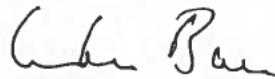


22nd April 1991

TO THE MEMBERS OF THE COMMITTEE OF ALTERNATES

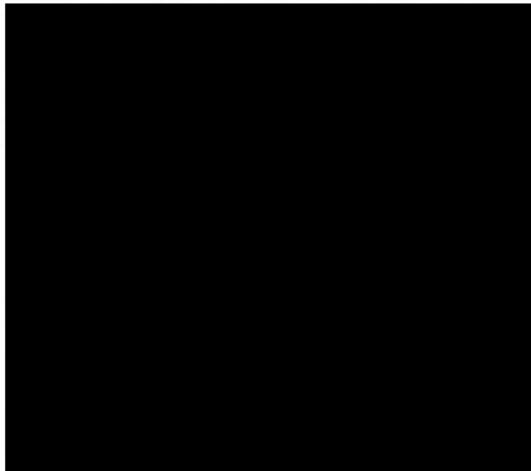
Please find attached the final texts of the draft Statute and the Commentary, as they have been agreed at today's teleconference. These documents will be sent by special courier to the Presidency of the Community, the Finance Ministers, the President of the Commission and the Governors on 26th April 1991, and for this reason the texts have been predated to Friday's date.

With kind regards,



Gunter D. Baer

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Secretariat

DRAFT WORK PROGRAMME  
IN CONNECTION WITH THE ESTABLISHMENT OF THE  
EUROPEAN SYSTEM OF CENTRAL BANKS

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In compliance with the mandate given by the Committee of Governors at its meeting of 9th April 1991, the Secretariat has drawn up this note which deals with the preparatory work to be undertaken by the Committee of Governors with a view to the establishment of the European System of Central Banks (ESCB). The note outlines the main areas of activity, makes proposals for the body which should primarily be responsible for that work and tries to evaluate the time necessary for this proposal.

Given the uncertainty about the date on which the final stage of EMU will begin and in the absence of final political decisions about the contents of Stage Two, it is not possible to indicate the date on which the different projects should start. However, if it were assumed that Stage Two would be a short transitional period and the final stage would already commence in 1997, this would imply that by this date all necessary provisions will have had to be taken so as to enable the ESCB to perform the task of conducting a single monetary policy. Likewise, if the new monetary Community institution were to be created before the beginning of Stage Three (for instance, at the beginning of Stage Two, as was stipulated in the Rome Communiqué), this contingency should be taken into account when making the "count down" for the entry into EMU.

At the present juncture, the Secretariat has confined itself to a "blueprint" of the work programme. It will draw up a more detailed programme after having received some guidance from the Committee of [Governors] [Alternates].

The work programme distinguishes three broad categories of issues:

- the functional and operational aspects of the ESCB;

- institutional issues (relating to the creation of the new monetary Community institution);
- legal issues.

It goes without saying that all these issues are closely interrelated. Whereas preparatory work in the different areas will necessitate recourse to specialised experts, it will nonetheless be equally important to co-ordinate the activities of the working parties.

## I. FUNCTIONAL AND OPERATIONAL ASPECTS

It is a commonly agreed principle that monetary responsibilities will remain with the national central banks (NCBs) until the beginning of Stage Three. However, for a smooth transition to Stage Three, it will be essential that monetary convergence is achieved by that date, the instruments of monetary policy are adapted to the requirements of a single monetary policy and all operational features of the System (which are left completely open in the draft Statute) and related aspects have been defined.

### 1. Achievement of monetary convergence

A high degree of - or even perfect - monetary convergence will have to be achieved by the eve of Stage Three at the latest. With this ultimate aim in mind, Stage One of EMU already provides for greater monetary convergence through a strengthening of monetary policy co-ordination. Article 3 of Council Decision 90/142/EEC requests the Committee of Governors to promote monetary policy co-ordination with the aim of achieving price stability as a necessary condition for the proper functioning of EMS. In compliance with this mandate, the Committee of Governors has been establishing a common framework for the monitoring of monetary policies. It is intended to develop this system further by harmonising the indicators used for the common assessments.

With a view to Stage Three, there are a number of questions. For instance, would it be sufficient to pursue and possibly refine the present approach in order to realise the degree of monetary convergence necessary for the transition to Stage Three? Alternatively, should new approaches be

examined? Who should be entrusted with the task of developing and proposing such new approaches?

