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

with an : *** INTRODUCTORY REPORT
and a : *** COMMENTARY

EUROPE/DOCUMENTS publishes the original text (which exists only in English) of the three Documents that the Committee of Governors of the Central Banks of the Member states of the European Economic Community transmitted on November 27 to the president of the ECOFIN Council, who will transmit it to the Intergovernmental Conference on EMU (see EUROPE of 7 December).

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CHAPTER I - CONSTITUTION OF THE SYSTEM

Article 1 - The System

Pursuant to Article ... of the EEC Treaty, a system, consisting of a central institution to be known as "The European Central Bank" (hereinafter "the ECB") and of the participating central banks of the Member States of the Community (hereinafter "national central banks"), is hereby established and shall be known as the "European System of Central Banks" (hereinafter the "System").

CHAPTER II - OBJECTIVES AND TASKS OF THE SYSTEM

Article 2 - Objectives

2.1 The primary objective of the System shall be to maintain price stability.

2.2 Without prejudice to the objective of price stability, the System shall support the general economic policy of the Community.

2.3 The System shall act consistently with free and competitive markets.

Article 3 - Tasks

The basic tasks to be carried out through the System shall be:

- to formulate and implement the monetary policy of the Community;
- to conduct foreign exchange operations in accordance with the prevailing exchange rate regime of the Community as referred to in Article 4.3;
- to hold and manage [the] official foreign reserves of the participating countries;
- to ensure the smooth operation of payment systems;
- to participate as necessary in the formulation, co-ordination and execution of policies relating to prudential supervision and the stability of the financial system.

Article 4 - Advisory functions

4.1 The ECB shall be consulted regarding any draft Community legislation and any envisaged international agreements in the monetary, prudential, banking or financial field. In accordance with Community legislation, the ECB shall be consulted by national authorities regarding any draft legislation within its field of competence.

4.2 The ECB may give opinions to any Community or national authority on matters within its field of competence.

4.3 The ECB shall be consulted with a view to reaching consensus, consistent with the objective of price stability, prior to any decision relating to the exchange rate regime of the Community, including, in particular, the adoption, abandonment or change in central rates [or exchange rate policies] vis-à-vis third currencies.

4.4 The ECB may publish its opinions.

Article 5 - Collection of statistical information

5.1 In order to undertake the tasks of the System, the ECB, assisted by the national central banks, shall collect the necessary statistical

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information either from the competent national authorities or directly from economic agents. For these purposes, it shall co-operate with the competent authorities of the Community, the Member States or third countries and with international organisations.

5.2 The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.

5.3 The ECB shall promote the harmonisation, where necessary, of the conditions governing the collection, compilation and distribution of statistics in the areas within its field of competence. Community legislation shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6 - International co-operation

6.1 In the field of international co-operation involving the tasks entrusted to the System, the ECB shall decide whether the System shall be represented by the ECB and/or the national central banks.

6.2 The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

CHAPTER III - ORGANISATION OF THE SYSTEM

Article 7 - Independence

In exercising the powers and performing the tasks and duties conferred upon them by the Treaty and this Statute, neither the ECB nor a national central bank nor any member of their decision-making bodies may seek or take any instructions from Community institutions, governments of Member States or any other body. The Community and each Member State undertake to respect this principle and not to seek to influence the ECB, the national central banks and the members of their decision-making bodies in the performance of their tasks.

Article 8 - General principle

The System shall be governed by the decision-making bodies of the ECB.

Article 9 - The European Central Bank

9.1 The ECB is hereby established and shall have legal personality.

9.2 In each of the Member States the ECB shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.3 The property of the ECB shall be exempt from all forms of requisition or expropriation.

Disputes between the ECB, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice.

9.4 The function of the ECB shall be to ensure that the tasks conferred upon the System under Article 3 shall be implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Article 14.

9.5 The decision-making bodies of the ECB shall be the Council and the Executive Board.

Article 10 - The Council

10.1 The Council shall comprise the President, the Vice President, the other members of the Executive Board and the Governors of the national central banks.

