

Committee of Governors of the
Central Banks of the Member States
of the European Economic Community

DRAFT STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

AND OF

THE EUROPEAN CENTRAL BANK

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

Articles and Comments

CHAPTER I - CONSTITUTION

Article 1 - The System

Pursuant to Article ... of the 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").

* * *

Comments

- a) Participation: The definition of a participating central bank will have to be made more precise.

For most Alternates, a participating central bank should be one whose Member State has become a member of the Union or has fully accepted the objectives of economic and monetary union and has pledged to become a member as soon as economic conditions permit it to do so. The rights and obligations of a central bank in the second group will be restricted until its Member State joins the

Union. In this respect the necessary provisions will have to be drafted in the articles dealing with transitory requirements.

In the view of one Alternate, a participating central bank should be one which has accepted the obligations of membership of the System (as it may have evolved in Stage Two). After Economic and Monetary Union is achieved, participating central banks will be those of the Member States that have become members of the Union or have fully accepted the objectives of Economic and Monetary Union and have pledged to become a member as soon as economic conditions permit it to do so.

In the view of some Legal Experts the word "participating" should be omitted from this Article. The transitional arrangements should cater for a situation where not all national central banks participate in the System.

- b) Legal structure of the System: On the assumption that the System should be able to operate through both the ECB and the national central banks, the Legal Experts recommended giving legal personality to the ECB while maintaining the legal personality of the national central banks. Other legal constructions were possible but would not be in the spirit of the present draft Statute. The German Alternate said that he could accept the proposed legal structure as a working hypothesis although he had, at this stage, some reservations about this construction.

The Legal Experts also recommended that classification of the System as a Community institution should be avoided under Article 4, §1 of the EEC Treaty but instead a reference to the System should be inserted in a new §2 of that Article. This solution implies the inclusion in the Statute of specific provisions governing all aspects of the System, to ensure that there is no legal uncertainty arising from the possible application to the System of general provisions relating to Community institutions contained in the EEC Treaty. Such specific provisions might include, for example, aspects governing staff (see Article 12), budgetary issues, auditing, judicial control, professional secrecy, non-contractual liability, seat, official languages and privileges and immunities.

CHAPTER II - OBJECTIVES AND TASKS

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. In exercising its functions, the System shall act consistently with free and competitive markets.

* * *

Comments

Article 2.3.: The Legal Experts commented that the word "functions" was not clearly defined. It was questioned whether it related solely to monetary functions or those tasks contained in Article 3. Is it appropriate to regard such requirements as are stated in this Article as a fundamental objective of the System?

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 Community];
- to ensure the smooth operation of the payment system;
- [- to support the stability of the financial system];
- to participate as necessary in the formulation and execution of policies relating to prudential supervision *according to Chapter V.*

* * *

Comments

- a) Indent 3: The brackets relate to the ownership of reserves and this issue will have to be discussed in the light of the provisions governing financial arrangements (see Article 26).
- b) Should future developments call for an extension of the System's tasks, a Treaty provision might stipulate that following a proposal from the System, other tasks may be conferred by a decision of the Council of the European Communities in order to promote the primary objectives of EMU whilst respecting the objectives contained in Article 2 of the Statute. The Committee of Governors considers that such a Council decision should be subject to a procedure requiring more than simple majority.
- c) *Some Legal Experts proposed introducing an enabling clause as a separate Article 3.2 on the lines suggested in comment b). Others felt that this matter could be dealt with in the general simplified amendment procedure.*

Article 4 - Advisory functions

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

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

4.3. The ~~System~~ ECB shall be consulted with a view to reaching consensus 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 ~~System~~ ECB may publish its opinions.

* * *

Comments

- a) Articles 4.1. and 4.3.: These provisions should also be inserted in the Treaty because they impose obligations on ~~the~~ Community institutions rather than on the System itself.

Article 5 - Collection of statistical information

5.1. In order to perform its functions, the ~~System~~ ECB shall collect the necessary *statistical* 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 ~~non-member States~~ *third countries* and with international organisations.

5.2. The national central banks shall carry out, to the extent possible, *and following instruction from the ECB* the tasks described in Article 5.1.