## 2. Approximation of monetary policy instruments

Although opinions differ about the necessary degree of harmonisation of monetary policy instruments, it appears to be a common view that the principle of a single monetary policy also relates to the instrumental level. Thus, at least an approximation or homogenisation of monetary policy instruments will be required. This approximation will have to be completed well in advance of the beginning of Stage Three in order to give both the NCBs and market operations the opportunity to familiarise with the new instruments and techniques and to avoid abrupt changes in money market conditions.

The draft Statute refers to a number of areas where approximation will be necessary. The most important ones are:

- Article 18 states that the ECB shall establish general principles for open market and credit operations carried out by itself or the NCBs;
- Article 19 mentions minimum reserves. To what extent should reserve co-efficients, determination of the base and possibly the remuneration be harmonised.

Other questions relate to the issuance of currency in Stage Three. To the extent that at the beginning of Stage Three there are still national currencies in circulation, Article 16.2 of the Statute stipulates that the Council of the ECB shall make the necessary arrangements for the exchange of notes denominated in Community currencies by the NCBs at par value. The introduction of a single currency will require extensive preparatory work (see for instance President Duisenberg's letter, dated 18th April 1991).

Other provisions of the Statute are not directly related to monetary policy but nevertheless are also relevant from the monetary viewpoint. For instance, Article 21 defines the operations with public entities. The purpose of this Article is to enable NCBs to continue a service traditionally provided to governments and other public entities while precluding any lending to these bodies. While - from a conceptual point of view - both these sides can easily be distinguished, this may prove to be more difficult in practice and hence there will be the

necessity to establish precise regulations in this field of activity. Likewise, the application of Article 31 which deals with the foreign reserve assets held by the NCB necessitates the prior establishment of precise guidelines in order to ensure that transactions effected by the NCBs are consistent with both the System's monetary policy and exchange rate policy aims.

Finally, Article 14.5 enables NCBs to perform functions other than those specified in the Statute provided the Council of the ECB finds that such functions do not interfere with the objectives and tasks of the System. Thus, it will be necessary to check the compatibility of NCBs' current extra-System functions with the objectives and tasks of the System.

All these aspects should be examined by the [Monetary Policy Sub-Committee]; in respect of external aspects, the Foreign Exchange Policy Sub-Committee should also be involved. Since all instruments of monetary policy should be in place and have been tested well in advance of the beginning of Stage Three and the implementation of any changes will take some time, preparatory work should start in the [sixth year] before the entry into Stage Three of EMU.

### 3. Statistics

Work on the harmonisation of monetary statistics has already started in Stage One to the extent necessary for the implementation of the "common framework" and efforts will be continued. For Stage Three, however, the harmonisation will have to be so advanced as to permit the compilation of reliable Community aggregates. This work will have to be completed by common efforts of the Monetary Policy Sub-Committee, the Committee on balance of payments, monetary and financial statistics (as long as this Committee exists<sup>1</sup>) and the Secretariat.

### 4. Operational aspects

The Statute does not define the operational features of the System; it only creates the necessary legal and institutional conditions for carrying out operations by both the ECB and the NCBs. The choice of the

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1 The purpose of this Committee will have to be reviewed before the beginning of Stage Two.

appropriate operation arm in each specific area will have to be made in accordance with criteria of efficiency and consistency with the principles of a single monetary policy. While changes in prevailing market conditions and experience will necessitate periodic reviews of the System's operational features, decisions will have to be taken on the procedures to be applied at the beginning of the System.

Two examples may illustrate the scope of the studies to be undertaken. Firstly, how should the open market policy be conducted. The Special Report of the Monetary Policy Sub-Committee on the operations of the ESCB has blueprinted three different models which would need further examination. Secondly, how should foreign exchange market interventions be carried out? By the ECB itself or by the NCBs on behalf of the ECB? In the latter case, which rules would be necessary in order to ensure the consistency of the System's action?

5. Related aspects

The conduct of a single monetary policy will require a number of further provisions which will ensure the cohesion of the System.

(a) Linking up national payment systems

The central bank aspects of this very complex question as well as issues relating to the ecu clearing system are at present under the consideration of a Working Party which has recently been established. The Working Party will submit a report in about twelve months time which will probably make suggestions with regard to the follow-up.

(b) Establishment of the System's own clearing system

Whatever role the ESCB will play in the future clearing and payment systems, the final settlement of balances will be in the medium (media) issued by the System and with increasing cross border transactions, this will give rise to payment flows between the NCBs. For the clearing of these flows, the System will have to establish its own mechanism whose characteristics will have to be defined in accordance with the principles laid down in the Statute.

[I am not sure who could do the job?]

