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COMMITTEE OF GOVERNORS OF THE CENTRAL BANKS
OF THE MEMBER STATES
OF THE EUROPEAN ECONOMIC COMMUNITY

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To:

Monsieur J.-J. Rey
Directeur
Banque Nationale de Belgique
Bruxelles

Telefax No.: 0032 2 221 31 01

Dear Monsieur Rey

Please find attached the promised first draft of the introductory report which is to accompany the draft Statute when transmitted to the Italian Presidency. I am afraid that the draft is no more than a skeleton of a final report.

I will contact you tomorrow morning concerning the question of a more detailed agenda for the forthcoming meeting of the Committee of Alternates.

With kind regards



Gunter D. Baer

From: The Secretariat

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

Introduction

In Madrid in June 1989 the European Council asked the competent bodies of the Community to carry out the preparatory work for the organisation of an Intergovernmental Conference to lay down the subsequent stages of Economic and Monetary Union.

In this context, the Committee of Governors has prepared the attached draft Statute of the European System of Central Banks and of the European Central Bank, hereinafter called the "System".

In its work, the Committee of Governors has taken into account the preparatory work undertaken by other Community bodies and, in particular, the ideas developed and proposals made in the "Report on Economic and Monetary Union in the European Community" (the "Delors Report"). The Committee of Governors endorses the principal findings and conclusions of this Report and has transcribed them into the institutional and operational provisions of the draft Statute.

Principal considerations underlying the draft Statute

In preparing the draft Statute the Committee of Governors has assumed that there is a clear political will and a firm commitment on the part of all Member States to continue with the process of economic and monetary integration to the final stage of Economic and Monetary Union. Indeed, the Statute, as presented, focuses entirely on that objective, i.e. when a situation has been reached where a decision has been taken to lock irreversibly exchange rates between all Community countries, where subsequently a single currency will be issued which will replace national

currencies and where all Member States will participate in the System. However, the move from national currencies with permanently fixed exchange rates to a single Community currency, but also the concomitant integration of financial markets, must be viewed as an evolutionary process. This calls for a draft Statute which can accommodate this gradual development in a flexible, pragmatic and progressive manner.

The draft provisions do not yet deal with the complex issues of transitional arrangements, i.e. the decisions on the necessary preparatory steps to be implemented in Stage Two, the transition to Stage Three, the start-up procedures and, perhaps most importantly, the implications of less than full participation in the System by some of the Member States and the rights and obligations of the members which might join the monetary union at a later date. The Committee of Governors has the intention of presenting proposals in respect of these transitional arrangements in the course of the Intergovernmental Conference.

The Organisation of the System

As stated in Article 1, the System is described by the co-existence of a new central institution - The European Central Bank (ECB) - and the central banks of the Member States. These institutions jointly pursue the objectives of the System and the tasks entrusted to it. The System itself is governed by the decision-making bodies of the ECB, which will be the Council and the Executive Board.

This structure meets two essential requirements. On the one hand, it ensures that monetary policy decisions are placed firmly in the hands of the central decision-making bodies and clearly indicates that the responsibility for monetary policy has been transferred from national central banks to the System. On the other hand, it offers a high degree of flexibility in carrying out monetary policy operations either through national central banks and/or the ECB. This operational flexibility not only allows the involvement of national central banks in accordance with the principle of subsidiarity but also takes advantage of their knowledge of local market conditions.

The Basic Principles

(a) The Primary Objective

As stated in Article 2 the primary objective of the System shall be to maintain price stability. However, as also indicated in this Article, this does not mean that monetary policy will be carried out in isolation and without due regard to other economic policy objectives. There is clear recognition that the System shall, without prejudice to the primary objective, support the general economic policy of the Community.

In addition, Article 3 enumerates those tasks which are normally associated with the activity of a central bank as well as several advisory functions (laid down in Article 4).

(b) Indivisibility and centralisation of monetary policy

The single most important characteristic of monetary policy is that it is indivisible and that the responsibility for monetary policy cannot be shared out between autonomously acting bodies. As much as in the national context monetary policy decisions are in the hands of one single authority, the Community, upon entry into Economic and Monetary Union, will also require central decision-making bodies. It is therefore indispensable that with the move to the final stage, national monetary authorities relinquish their decision-making power and transfer it to the ECB, i.e. its decision-making bodies, the Council and the Executive Board.