5.3. The ECB shall ~~promote the harmonisation, where necessary, of~~ *be enabled by Community legislation to regulate* the conditions governing the collection, compilation and distribution of statistics in the areas within its field of competence. *The enabling legislation shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the sanctions to be imposed in case of non-compliance.*

~~3/3/ The System shall exercise this task and respect the confidentiality of information it receives in accordance with the relevant provisions of Community law.~~

* * *

Article 6 - International co-operation

6.1. In the field of international co-operation involving the tasks entrusted to the System, the System shall be represented by the ECB or the national central banks. The Council shall decide the methods of this representation.

The ECB shall co-operate with all international organisations active in fields similar to its own and with central banks of third countries.

6.2. Subject to approval by the Council, Subject to the provisions of the Treaty regarding the relations of the Community with international organisations, the ECB and the national central banks may participate in international monetary institutions.

6.3. The ECB may represent the Community in international monetary institutions and conclude agreements on behalf of the Community in the field of the ECB's competence.

6.4. Subject to approval by the Council, national central banks may continue to participate in existing international institutions.

* * *

Comments

Articles 6.2 and 6.4 enable ~~would permit~~ the ECB or the national central banks to participate in international monetary institutions, thus allowing, This flexibility would allow, for instance, Community national central banks to remain members of the Bank for International Settlements, for as long as is appropriate.

CHAPTER III - THE GOVERNING BODIES ORGANISATION OF THE SYSTEM

Article 7 - General Principles

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

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

* * *

Comments

Article 7.2.: *This is an amended version of Article 8 in the draft Statute of 14th September 1990. The last sentence is extracted from Article 157 of the EC Treaty, Article 10 of the Merger Treaty.*

Article 8 - ~~Decision-making bodies of the System~~ The European Central Bank

~~7/1/ The decision-making bodies of the System shall be the Council and the Executive Board/~~

~~[8.1. The ECB shall have legal personality.]~~

~~[8.2. 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.]~~

~~8.3. The decision-making bodies of the ECB shall be the Council of the System (hereinafter the "Council") and the Executive Board.~~

~~8.4. The rules regarding the organisation of the ECB, the legal status of the members of its decision-making bodies and of its permanent staff shall be determined according to the amendment procedure stated in Chapter IX.~~

* * *

Comments

Articles 12.1. and 12.2. of the version of the draft Statute dated 14th September 1990 have been deleted [12.1. - The ECB shall be administered by the Executive Board; 12.2. - Permanent staff of the ECB (details to be given).].

Chapter IX will set out the simplified procedure for amending certain Articles of the Statute. This procedure could be applied to determine the organisation of the ECB.

Article 8 / Independence

Contents transferred to Article 7.2.

Article 9 - The Council

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

9.2. Subject to Article 9.3, all members of the Council present in person shall have the right to vote. *In the event of absence of a member of the Council a deputy may attend but would not be permitted to vote.* Each member has one vote. Save as otherwise provided 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.

9.3. Weighted voting shall apply in accordance with the provisions of Article 25. If a Governor is unable to be present, he may nominate an Alternate to cast his weighted vote.

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

9.5. *The Council shall meet at least ten times a year.*

* * *

Comments

- a) Article 9.2.: There was unanimous agreement to apply the principle of "one person, one vote" for all decisions, except those relating to capital assets and profits (see Article 9.3).

Moreover, it is understood that in the case of the absence of a Governor, the deputy may attend but would not be permitted to vote. The requirement of present in person could also mean a Teleconference.

- b) Article 9.3.: There was agreement to apply the principle of weighted voting to decisions concerning capital assets and profit, and to weight the votes of the Governors according to the key attached to the Statute (see Article 25). [No weights would be given to the members of the Executive Board].

Since proxy voting is suggested under this Article, it would not seem necessary to establish a particular quorum.

- c) *Article 9.5. of the version dated 14th September has been exchanged with Article 11.3.*

Some Alternates felt that emergency procedures were unnecessary, given the availability, inter alia, of teleconference networks.

Article 10 - The Executive Board

10.1. The Executive Board shall comprise the President, the Vice-President, and 4 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 System or occupy any other office or employment, whether remunerated or not, except as a nominee of the System.