10.2 Subject to Article 10.3, only members of the Council present in person shall have the right to vote. Each member shall have one vote. The Rules of Procedure referred to in Article 12.3 shall provide that a member of the Council who is prevented from voting for a prolonged period may appoint an alternate as a member of the Council.

Save as otherwise provided for in the Statute, the Council shall act by a simple majority. In the event of a tie, the President shall have the casting vote.

In order for the Council to vote, there shall be a quorum of two-thirds of the members. If the quorum is not met, the President may convoke an extraordinary meeting at which decisions may be taken without regard to the quorum referred to above.

10.3 Weighted voting shall apply in accordance with the provisions of Article 28. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

10.4 The proceedings of the meetings shall be confidential. The Council may decide to make the outcome of its deliberations public.

10.5 The Council shall meet at least ten times a year.

Article 11 - The Executive Board

11.1 The Executive Board shall comprise the President, the Vice President and four other members.

The members of the Executive Board shall be selected among persons of recognised standing and professional experience in monetary or banking matters.

The members shall perform their duties on a full-time basis. No member shall, without approval of the Council, receive a salary or other form of compensation from any source other than the ECB or occupy any other office or employment, whether remunerated or not, except as a nominee of the ECB.

11.2 The President and the Vice President shall be appointed for a period of eight years by the European Council, after the Council has given its opinion, and after consultation with the European Parliament.

11.3 The other members of the Executive Board shall be appointed, for a period of eight years, by the European Council after the Council has given its opinion.

11.4 The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be laid down in contracts with the ECB and shall be fixed by the Council on the proposal of a Committee comprising three members appointed by the Council and three members appointed by the Council of the European Communities. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.

11.5 If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been

guilty of serious misconduct, the Court of Justice may, on application by the Council or the Executive Board, compulsorily retire him.

11.6 Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements will be specified in the Rules of Procedure referred to in Article 12.3.

11.7 The Executive Board shall administer the ECB.

Article 12 - Responsibilities of the decision-making bodies

12.1 The Council shall take the decisions necessary to ensure the performance of tasks entrusted to the System under the present Statute. The Council shall formulate the monetary policy of the Community including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the System, and shall establish the necessary guidelines for their implementation.

[The Council shall delegate to the Executive Board such necessary operational powers as it thinks fit for implementing the monetary policy decisions and guidelines. The Council may delegate other powers as it may specify to the Executive Board.] [The Executive Board shall implement monetary policy in accordance with the decisions and guidelines laid down by the Council.]

12.2 When implementing monetary policy in accordance with the decisions and guidelines established by the Council, the Executive Board shall give the necessary instructions to national central banks.

The Executive Board shall have responsibility for the preparation of Council meetings.

12.3 The Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

12.4 The Council shall exercise the advisory functions referred to in Article 4.

12.5 The Council shall take the decisions referred to in Article 6.

Article 13 - The President

13.1 The President, or, in his absence, the Vice President shall chair the Council and the Executive Board of the ECB.

13.2 The President or his nominee shall represent the ECB externally.

Article 14 - National central banks

14.1 The Member States shall ensure that their national legislation including the statutes of the national central banks is compatible with this Statute and the EEC Treaty.

14.2 The statutes of the national central banks shall in particular provide that the Governor of a national central bank is appointed by the national authorities of the Member State after consultation with the Council. The term of office shall be no less than 5 years. The Governor may be relieved from office only for serious cause resting in his person. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Council.

14.3 Subject to Article 14.5, the national central banks are an integral part of the System and shall act in accordance with the guidelines and instructions of the ECB.

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The Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4 [To the full extent possible in the judgement of the Council, the national central banks shall execute the operations arising out of the System's tasks.] [The Executive Board shall, to the extent possible and appropriate, make use of the national central banks in the execution of the operations arising out of the System's tasks.]

14.5 National central banks may perform on their responsibility and liability functions other than those specified in this Statute unless the Council finds, by a qualified majority of two-thirds of the votes cast, that these interfere with the objectives and tasks of the System. Such functions shall not be regarded as being part of the System.

14.6 For the purpose of this Statute, the Institut Monétaire Luxembourgeois shall be regarded as a national central bank.