As stated in Article 12 the Council will be the supreme decision-making body on all central banking matters. This involves in particular all strategic monetary policy decisions including those on basic interest rates and liquidity conditions in the Community and the establishment of guidelines for their implementation. At the same time, as the daily execution of monetary policies takes place in close contact with the market, it necessitates continuously operational decisions. The responsibility for those will fall to the Executive Board to whom, in accordance with Article 12, the necessary operational powers shall be delegated.

(c) Federalism and subsidiarity

The principle of indivisibility of monetary policy and the concomitant centralisation of decision-making is not in contradiction to the federative structure of the Community. Not only will, in accordance

with Article 10, the governments of all national central banks be ex officio members of the Council, but also the appointment and voting procedures underline the principle of federalism. Except for any specific decisions, such as those relating to capital subscription and profit distribution, each Council member will have one vote. A weighted voting scheme for monetary policy decisions would tend to give too much emphasis to regional considerations and would risk weakening the decision-making process which must be oriented exclusively at the requirements for the Community as a whole.

The federative structure of the System is also reflected in the practical implementation of monetary policy, i.e. the operations with market participants. In accordance with the principle of subsidiarity Article 14 calls upon the Executive Board to make use of the national central banks, to the extent possible and appropriate, in the execution of operations arising out of the System's tasks. This will require that the statutes of national central banks are made compatible - but not necessarily fully harmonised - with the Statute of the System. At the same time, Article 14 also recognises that national central banks will continue to perform functions outside those prescribed in the Statute, unless of course, they interfere with the objectives and tasks of the System. National central banks may, for example, have responsibility of their own in settling payments, performing tasks in the important areas of banking supervision (as indicated in Article ..) or carrying out business on behalf of government institutions.

(d) The independence of the System

In order to enable the System to pursue the primary objective of price stability it is important that the decision-making bodies should not be pressured to orient monetary policy towards conflicting goals. For this reason Article 7 states that the ECB, the national central banks and the decision-making bodies shall act independently of instructions from political authorities. The independence of monetary authorities has been successfully pursued in a number of countries. It may perhaps be even more justified in a plural Community society where competing interests may tend to give greater thought to short-term considerations and thus lead to pressures in favour of a monetary policy stance which would not always be compatible with price stability in the longer run.

However, for independence to be effective in practice, the principle must be reflected in concrete provisions governing the personal, functional, operational and financial conditions of the System.

One important aspect of independence is that the members of the Council and the Executive Board should be able to exercise their powers and perform their tasks in a situation of assured tenure. Accordingly, Articles 11 and 14 specifically stipulate the length of term of office as well as the conditions and procedures under which the members of the decision-making bodies can be relieved from office.

Independence in the pursuit of monetary policy can exist de facto only if the decision-making bodies are not obliged to fulfil tasks which would render it extremely difficult, if not impossible, to gear monetary policy towards price stability. For this reason, Article 25 denies the ECB and the national central banks the possibility of giving overdrafts or any other type of credit facility to public entities, except of course publicly-owned credit institutions. A further example of functional independence can be found in the context of the external operations entrusted to the System under Article 3. While the draft Statute acknowledges - in Article 4.3. - that the responsibility for decisions concerning the Community's exchange rate regime rests with the political authorities, it also recognises that such agreements will have a direct bearing on monetary policy and therefore states that the ECB shall be consulted with a view to reaching consensus prior to any decision relating to the exchange rate regime. It is understood that within the confines set by such decisions, the ECB and the national central banks shall be in a position to conduct freely foreign exchange market operations. Furthermore, in its advisory capacity the ECB is to be consulted regarding any draft Community legislation and any envisaged international agreements in the monetary, banking or financial field (see Article 4.1.).

Operational independence is ensured by giving the ECB and the national central banks the necessary policy instruments (see Articles 18 to 20) which can be used without restrictions. [However, as the minimum reserve requirements impose obligations on credit institutions it is recognised that Community legislation will have to lay down the broad framework within which the Council may apply this instrument.] These provisions have been drafted to accommodate the evolutionary nature of financial markets and will allow the System to respond adequately to

changing market conditions. A related aspect of operational independence is mentioned in Article 16 which confers upon the Council the exclusive right to authorise the issue of bank notes within the Community.