10.2. The President shall be appointed for a period of 8 years by the European Council, after the Council ~~of the System~~ has given its opinion, and after consultation with the European Parliament.

10.3. The Vice-President and the other members of the Executive Board shall be appointed, for a period of 8 years by the European Council after consultation with the Council ~~of the System~~.

10.4. With the exception of the President, no member of the Executive Board shall hold office beyond the age of 65.

10.5. ~~Legal status of the members of the Executive Board (details to be given)~~ A member of the Executive Board may be relieved from office only for serious cause resting in his person. A decision to this effect must be [submitted for approval to the European Council] [taken by the Court of Justice].

10.6. All members 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 in the Statute, 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.

* * *

Comments

- a) Start-up procedures should be dealt with in Articles concerning questions of transitional arrangement, see Chapter VIII.
- b) *Article 10.5.: It has to be determined who shall initiate the procedure for the removal of a member of the Executive Board.*

Article 11 - Responsibilities of the governing bodies

11.1. The Council shall take the decisions necessary ~~for~~ *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 decisions on basic rates of interest and overall liquidity supply in the System, and shall establish the necessary guidelines for their implementation.

The Council shall delegate to the Executive Board the necessary operational powers for implementing the monetary policy decisions and guidelines. *The operational powers that have been delegated to the Executive Board by the Council shall be made public.* The Council may delegate other powers as it may specify to the Executive Board.

11.2. 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 the meetings of the Council.

11.3. *The Council shall adopt Rules of Procedure on the proposal of the Executive Board. With due regard to Article 8.4., the Rules of Procedure shall determine the internal organisation of the ECB and its decision-making bodies.*

* * *

Comments

- a) Article 11.1. reserves to the Council the strategic monetary policy decisions, whereas the implementation of these decisions would fall under the responsibility of the Executive Board. The role of the Board in the implementation of monetary policy is reflected by the provision that the Council shall delegate to the Executive Board the necessary operational powers to carry out its task. However, since the Council may revoke such powers and re-delegate them on different terms, there could still be an active role for the Council in the implementation of monetary policy.

Some Legal Experts consider that the Council's ability to revoke powers previously delegated to the Executive Board should be explicitly stated in this Article. The second sentence of the second paragraph of this Article has been included on suggestion of some Legal Experts who consider it necessary for the purpose of legal certainty in situations where the Executive Board acts on behalf of the ECB and deals directly with third parties.

Second paragraph, first sentence: The Deutsche Bundesbank proposes replacing this sentence as follows:

The Executive Board shall implement monetary policy in accordance with the decision and guidelines laid down by the Council.

- b) *Article 11.3.: The Legal Experts recommended that the Rules of Procedure should govern only the internal management of the System. However, where the rules govern important aspects of internal management, it was suggested that they be included in the Statute. Provisions aimed at binding a person or an institution outside the internal system would fall under the exercise of regulatory powers and should be included in the Statute and even in the Treaty itself.*

Article 12 - The European Central Bank (ECB) President

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

12.2. *The President or his nominee shall represent the Council and the Executive Board ECB externally.*

[12.3. The President has authority over officials and other employees of the ECB.]

* * *

Comments

Article 12.3.: *This provision may more appropriately be included under Chapter VII, General Provisions.*

Article 13 - National central banks

13.1. ~~The statutes of national central banks shall be made compatible with this Statute.~~ The Member States shall ensure that the statutes of the national central banks are compatible with this Statute and the Treaty. To this end, the European Council may, according to a procedure, issue directives, if necessary, pursuant to the provisions under Article ... of this Statute.

13.2. 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 of the System. 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 ~~must~~ shall be ~~submitted to the European Council for approval~~ taken by the Court of Justice.

13.3 Subject to Article 13.5., the national central banks are an integral part of the System and shall act *only* in accordance with the policy guidelines and instructions of the Council or Executive Board.

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

13.4. The Executive Board shall, to the extent possible and appropriate, make use of the national central banks in the execution of the System's operations.

13.5. National central banks may continue to perform *on their responsibility and liability* functions other than those described in the Statute of the System unless the Council finds, by an [appropriate] majority that these interfere with the objectives and tasks of the System. Such functions shall not be regarded as being part of the System. The national central banks may assume new functions subject to the prior approval of the Council of the System.

