

14th September 1990

To the members of the Group of Legal Experts

At their last meeting the Governors of the EEC central banks decided to complete the work on the draft Statute of the European System of Central Banks as soon as possible. Completion in this context means the preparation of a draft Statute which would contain most but not all articles (for instance, the important transitional provisions would be drafted at a later stage).

The date for a meeting of the Committee of Governors, at which the draft Statute, an accompanying set of comments and an introductory report will be finalised, is either 24th October or 13th November 1990, the choice of date depending on the progress being made by the Committee of Alternates in drafting the very difficult Chapter VI on financial provisions. In order to facilitate the drafting of this chapter, some analytical work on profit accrual from domestic and foreign operations is under way and the Foreign Exchange Policy Sub-Committee has been asked to look into the question of pooling of official reserves. A meeting of the Committee of Alternates has been scheduled for 15th and 16th October in order to prepare for the meeting of the Governors.

This background information on ongoing work and timetables indicates the urgency for legal experts to take a close look at the draft Statute. In particular, I see three areas where the advice of legal experts is required: firstly, there should be a thorough examination of each draft article with a view to its legal accuracy and consistency with the intentions of the Governors. Secondly, as had been pointed out in the Report of the Legal Experts (dated 31st August 1990), there is a need to introduce general provisions into the Statute in order to ensure that there is no legal uncertainty arising from the possible application to the System of general provisions relating to Community institutions. Finally, it is necessary to introduce a simplified procedure for amending some provisions of a more technical nature in order to preserve an adequate degree of flexibility.

In order to carry out this work in the most efficient manner, I would like to suggest to you the following procedure:

1. As a first step, each member of the Group of Legal Experts would be invited to review the draft Articles and should feel free to make proposals for the amendment of existing Articles, the addition of general provisions and the formulation of a legal procedure (i.e. secondary legislation) to be introduced into the draft Statute in order to amend the more technical provisions.
2. As a second step, a small drafting committee, consisting of three or four legal experts (drawn from the Group), would meet in order to amalgamate to the extent possible the suggestions received from the members of the Group and to introduce them into the draft Statute.
3. As a third and final step, we would have a one to two day meeting of the Group of Legal Experts at which we should try to finalise the work and agree on a draft Statute to be submitted to the Alternates.

If such a procedure would be acceptable to you, I would try to arrange for a small drafting committee and would propose the following timetable: the written comments on the draft Articles, general provisions and secondary legislation should be sent to me not later than Friday, 21st September; the drafting committee would start its work on the following Monday, 24th September, with a view to preparing a document which would serve as the basis for the Group's discussions at a mutually-convenient date at end-September or at the latest in the first week of October.

I should like to emphasise that this procedure would enable us to review most of the draft Articles, but possibly not the important chapter on financial provisions on which the work will proceed in parallel and which may not yet be finalised at the time of the Group's meeting. This would mean that we might have to resort to a written procedure for reviewing the financial provisions.

I would be grateful to have your reaction as soon as possible, as regards both the suggested procedure and the indicated timetable. The draft Statute in its present form is attached; please disregard for the time

being the draft Articles on financial provisions which, as mentioned above, are still subject to discussion.

With kind regards,

Gunter D. Baer