Article 15 - Inter-institutional co-operation and reporting commitments

15.1 The President of the Council of the European Communities and a Member of the Commission may attend meetings of the Council. They may take part in the Council's deliberations but not in the voting.

15.2 The President of the ECB shall be invited to participate in meetings of the European Council and Council of the European Communities when matters relating to the System's objectives and tasks are discussed.

15.3 The ECB shall draw up an annual report on the activities of the System and on the monetary policy of both the previous and current year at a date to be established in the Rules of Procedure. The President shall present the annual report to the European Council, the Council of the European Communities and the European Parliament. The President and members of the Executive Board may attend meetings of the European Parliament's specialised committees, if circumstances justify.

15.4 The ECB shall draw up reports on the activities of the System at regular intervals. These reports and statements are to be published and to be made available to interested parties free of charge.

15.5 A consolidated financial statement of the System shall be published each week.

CHAPTER IV - MONETARY FUNCTIONS AND OPERATIONS OF THE SYSTEM

Article 16 - Notes and coins

16.1 The Council shall have the exclusive right to authorise the issue of notes within the Community. The notes issued by the ECB and the national central banks shall be the only notes to have legal tender status.

16.2 Provisions concerning the legal tender status of Community currencies shall be established according to the Community legislation. The Council shall make the necessary arrangements for the exchange of notes denominated in Community currencies by the national central banks at par value.

16.3 The volume and denomination of coins issued within the Community shall be subject to approval of the Council. The coins shall be put into circulation by the ECB and/or the national central banks.

Article 17 - Accounts with the ECB and the national central banks

In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets including book-entry securities as collateral.

Article 18 - Open market and credit operations

18.1 In order to achieve the objectives of the System and to carry out its tasks, the ECB and the national central banks shall be entitled:

- to operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement claims and marketable instruments, whether in Community or in foreign currencies, as well as precious metals;
- to conduct credit operations with credit institutions and other market participants [with lending being based on adequate collateral].

18.2 The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks including the announcement of conditions under which they stand ready to enter into such transactions.

Article 19 - Minimum reserves

The ECB shall be entitled to require credit institutions to hold minimum reserves on accounts with the ECB and national central banks. Regulations concerning the calculation and determination of the required minimum reserves shall be established by the Council. In cases of non-compliance the ECB shall be entitled to levy penalty interest and to take steps to pursue the matter in the supervisory sphere.

Article 20 - Other instruments

The Council may decide, by qualified majority of two-thirds of the votes cast, upon the use of such other operational methods of monetary control as it sees fit.

Article 21 - Operations with public entities

21.1 The ECB and national central banks shall not grant overdrafts or any other type of credit facility to Community institutions, governments or other public entities of Member States or purchase debt instruments directly from them.

21.2 The ECB and national central banks may act as fiscal agents for Community institutions, governments or other public entities of Member States.

21.3 The function of fiscal agent shall comprise all banking transactions except those referred to in paragraph 1 of this Article.

21.4 Community institutions, governments and other public entities of Member States for which the ECB and national central banks act as fiscal agents shall issue debt instruments either through the System or in consultation with it.

21.5 The provisions under this Article shall not apply to publicly-owned credit institutions.

Article 22 - Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may issue regulations to ensure efficient and sound clearing and payment systems inside the Community and with third countries.

Article 23 - External operations

The ECB and the national central banks shall be entitled:

- to establish relations with central banks and financial institutions in third countries and, where appropriate, with international and supranational organisations;
- to acquire and sell spot and forward all types of foreign exchange assets and precious metals. The term "foreign exchange asset" shall include securities and all other assets in currency of any country or units of account and in whatever form held;

- to hold and manage the assets defined above;
- to conduct all types of banking transactions in relation to third countries and international and supranational organisations, including borrowing and lending operations.

Article 24 - Other operations

In addition to operations arising from their tasks, the ECB and the national central banks may enter into operations that serve their administrative purposes or for their staff.

