 47 AND 48

Article 47 - Applicability of the Statute

47.1 If, pursuant to Article 109G of the Treaty, Member States have been granted derogations or exemption status (called hereafter "Member States with derogations or exemption status"), this Statute shall apply within the limits and under the conditions specified hereafter for as long as such derogations or exemptions remain in force.

47.2 By way of derogation from Article 10.2, the Governors of the central banks of Member States with derogations or exemption status shall have no right to vote on matters referred to in Articles 4.3, 12.1, second sentence and 26.2. In Articles 2.2, 3, 4.3 and 12.1 "Community" shall read as "the group of Member States without derogations or exemption status".

47.3 The provisions of this Statute as well as measures and decisions taken by the Council of the ECB and the Executive Board shall be without prejudice to the right of Member States with derogations or exemption status to formulate and implement their own monetary policy. Articles 16 and 19 shall not apply to the territories of the Member States with derogations or exemption status.

47.4 The consolidated financial statements of the System referred to in Article 15.5 and the consolidated balance sheet of the System referred to in Article 26.3 shall be drawn up for the ECB and the central banks of Member States without derogations or exemption status.

47.5 Articles 26.3, 30, 31, 32 and 33 shall not be applicable to the central banks of Member States with derogations or exemption status. In Articles 30, 32 and 33 the term "subscribed shares" shall read "shares subscribed by the central banks of Member States without derogations or an exemption status".

47.6 Shares in the capital of the ECB subscribed by central banks of Member States with derogations or exemption status shall be remunerated at a rate of interest which shall be determined by the Council of the ECB acting by qualified majority in accordance with the procedure described in Article 10.3.

47.7 For decisions to be taken under Articles 30, 32 and 33, votes in the Council of the ECB shall be weighted, by way of derogation from

Article 10.3, according to the shares in the capital of the ECB subscribed by the central banks of Member States without derogations or an exemption status. In this case, a decision by a qualified majority shall be approved if the votes cast in favour represent at least [...]% of the capital of the ECB subscribed by the central banks of the Member States without derogations or exemption status.

* * *

Comments

Alternative B starts from the assumption that the Statute is in principle applicable to the central banks of Member States with derogations or exemption status. However, it differentiates between central banks of Member States with and without derogations or exemption status on the basis of their different monetary policy responsibilities. On the one hand, Article 47.2 excludes the central banks of Member States with derogations or exemption status from decisions to be taken on the centralised monetary and exchange rate policy (Articles 4.3 and 12.1, second sentence). On the other hand, Article 47.3 ensures that the right of these central banks to formulate their own monetary policy should not be restricted and Article 47.5 makes inapplicable all those provisions which would be incompatible with the conduct of a separate exchange rate policy, namely Articles 30 and 31. Furthermore, in line with this principle, the monetary income of central banks of Member States with derogations or exemption status would be excluded from the mechanism for the allocation of income (Article 32) and their assets and liabilities would not be included in the consolidated financial statements of the System.

In accordance with Article 47.5, the shares in the capital of the ECB which have been subscribed by central banks of Member States with derogations or exemption status would not carry the right to participate in the distribution of the ECB's net profits nor would it carry an obligation to cover possible shortfalls. Instead it would be remunerated at a rate determined by the Council of the ECB (Article 47.6). This provision reflects the consideration that the central banks of Member States with derogations or exemption status should not participate in the financial consequences of the single monetary and exchange rate policy.

Shares subscribed by the central banks of Member States with derogations or exemption status would in principle carry voting rights; however, in accordance with Article 47.7, this would not apply to those areas in which these central banks would not participate (Articles 30, 32 and 33). Article 47.7 also lays down a procedure for weighted voting in all those cases in which these central banks were excluded from participating in weighted voting.

Article 48- Relationship with central banks of Member States with
derogations or exemption status

The ECB and the central banks of Member States with derogations or exemption status shall co-operate closely, without prejudice to their respective monetary policy responsibilities, with a view to:

- promoting the co-ordination of monetary policies within the Community with a view to ensuring price stability;
- overseeing the functioning of the European Monetary System in accordance with Article 49;
- making the necessary preparations for the irrevocable fixing of the exchange rates of the currencies of Member States with derogations against the currencies, or the single currency, of the Member States without derogations.

* * *

Comments

Article 48 of Alternative B follows closely the text of Article 48.2 in Alternative A.

ALTERNATIVE C - ARTICLES 47 AND 48

Article 47 - Applicability of the Statute

47.1 If, pursuant to Article 109G of the Treaty, Member States have been granted derogations or exemption status (called hereafter "Member States with derogations or exemption status"), this Statute shall apply within the limits and under the conditions specified hereafter for as long as such derogations or exemptions remain in force.

47.2 By way of derogation from Article 10.1, the Council of the ECB shall meet either with full participation or in restricted sessions excluding the presence of the Governors of the Central Banks of the Member States with derogations or exemption status.