(c) Harmonisation of accounting rules

The conduct of a single monetary policy and the need for proper information on the sources of money creation throughout the Community will require the consolidation of such assets and liabilities within a single balance sheet structure. Therefore, Article 26.4 states that the Council will establish rules with a view to harmonising the accounting and reporting of operations undertaken by the NCBs. The harmonisation of accounting rules is also necessary for the measurement of the NCBs' "monetary income" (see Article 32.2), but the application of this Article also requires guidelines according to which assets would be earmarked as counterparts to the monetary base.

The issues mentioned above should be addressed by a specialised working party consisting of the chiefs of NCBs' accountancies. Since the undertaking will raise not only difficult intellectual issues, but also questions of a political nature (for instance transformation of hidden reserves into open reserves) and there might also be a rather long legal lag, preparatory work should start sooner rather than later.

(d) Establishment of an integrated information system

A smooth functioning of the System will presuppose an efficient integrated information system which will have to ensure the exchange of information in real time. At present, there are two systems:

- the special telephone network for multilateral conferences and bilateral conversation;
- the CEBA mail network for non-voice communication.

These technical facilities would have to be developed into an integrated system which would include the ECB (see Section II below). A project should be elaborated by the working party under the chairmanship of M. Bourguignon under the auspices of the Foreign Exchange Policy Sub-Committee (see item 5 of this Sub-Committee's mandate). Given the complexity of this task and the significant time needed for the implementation of the chosen approach, the preparatory work might need [5] years.

## II. INSTITUTIONAL ASPECTS

The ECB<sup>2</sup> will be created by primary Community law, namely the Statute which will be annexed to the Treaty. In order to enable the ECB to perform its tasks, however, additional measures will be necessary. When preparing these measures, care will have to be taken of the fact that the ECB will be designed to become the core of the future ESCB.

### 1. Rules of procedure

The internal organisation of the ECB and its decision making bodies will have to be laid down in a set of Rules of Procedure (see Article 12.3 of the draft Statute of the ESCB). Some elements of the Rules of Procedure are already referred to in the Statute (see for instance Articles 10.2 and 11.6). Other elements arose in the process of elaborating the Statute, for instance, the decision making in teleconferences, derogations to majority requirements stated in the Statute in respect of decisions taken by the Executive Board or the procedure whereby the Council would appoint the members of the Committee referred to in Article 11.4.

The Rules of Procedure should be prepared to the largest possible extent so that they could be adopted by the Council of the ECB at its inaugural meeting. It is suggested that the preparatory work be carried out by the Secretariat in co-operation with the Legal Experts.

### 2. Conditions of employment of the members of the Executive Board and of the staff of the ECB

As the ECB will not be a Community institution under Article 4 of the Treaty, the Statute provides for special rules with regard to the

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2 The Rome Communiqué states that the new monetary Community institution will be established at the start of the second stage, i.e. on 1st January 1994. At present, it is not yet clear whether this new institution shall be the ECB or an intermediate institution, constituting a prefiguration of the ECB whose creation would be postponed to the start of Stage Three (see the Secretariat's summary note on the IGC session of 9th April 1991). Without prejudice to this open question and for the sake of convenience, the following considerations will refer to the ECB and the Statute of the ESCB and of the ECB. In essence, the legal and other measures necessary for the establishment of the new institution would be virtually the same in both alternatives.



conditions of employment of the members of the ECB's Executive Board and staff.

In accordance with Article 11.4 of the Statute, the terms and conditions of employment of the members of the Executive Board will be laid down in contracts with the ECB and will be fixed by the Council of the ECB on the proposal of a Committee comprising three members appointed by the Council of the ECB and three members appointed by the Council of the European Communities. While the procedure whereby the Council of the ECB would appoint the members of the Committee would have to be laid down in the Rules of Procedure (see above), the terms and conditions themselves would also have to be elaborated prior to the first appointments.

With regard to the staff of the ECB, Article 36 states that their conditions of employment shall be laid down by the Council of the ECB upon a proposal from the Executive Board. As currently drafted, Article 36 suggests the establishment of standardised conditions of employment but does not prejudge the question of the legal status of the staff. Should it be governed exclusively by contracts or should, at least part of the staff, enjoy the status of officials whose conditions of employment would be laid down in a statutory regime?

Hence, it will be necessary to address two main questions:

- firstly, the appropriate legal status of the staff of the ECB. The appropriateness will have to be examined *inter alia* in accordance with the new institution's functions, not only in Stage Two, but also in Stage Three;
- secondly, the contents of the conditions of employment (including remuneration, pensions and other social benefits).