CHAPTER V - PRUDENTIAL SUPERVISION

Article 25 - Supervisory tasks

25.1 The ECB shall be entitled to offer advice and to be consulted on the interpretation and implementation of Community legislation relating to the prudential supervision of credit and other financial institutions and financial markets.

25.2 The ECB may formulate, interpret and implement policies relating to the prudential supervision of credit and other financial institutions for which it is designated as competent supervisory authority.

CHAPTER VI - FINANCIAL PROVISIONS OF THE SYSTEM

Article 26 - Financial accounts

26.1 The financial year of the ECB and the national central banks shall begin on the first day of January and end on the last day of December.

26.2 The annual accounts of the ECB shall be drawn up by the Executive Board in accordance with the principles established by the Council. The accounts shall be approved by the Council and shall thereafter be published.

26.3 For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the System, comprising the assets and liabilities of the ECB and those assets and liabilities of the national central banks that fall within the System.

26.4 For the application of this Article, the Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

Article 27 - Auditing

27.1 The accounts of the ECB and the national central banks shall be audited by independent external auditors recommended by the Council and approved by the Council of the European Communities. The auditors shall have full power to examine all books and accounts of the ECB and national central banks, and to be fully informed about their transactions.

27.2 The provisions of Articles 203 and 206a of the Treaty shall not apply to the ECB or to the national central banks.

Article 28 - Voting on financial matters

28.1 For any decisions to be taken under Articles 29 to 32, the votes in the Council shall be weighted according to the key attached to the Statute. A decision by a qualified majority shall be deemed to be approved if it carries [...] votes out of the total of [...].

28.2 The key referred to in paragraph 1 shall be reviewed every [5] [10] years and may be modified in accordance with the simplified amendment procedure laid down in Chapter IX. The review shall take into consideration changes in the criteria on which the key was established.

Article 29 - Capital of the ECB

29.1 The capital of the ECB shall, upon its establishment, be ecu [x] million. The capital may be increased from time to time by such amounts as may be decided by the Council acting by qualified majority.

29.2 The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key attached to this Statute.

29.3 The Council, acting by qualified majority, shall determine the extent to which and the form in which capital shall be paid-up.

29.4 The shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached other than in accordance with a decision taken by the Council.

29.5 If the key attached to this Statute is modified in accordance with Article 28.2, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the revised key. The Council shall determine the terms and conditions of such transfers.

Article 30 - Transfer of foreign reserve assets to the ECB

30.1 Without prejudice to the provisions of Article 29, the ECB shall be endowed by the national central banks with foreign reserve assets, other than Community currencies and ecus, up to an amount equivalent to ecu (x). The Council shall decide about the proportion to be called up by the ECB at the entry into force of this Statute and the amounts called up at later dates.

30.2 The contributions of each national central bank shall be fixed in accordance with the key attached to this Statute.

30.3 Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Council shall determine the denomination and remuneration of such claims.

30.4 Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB in accordance with Community legislation.

30.5 The ECB shall be authorised to accept the pooling of IMF reserve positions and SDRs.

30.6 The Council shall determine all other conditions required for the application of this Article.

Article 31 - Foreign reserve assets held by national central banks

31.1 The national central banks shall be allowed to perform transactions in fulfilment of the obligations towards international organisations in accordance with Article 23.

31.2 All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30 shall be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Community.

31.3 The Council shall issue guidelines with a view to facilitating such operations.

Article 32 - Distribution of income of the System and allocation of net profits and losses of the ECB

To be drafted.

CHAPTER VII - GENERAL PROVISIONS

Article 33 - Regulatory powers

33.1 The Council and the Executive Board shall, in accordance with their respective responsibilities, make regulations and take decisions, necessary for the performance of tasks entrusted to the System under the present Statute.

33.2 To be drafted. (Conditions of motivation, publication, entering into force, notification and enforceability of the regulations and decisions referred to in Article 33.1.)

Article 34 - Enforcement

The ECB and national central banks shall be entitled to impose sanctions on market participants and other economic agents which fail to comply with their obligations under regulations and decisions issued under this Statute.