The Council of the ECB shall meet with full participation when deliberating and voting on matters referred to in Articles 12.3, 12.4 (except as it relates to Article 4.3), 26.2, 26.4, 36.1 and 41.3.

The Council of the ECB shall meet in restricted sessions when deliberating and voting on all other matters referred to in this Statute. The Governors of the central banks of Member States with derogations or exemption status may be invited to such meetings following a decision taken by the Council of the ECB meeting in restricted session.

47.3 In addition, the Council of the ECB, meeting with full participation, shall:

- promote the co-ordination of the monetary policies within the Community with a view to ensuring price stability;
- oversee the functioning of the European Monetary System in accordance with Article 49;
- make the necessary preparations for the irrevocable fixing of the exchange rates of the currencies of Member States with derogations against the currencies, or the single currency, of the Member States without derogations.

47.4 Save for Articles [21.1,] 47.2, 47.3 and 49, the provisions of this Statute shall be solely applicable to, and within the territory of, the Member States without derogations or exemption status, as well as to their respective central banks and national authorities. [Save for Article 21.1,] the functions and powers conferred under their respective national legislation upon the central banks of Member States with

derogations or exemption status shall not be restricted or extended by virtue of this Statute.

47.5 The central banks of Member States without derogations or exemption status shall be the sole subscribers to the capital of the ECB in accordance with Article 28.

* * *

Comments

1. Some Alternates felt that under this proposal the central banks of Member States with derogations or exemption status could not be considered members of the ESCB since they were excluded from subscribing to capital of the ECB. Other Alternates argued that all Community central banks would be members by virtue of Article 10.1 which states that the Governors of the national central banks are members of the Council of the ECB.

One possible solution could be that all Community central banks subscribed to the capital of the ECB, but that only the central banks of Member States without derogations or exemption status would actually pay in the capital. With a transitional provision stating "In Articles 10.3, 30, 32 and 33 the term "subscribed capital" shall read as "paid-up capital subscription", all rights and obligations relating to capital subscription would pertain only to the central banks of Member States without derogations or exemption status.

2. One Alternate suggested to amend the compromise proposal by giving to the Council meeting with full participation additional functions (e.g. in the area of payment systems and prudential supervision). In addition, in order to facilitate their participation in the ECB, the central banks of Member States with derogations or exemption status should ensure the fulfilment of all the necessary technical conditions and the compatibility of their statutes with that of the ESCB by the start of Stage Three.

3. For brackets in Article 47.4 see comments on Article 47.2 in Alternative A.

Article 48 - Deferred subscription to the capital of the ECB

The text of this Article would be identical to that of Article 48a in Alternative A.

* * *

Comments

If under this compromise proposal the notion of paid-up capital subscriptions (see comment on the preceding Article) were introduced, Article 48 could be applied provided it referred to "deferred payment of capital subscription to the ECB".

Article 49 - Continuation of the European Monetary System

49.1 With effect from the entry into Stage Three of EMU, the ECB shall become a party to the Agreement of 13th March 1979 between the central banks of the Member States of the European Economic Community laying down the operating procedures for the European Monetary System (called thereafter "EMS Agreement") and to the Agreement of 9th February 1970 setting up a system of short-term monetary support among the central banks of the Member States of the European Economic Community, and to any subsequent agreement between the national central banks amending or superseding the aforementioned agreements. The ECB shall replace the central banks of the Member States without derogation or exemption status. The rights and obligations of these central banks under the aforementioned Agreements vis-à-vis the central banks of Member States with derogation or exemption status shall become the rights and obligations of the ECB.

The reciprocal rights and obligations of the central banks of Member States without derogation or exemption status resulting from the aforementioned Agreements shall lapse with effect from the entry into Stage Three of EMU.

49.2 The ECB shall perform, to the extent necessary, all functions and tasks which were carried out by the EMI, before its liquidation, in the framework of the EMS.

49.3 To the extent necessary for the smooth functioning of the European Monetary System, the ECB and the central banks of Member States with derogations or exemption status shall agree upon an adaptation of the mechanisms of the EMS as laid down in the Agreements referred to in Article 49.1.

* * *

Comments

Article 49 is based on the assumption that the EMS will continue in Stage Three as a framework for exchange rate co-operation with the central banks of Member States with derogations or exemption status until they become fully participating members of the System. Article 49.1 therefore requests the ECB to continue the existing EMS arrangements with the central banks of Member States with derogation or exemption status. In

doing so, the ECB would replace the central banks of Member States without derogation or exemption status. At the same time, the tasks and functions which had been performed by the EMI, before its liquidation, in the context of the EMS, for instance the administration of the financing and credit mechanisms, would be taken over by the ECB (Article 49.2).

Article 49.3 reflects the need to alter certain mechanisms of the EMS in the light of the new conditions. It will have to be seen whether, following the unwinding of the mechanism for the creation of ecus (see draft Statute of the EMI), a new mechanism with similar characteristics should be set up.