Besides these rather legal questions, a further issue for reflection would be the principles of staffing policy. Of course, given the evolutionary aspects of the ECB's functions, these principles would have to be rather general. More concrete ideas, however, will have to be developed in respect of the initial composition of the staff.

The issues outlined above should be studied by a working party composed of the Directors of Personnel of the central banks. The required time is estimated to be [two] years.

### 3. Other measures

The ECB will also need premises and equipment. The issue of the ECB's premises can only be dealt with once a decision on this institution's seat has been taken. The question of the appropriate equipment does not require urgent treatment either except for one element, namely an appropriate computer-based information system. Such a system should not be designed exclusively with a view to the functions of the ECB in Stage Two, but should be flexible enough to be adapted to the ECB's needs in Stage Three. As the ECB will be the core of the future ESCB, its own information system will have to become part of an integrated system for the ESCB as a whole (see Section I, 5d above).

### III. LEGAL ISSUES

Preparations for Stage Three will necessitate legal action both at a Community and national level.

Complementary Community legislation is foreseen by Articles 4.1, 5.3, 16.2, 25.2, 29.2, 30.4 and 34.3 of the Statute. Although the right of initiative will probably lie with the Commission (in accordance with the suggestions made by the Committee of Governors), it would be desirable that informally central banks contributed actively to the elaboration of the draft legal texts<sup>3</sup>. This would especially apply to:

- Article 5 of the Statute which stipulates that Community legislation shall define the national and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement. For the elaboration of the text, it is proposed that the Secretariat would co-operate with the Monetary Policy Sub-Committee and possibly the Legal Experts;
- Article 16.2 which states that the provisions concerning the legal tender status of Community currencies be established

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3 In analogy to the procedure chosen for the revision of the 1964 Council Decision which was actually drawn up by the Committee of Governors.

according to Community legislation. This matter will be of particular interest for the Legal Experts;

- Article 34.3 which deals with the power of the ECB and the NCBs to impose sanctions. This matter should also be studied by the Legal Experts.

With regard to the timing, one should take into account the fact that Community legislation, in particular if it involves the European Parliament, takes time. Estimating a "legal lag" (i.e. the time span between the presentation of a proposal to its final adoption) of six months, preparatory work should start at least eighteen months before the presumed date of the first application of the legal texts.

In respect of national legislation, it should be recalled that Article 14.1 stipulates that Member States shall ensure the compatibility of national legislation including the statutes of the national central banks with the Statute of the ESCB and the EEC Treaty. This suggests that the Statute itself would not automatically be a substitute for national legal provisions; instead, legal action by the competent national authorities would be required. Article 14.1 also suggests that national legislation will have to be adjusted in a comprehensive manner. Article 14.2 dealing with appropriate provisions ensuring the independence of the members of the Council of the ECB<sup>4</sup> focuses on a specific aspect but by no means does it define the entire scope of the necessary adjustments in an exhaustive manner.

Albeit central banks hardly have formal rights of initiative in legal matters the impetus will no doubt have to come from them. During the elaboration of the draft Statute of the ESCB, there was the view that legal actions needed to be taken in a co-ordinated way and that the process should be facilitated by work to be undertaken in the Committee of Governors.

In essence, there will be the basic question of how national legislation can be made compatible with the Statute of the ESCB. Could this be effected in a relatively simple manner, namely by introducing a general

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4 According to the Rome Communiqué the process is designed to ensure that the independence of the new monetary institution has to be set in motion before the beginning of Stage Two.

clause whereby:

- all national provisions would only remain binding law to the extent that they do not conflict with the Statute of the ESCB;  
and
- the Statute would be directly applicable as a legal basis for monetary policy instruments where such a basis is not provided for by national legislation?

Or alternatively, would all national central bank statutes have to be harmonised in a detailed way with the Statute so that they would be the national mirror of the Statute of the ESCB? Depending on the answer to this question, one would then establish a method whereby the Legal Experts of the NCBs would "accompany" the work the other sub-committees and working parties do and would monitor the translation of the measures taken into legal acts where appropriate or necessary.

#### IV. FOLLOW-UP

As mentioned in the introductory statement, the present note only outlines the work programme in broad terms. It is suggested that the Committee of Governors holds an exchange of views on the various ideas. This would then permit the Secretariat to draw up a more detailed work programme including precise mandates for the sub-committees and working parties and a procedure designed to co-ordinate their activities. The co-ordination of activities might be ensured either by the Committee of Alternates or by a specialised ad hoc committee composed of the [or some] deputies of the Alternates.