Article 35 - Judicial control and related matters

35.1 The acts of the ECB 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 ECB may institute proceedings in the same conditions as Community institutions. Articles 173 to 178, 183 and 184 of the EEC Treaty shall be applicable accordingly.

35.2 The ECB shall be subject to the liability regime as provided for in Article 215 of the EEC Treaty.

35.3 The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law.

35.4 The decision of the ECB to bring action before the Court of Justice shall be taken by the Council.

35.5 The national central banks shall be liable according to their respective national laws.

Article 36 - Staff

36.1 The Council of the ECB, on a proposal from the Executive Board, shall lay down the Staff Regulations of officials and the Conditions of Employment of other servants of the ECB.

The Court of Justice shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment.

36.2 The Staff Regulations shall include the conditions of recruitment and promotion, the salaries, pensions and other social security benefits, the limitation of external activities, the Unions' rights and their relations with the Executive Board, the exchange of staff members from the national central banks.

Article 37 - Seat

The seat of the ECB shall be established at (....).

Article 38 - Professional secrecy

38.1 Members of the governing bodies, officials and other servants of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

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

Article 39 - Privileges and immunities

The Protocol on the privileges and immunities of the European Community shall apply to the ECB, the members of its decision-making bodies, its officials and other servants to the extent necessary for the performance of the ECB's tasks.

CHAPTER VIII - TRANSITIONAL PROVISIONS FOR THE SYSTEM

To be drafted.

CHAPTER IX - AMENDMENT AND COMPLEMENTARY PROVISIONS FOR THE SYSTEMArticle 40 - Simplified amendment procedure

To be drafted.

Article 41 - Complementary legislation

To be drafted.

INTRODUCTORY 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, whose meetings are regularly attended by a member of the Commission, has had extensive discussions on the monetary aspects of the final stage of Economic and Monetary Union. The point of departure of the Committee's deliberations was the concepts developed in the "Report on Economic and Monetary Union in the European Community" (the "Delors Report"), but the preparatory work undertaken by other Community bodies has also been taken into account.

The Chairman of the Committee of Governors has reported on several occasions to the ECOFIN on the progress made by the Committee in its work, the outcome of which is the attached draft Statute of the "European System of Central Banks and of the European Central Bank", hereinafter called the "System".

Principal considerations underlying the Statute

In preparing the Statute the Committee of Governors has assumed that there is a clear political will and a firm commitment 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 participating Community currencies and where subsequently a single currency will be issued which will replace the present national currencies. The Statute allows for the changes involved in the move from national currencies with permanently fixed exchange rates to a single Community currency as well as those arising from the continuing process of financial market integration.

While the Statute encompasses a detailed and comprehensive set of institutional and organisational provisions, it still needs to be completed in two respects. Firstly, the Statute does 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 the implications of full participation in the System by some of the Member States at different dates. Secondly, certain aspects of a more technical nature, especially those relating to the distribution of income, and some legal questions are still under consideration.

The Committee of Governors has the intention to complete the Statute in these areas and to present its proposals in the course of the Intergovernmental Conference. At the same time it is understood that, in accordance with Article 102a of the EEC Treaty, the Committee of Governors will be consulted regarding any proposals made during the Intergovernmental Conference for institutional changes in the monetary area. It may also on its own initiative wish to give further consideration to certain provisions of the draft Statute.

The Committee of Governors could not reach full agreement on a few provisions which have therefore been put between square brackets in the Statute. These issues concern the responsibility for exchange rate policy, the procedure for giving operational powers to the Executive Board, the embodiment of the principle of subsidiarity in the Statute and the need for collateral in lending to credit institutions.

Moreover, the Governor of the Bank of England records that the UK authorities do not accept the case for a single currency and monetary policy. He has nevertheless participated fully in the discussions of the Governors' Committee on this Statute. He recognises that it is the desire of the other Governors to define the responsibilities and functions of a possible future European System of Central Banks, before the Intergovernmental Conferences are convened in December 1990.

