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TELEFAX TO A FOREIGN CORRESPONDENT

DATE : 9 November 1990

ADDRESSEE : Mr. Gunter D. Baer
Secretary General
Secretariat Committee of Governors
B.R.I. - Bâle

fax : 00-41-61-280.91.00

SENDER'S REFERENCES (DEPARTMENT) : [REDACTED]
Adviser
International Agreements Office
Foreign Department

telephone : 21.07

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MESSAGE : Dear Mr. Baer,
Please find attached a note from Mr. Rey with his introductory comments
to the Governors' discussion on the draft Statute. Mr. Rey would welcome
your remarks in Basle on monday.

Best regards

Signature(s) : [REDACTED]

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09.11.1990 10:00

Re : Draft Statute

It may be useful if I first indicate what the main differences are between the document you approved at your September meeting and the one before you now. I shall then point out the main decisions which I feel are needed to ensure an agreed follow up to this work.

1. The main differences :

There are two areas where the present document considerably extends the scope of the previous version.

One is the result of work done by the legal experts and reviewed by the Alternates. This work resulted in the addition of a number of unexciting provisions grouped in Chapter VII, under the heading "General Provisions" : they are necessary to underline that the System is intended to be an autonomous institution, not one to which the general Treaty provisions relating to Community institutions would automatically apply. More importantly, the legal structure of the whole System has been adjusted to make sure that its decision-making bodies, the Council and the Executive Board, benefit from the legal personality attributed to the European Central Bank. This does not affect the balance of powers within the System nor the relationship between the central institution and the national central banks : the purpose of the change was to ensure that the liability for acts and decisions taken by the decision-making bodies of the System remains within the System, in casu with the European Central Bank. One Alternate, it is fair to say, wished to enter a reservation on this legal adjustment, which he felt had presentational disadvantages.

The other new area submitted to you is a more comprehensive set of provisions in Chapter VI, on financial arrangements. It has been drafted with the assistance of the Subcommittee on foreign Exchange Policy, which produced a most helpful report to that effect. In a nutshell, these provisions include the setting up of a consolidated balance sheet of the twelve national central banks plus the ECB, for analytical and operational purposes, the endowment of the ECB with capital, the pooling of a significant share of official reserves in the books of the ECB, and a procedure for income allocation which takes account of the consequences of operating a single monetary and exchange policy in an integrated Community-wide market.

Several of these provisions imply 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 is called to decide on financial matters. The Alternates did not try to put figures on such a key, but suggested some relevant criteria; if you so wished, preparatory work could be mandated in due time to allow for such discussion.

I should also report that the Banking Supervisory Sub-Committee has provided a set of draft provisions on prudential supervision, which were still lacking in September. They can be found under art. 25, but they remain controversial and form part of the several brackets which are left for your consideration.

2. The decisions to be taken :

Mr. Chairman, the text before you still has quite a number of sentences between brackets, including, I am afraid, under Articles which seemed to have been provisionally agreed at your last meeting. There is no point for me to comment on all of these at this stage, though I stand ready to provide explanations later if you so request.

Assuming you reach agreement on all controversial points, the dissenting observations which are presently reflected in the comments provided after each article would of course disappear, leaving only those comments which are designed to provide agreed explanations. If Governors would find it suitable or convenient that different viewpoints go forward as such to the Intergovernmental conference, on specific items, it would be important to devise a proper presentation to accommodate this wish. A particular case may be those several instances where disagreement may be regarded as a reflection of the same fundamental stance adopted in one country, namely the United Kingdom, towards the final stage of EMU.

So much for the individual articles. May I then draw your attention to the Draft of Introductory Report and General Commentary of Articles which, it is proposed, should accompany the Statute, when it is forwarded to the Intergovernmental Conference. These texts were written by the Secretariat and reviewed by the Alternates : they will have to be adjusted in the light of the outcome of your discussion of the various provisions. I assume you would not want to discuss these texts in great detail, but Governors may wish to comment on the format and general tone of these accompanying comments.

There are a number of questions which need to be addressed in connection with the follow up of this work. Let me just mention a few of them :

- what about the translation of the document in the Community languages ?
- to which authorities do you wish to address the draft Statute ?
- what kind of publicity, if any, do you intend to give to this document ?
- do you wish to mandate further work on issues which will obviously deserve further consideration, though perhaps not in an urgent manner ?
Two of them are explicitly mentioned in the documents before you : it is suggested that Governors consider drawing up an agreed list of the items which will have to be borne in mind when national parliaments amend the Statutes of their central banks in order to conform with the requirements of article 14.1. There is also an important chapter on Transitional provisions, for which only headlines have been provided so far, but which will have to be filled with detailed provisions before the end of the Intergovernmental Conference.

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