Finally, for the System to be financially independent it is important that it is not subjected to general Community provisions governing the budget and the auditing of financial operations. To this end, Chapter VI specifies the financial structure of the System. The ECB will have its own capital and means for allocating income, profits and losses. [To be expanded after financial provisions have been drafted.]

(e) Democratic accountability of the System

While independence is considered to be an essential prerequisite for the fulfilment of the System's objectives and tasks, it is fully recognised that a high degree of autonomy must be counterbalanced by democratic accountability. The compatibility of independence with democratic accountability is to a significant extent ensured by the fact that the Treaty (and the draft Statute annexed to it) will have to be approved unanimously by all Member States and be ratified by their parliaments. The powers entrusted to the decision-making bodies and the scope of their responsibilities are clearly defined in the draft Statute and the members of the decision-making bodies will be appointed by democratically legitimised political authorities.

The President of the Council will be nominated by the Council after consultation with the European Parliament. In addition, the Statute requires the presentation of an annual report to the European Council, the Council of the European Communities and the Parliament. The transparency of the System is further enhanced in Article 15 by enabling the President of ECOFIN and a member of the Commission to attend meetings of the Council of the System. Consolidated financial statements of the System will be published regularly.

Legal Aspects

(a) Enshrinement in the Treaty

It is proposed to annex the Statute to the new Treaty in the form of a Protocol. As a consequence, the Statute - as the Treaty itself - will have the status of primary EC law and any amendment of the statute would normally be subjected to the same rigorous procedure applied to Treaty

changes. However, if the Statute forms a self-contained piece of legislation it will not only include the fundamental constitutional provisions but also those of a more technical nature. In order to preserve some flexibility for amending these technical provisions in response to changing circumstances it is necessary to introduce in the Statute a simplified amendment and complementing procedure. However, at the present stage it would be difficult to make concrete proposals for such a procedure since the institutional arrangements of the Community, i.e. the legislative procedures to be followed in the future, are expected to be revised in the context of the Intergovernmental Conference on Political Union. As the requirement of democratic legitimacy needs to be respected in the procedure under which Articles of the Statute can be amended or complemented, it is considered advisable to await the outcome of the Intergovernmental Conference. For this reason Chapter IX of the draft Statute has not yet been completed. [However, the Committee of Governors has identified some elements which shall be taken into account when drafting the necessary provisions. While it is recognised that democratic legitimacy rules out the possibility of giving an exclusive right of initiative to the decision-making bodies of the System, it is also important to safeguard the interests of the ECB and the national central banks. This could probably best be achieved by introducing an obligation to consult the Council whenever draft legislation is proposed and by setting a reinforced majority requirement for adoption of the amendments.] The Committee of Governors is firmly of the view that all fundamental principles defining the System should be excluded from a simplified amendment procedure. Indeed, this should be the same provision the Committee of Governors proposes to insert into the Treaty (see list attached to the draft Statute).

(b) Legal structure

As stated in Article 1 - and as mentioned above - the System comprises the ECB and the national central banks and is therefore understood to describe the co-existence of separate institutions which are governed by common rules and which jointly pursue the objectives and tasks assigned to the System. The System as a whole does not enjoy legal personality but its constituent parts have separate legal personality, established explicitly for the ECB in Article 9 and - implicitly - retained by the national central banks in accordance with national law. This implies that only the ECB and the national central banks, but not the System, may

own, buy and sell assets, contract and sue or be sued. However, this also requires - as pointed out earlier - that the statutes of the national central banks are made compatible with the provisions of the Statute.

The System shall be governed by the decision-making bodies of the ECB, which shall be the Council and the Executive Board. Under this construction the decision-making bodies benefit from the ECB's legal personality, i.e. the ECB will be liable for the acts and decisions taken by the Council and the Executive Board, and there is thus no legal uncertainty as to whether the Community would have to assume liability for the System.

(c) The nature of the System in the framework of Community institutions

It is proposed that the European System of Central Banks consisting of the ECB and the central banks of the Member States is not classified as a Community institution in accordance with Article 4, Paragraph 1 of the EEC Treaty. Instead, it is suggested that the establishment of the System is mentioned separately in a new paragraph of this Article. In order to avoid any legal uncertainty arising from the possible application to the System of general provisions relating to Community institutions, the draft Statute contains a special Chapter (VII) which includes the necessary provisions governing all general aspects of the System. In many instances these provisions are broadly similar to those contained in the existing EEC Treaty.