The main organisational features of the System

As stated in Article 1, the System consists of a new central institution - The European Central Bank (ECB), endowed with legal personality - and the central banks of the Member States. For the System to operate efficiently and coherently Article 14 obliges the Member States to ensure that national legislation, including the statutes of the national central banks, are compatible with the Statute and the EEC Treaty. The System as such has no legal personality and should be regarded only as a term describing the existence of the ECB and the national central banks as integral parts of the System, governed by a common set of rules and committed to the objectives and tasks entrusted to it. The System 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 allows monetary policy decisions to be placed firmly in the hands of the central decision-making bodies. On the other hand, it offers the possibility of executing operations arising from the System's tasks through both the ECB and the national central banks. Although there is a consensus that, in accordance with the principle of subsidiarity, there is a presumption for carrying out such operations through the national central banks, views differ as to how the principle of subsidiarity should be embodied in the Statute. Most Community central banks agree on the formulation that to the full extent possible in the judgment of the Council the national central banks shall execute operations arising out of the System's tasks. Some Community central banks prefer the formulation that the Executive Board shall make use of the national central banks, to the extent possible and appropriate, in the execution of such operations.

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 that 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 lists those tasks which are normally associated with the activity of a central bank and Article 4 specifies several advisory functions.

(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. The Statute ensures that with the move to the final stage, responsibility for the formulation and implementation of the monetary policy of the Community will be vested with the System and be formally attributed to the Council and the Executive Board of the ECB.

In accordance with Article 12, the Council will be the supreme decision-making body on all matters relating to the System's tasks and operations. This involves in particular the strategic monetary policy decisions including those on intermediate monetary objectives, key interest rates and the supply of reserves in the System and the establishment of guidelines for their implementation. At the same time, as the daily execution of monetary policies takes place in an environment of rapidly changing market conditions, there is a continuous need for operational decisions. There is full agreement that the daily management of monetary policy should be in the hands of the Executive Board, which would act in accordance with the decisions and guidelines established by the Council. However, views differ as to how the necessary authority should be conferred upon the Executive Board. All but one member of the Committee of Governors favour an approach under which the Council would be obliged to delegate the necessary operational powers to the Executive Board. This is considered to underscore the position of the Council as the supreme decision-making body. One Committee member is of the view that an efficient monetary management makes it necessary to give explicitly to the Executive Board the responsibility for implementing the monetary policy.

(c) Federalism and subsidiarity

While the Statute provides for centralised decision-making in conformity with the indivisibility of monetary policy, it fully respects the federative structure of the Community. In accordance with Article 10, the Governors of all national central banks will be ex officio members of the Council. Except for some specific "patrimonial" decisions (see below: "(g) The financial arrangements"), each Council member will have one vote. In particular in the area of monetary policy decision-making voting on the basis of "one person, one vote" is conditioned by the need to direct such decisions to the requirements of the Community as a whole rather than to regional considerations. This voting procedure thus serves to strengthen the System's decision-making process.

The federative structure of the System is also reflected in the execution of operations arising out of the System's tasks, which, as mentioned above, rests firmly on the application of the principle of subsidiarity (Article 14). The reliance on national central banks as operational arms of the System is also one of the important reasons why their statutes will have to be made compatible - but not necessarily uniform across countries - with the provisions of the Statute and the EEC Treaty. At the same time, national central banks may have responsibilities of their own, for example, in settling payments, performing tasks in the important area of banking supervision or carrying out business on behalf of government institutions. Moreover, Article 14 authorises national central banks to perform functions outside those prescribed in the Statute, unless they interfere with the objectives and tasks of the System.

(d) The independence of the System

In order to enable the System to attain the primary objective of price stability it is important that the decision-making bodies should not be influenced by considerations which would be in conflict with the pursuit of price stability. Article 7 states that the ECB, the national central

banks and their decision-making bodies shall act independently of instructions from political authorities. The favourable experience with independent monetary authorities made by a number of countries is particularly relevant for 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.

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 refer to the term of office and stipulate the conditions and procedures under which the members of the decision-making bodies can be relieved from office.

While Article 7 firmly embodies the principle of independence in the Statute, other provisions give it practical effect by determining the functional, operational and financial conditions which need to be met so that the System can act with the necessary degree of autonomy.

(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 also fully recognised in the Statute that there must be democratic legitimacy and accountability. This is to a significant extent ensured by the fact that the Treaty (and the Statute annexed to it) will have to be approved by 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 Statute and the members of the decision-making bodies will be appointed by the appropriate political authorities. The President and the Vice-President of the Executive Board (who also preside over the Council) will be nominated by the European Council after consultation with the European Parliament.

Transparency is an important element of democratic accountability. To this end, the Statute calls for the preparation of an annual report which the President of the Council shall present 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 the Council of the European Communities and a member of the Commission to attend meetings of the Council of the ECB. In addition, the ECB will report regularly on the activities of the System and will publish consolidated financial statements of the System.

(f) The fundamental functional and operational features of the System

In order to ensure that the Council and the Executive Board can direct monetary policy towards price stability, they should not be obliged to fulfil tasks which would render it extremely difficult, if not impossible, to attain the primary objective of the System. For this reason, Article 21 denies the ECB and the national central banks the possibility of giving overdrafts or any other type of credit facility to public entities. Publicly-owned credit institutions should of course have access to credit from the System in the conduct of their normal banking operations. In the context of the external operations Article 3 entrusts the System with the task of conducting foreign exchange operations in accordance with the prevailing exchange rate regime of the Community. While Article 4.3 acknowledges that the responsibility for decisions concerning the Community's exchange rate regime rests with the political authorities, it also needs to be taken into account that operations in the exchange market are closely interconnected with monetary policy and, thus, may have a

direct bearing on the System's ability to attain its primary objective. For this reason Article 4.3 establishes the obligation to consult the ECB with a view to reaching consensus consistent with the objective of price stability prior to any decision relating to the exchange rate regime. However, views differ with regard to the ECB's role in the decisions about exchange rate policy. Most of the members of the Committee of Governors are of the view that decisions on the Community's exchange rate policy should be taken in the same way as decisions on the adoption, abandonment or change in central rates vis-à-vis third currencies. Some Committee members are of the view that decisions on the Community's exchange rate policy should be subject to the consent of the ECB.

In order to be able to act autonomously, it is also essential that the ECB and the national central banks are given the necessary policy instruments (see Articles 18 to 20) and that those instruments can be used without restrictions. The relevant provisions have been drafted with due regard to the evolutionary nature of financial markets and will allow the System to respond adequately to changing market conditions.

In order to be able to perform its tasks the System is given three important complementary functions. Firstly, in its advisory capacity the ECB is to be consulted regarding any draft Community legislation (as well as any national legislation within the ECB's field of competence) and any envisaged international agreements in the monetary, prudential, banking or financial field (Article 4.1). Secondly, the ECB, assisted by the national central banks, will be entitled to collect the statistical information necessary for the performance of the System's tasks and, where necessary, the ECB shall promote the harmonisation of the conditions governing the collection, compilation and distribution of statistics in the areas within its field of competence. Thirdly, the System will participate as necessary in the formulation, co-ordination and execution of policies relating to prudential supervision and the stability of the financial system.

(g) The financial arrangements

The provisions of Chapter VI establish the financial foundations of the System which ensure its financial autonomy. In particular, the provisions govern the endowment of the ECB with capital and foreign assets (Articles 29 and 30). Provisions relating to rules for the distribution of income deriving from the System's operations are still under consideration.

Two principal features characterise these financial arrangements. Firstly, in accordance with the tasks entrusted to the System, and the ensuing operational requirements, provision has been made for endowing the ECB with capital and for pooling in its books foreign reserve assets as necessary to ensure the credibility of the System. Secondly, the subscription of capital to the ECB and the transfer of foreign reserve assets to the ECB are based on a single key which is to be established with due regard to objective indicators, such as GNP, and possibly population and financial criteria. The key also defines the numbers of votes each national central bank Governor will have in decisions on financial matters, which, in accordance with Articles 10.3 and 28, are the only areas in which weighted voting will apply.

The Statute does not yet prescribe precise amounts for the capital of the ECB or the total of pooled foreign reserve assets. There is, however, agreement in the Committee of Governors that the volume of foreign assets to be placed at the disposal of the ECB should be sufficiently high to make the foreign exchange policy credible in the eyes of market

participants. Accordingly Article 30 prescribes that the Council will be entitled to call up - in successive steps - up to a predetermined limit foreign reserve assets from the national central banks. Further calls of such assets, beyond the fixed limit, may be made only in accordance with a procedure determined by Community legislation.

Depending on the extent of pooling at the outset, this approach could imply that a part of foreign reserve assets remains in the hands of national authorities. In order to ensure that these residual reserve assets are held and used in a manner which is consistent with the Community's exchange rate and monetary policies, Article 31 states that all operations (except those in fulfilment of obligations to international organisations) involving foreign reserve assets can be carried out by the national central banks only with approval of the ECB. However, for all foreign reserve assets in the Community to be effectively under the control of the ECB, all but one member of the Committee of Governors agree that it will be necessary to bring such assets into the System at the start of Stage Three. To this effect the Treaty should stipulate that all foreign reserve assets held by non-central bank entities are to be transferred to the national central banks of the countries concerned.

Legal Aspects

(a) Enshrinement in the Treaty

It is proposed to annex the Statute to the new Treaty in the form of a Protocol. This ensures that the Statute - as the Treaty itself - will have the status of primary Community law and therefore any amendment of the Statute would normally be subjected to the procedure applied to EEC Treaty changes. At the same time, as 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 such technical provisions in response to changing circumstances it is necessary to introduce in the Statute a simplified amendment procedure. However, since the legislative procedures of the Community are expected to be revised in the context of the Intergovernmental Conference on Political Union, the Committee of Governors considers it premature to make a concrete proposal for a simplified amendment procedure. The completion of Chapter IX, which will contain the necessary provisions, should therefore await the outcome of the Intergovernmental Conference. The Committee of Governors is firmly of the view that all fundamental features of the System should definitely be excluded from simplified amendment procedures. The Treaty itself should include provisions which refer inter alia to the establishment of the System comprising the ECB and the national central banks, its objectives, its tasks, its powers as well as its independence.

(b) Legal structure

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, can own, buy and sell assets, conclude contracts and be a party in legal proceedings.

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 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 that Article. In order to avoid any legal uncertainty arising from the possible application to the System of general provisions relating to Community institutions, the Statute contains a special Chapter (VII) which includes the necessary provisions governing the general aspects of the System. In many instances these provisions are broadly similar to those contained in the existing EEC Treaty.

Concluding comments

The attached draft Statute has been designed with two considerations in mind. On the one hand, the System must be built on those fundamental institutional requirements which are essential for the performance of its task and the attainment of its objectives; on the other hand, it must allow for changes arising from further economic and financial integration of the Community, the time and speed at which these changes will occur being difficult to predict. Indeed, the state of market integration will have important operational implications for the System. Moreover, changes implied by the move to a single currency in the final stage will also have to be allowed for under the Statute. For these reasons the Committee of Governors has chosen to follow a pragmatic approach by leaving many of the operational features to the decision of the Council rather than defining now in great detail operational aspects which may be outdated by the time the System is established.

By contrast, the institutional principles on which the System needs to be founded in order to provide greatest possible assurance for the attainment of its objectives, have been fully embodied in the Statute. The Committee of Governors is firmly of the view that indivisibility of monetary policy, independence and democratic accountability, federalism and subsidiarity, denial of monetary financing to the public sector, freedom to conduct foreign exchange market operations in the framework of the Community's exchange rate regime, availability of the appropriate policy instruments and financial autonomy are indispensable cornerstones of a System committed to the maintenance of price stability.

Finally, the Committee of Governors wishes to emphasise that the success of the System in performing its functions and tasks does not solely depend on its operational and institutional features. As has been pointed out in the Delors Report "economic union and monetary union form two integral parts of a single whole" and have to be implemented in parallel. Indeed, only if adequate progress has been made in the economic field, in particular with regard to ensuring budgetary discipline, will the System be able to operate in an environment in which it can successfully attain its primary objective of price stability.