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

Comments

- a) *Article 13.1.: This text has been amended following suggestions by the Legal Experts who considered that it was necessary to specify the procedure to be adopted to ensure the compatibility of the statutes of the national central banks with that of the System.*
- b) *Article 13.2.: One Alternate suggested that the Governor of a national central bank shall be appointed by the European Council upon proposal of the respective Member State and following consultation with the Council of the System.*
- c) *Article 13.3.: The Deutsche Bundesbank proposes replacing the first sentence of this Article as follows:
Subject to Article 13.5., the national central banks are an integral part of the System and shall act only in accordance with policy guidelines of the Council and the instructions of the Executive Board.*
- d) *Article 13.4.: The Deutsche Bundesbank proposes replacing the first sentence of this Article as follows:
Acting in accordance with the proposals of the Executive Board, the Council, taking account of the subsidiarity principle, shall lay down which monetary functions are to be carried out by the Executive Board and which functions by the national central banks, and in which areas the Executive Board and the national central banks, respectively, execute the monetary functions assigned to them.*
- e) *Article 13.5.: The appropriate majority would have to be specified.*
- f) *Article 13.6. has been transferred from Article 1.4 of the draft version of the Statute, dated 14th September 1990.*

Article 14 - Inter-institutional co-operation and publication

14.1. The President of the Council of the European Communities (ECOFIN) 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.

14.2. The President of the ~~System~~ 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.

14.3. The ~~System~~ ECB shall draw up an annual report on ~~its~~ the activities of the System and on the monetary policy of both the previous and current year. This annual report shall be transmitted to the European Council, the Council of the European Communities and the European Parliament. The President of the ~~System~~ ECB may present the annual report before these institutions. The President and members of the Executive Board may attend meetings of the European Parliament's specialised committees, if circumstances justify.

[14.4. The System shall report on its activities at regular intervals. These reports are to be published and to be made available to interested parties free of charge.]

* * *

Comments

- a) Article 14.2.: This provision should be repeated in the Treaty.
- b) Article 14.4.: This Article has been transferred from Article 30 of the version of the draft Statute dated 14th September 1990.

CHAPTER IV - MONETARY FUNCTIONS AND OPERATIONS

General comments

- a) The Alternates are aware that there might be a need to amend the following list of operations. To meet this requirement a procedure for the revision through secondary Community legislation will have to be defined[, see Chapter II of the introductory report].
- b) *Unless the alternative versions shown in the Comments to Articles 11.1 and 13.4 are adopted, the text as drafted ~~the text does~~ would not prejudice the question of whether operations are carried out at the level of the ECB or at the level of the national central banks. The precise distribution of tasks may evolve over time with due regard to the principle of subsidiarity. Some Alternates were firmly of the opinion that virtually all operations should be executed by national central banks. The operating procedures would be harmonised to the extent necessary; full harmonisation being neither necessary nor appropriate.*

Article 15 - Notes and coins

15.1. The Council shall have the exclusive right to authorise the issue of notes in the System which shall be the only legal tender.

15.2. Provisions concerning the legal tender status of Community currencies shall be regulated according to the ~~Community legislation~~ *procedures specified in Article ... of this Statute*. The Council shall make the necessary arrangements for the exchange of notes denominated in Community currencies by the national central banks at par value.

15.3. The volume and denomination of coins issued within the Community shall be subject to approval of the Council ~~of the System~~. The coins [shall] [may] be put into circulation by the System.

* * *

Comments

- a) The provisions of Articles 15.1., 15.2. and 15.3. should also be stated in the Treaty.

- b) Article 15.1. is understood to cover the issuance of bank notes by the national central banks as long as there is no single currency.

The United Kingdom Alternate wished to retain the right of some commercial banks in the United Kingdom to continue to issue bank notes. These notes have no legal tender status and are largely backed by holdings of legal tender.

- c) Article 15.2.: Most Alternates considered that it would be sufficient that national central banks stand ready to exchange notes denominated in Community currencies at par value (i.e. without any costs). Commercial banks would be free to charge the costs of the transactions but competition would reduce these to a level which would not be significantly higher than for transactions in a single currency.
- d) *Article 15.2.: The procedure would be in accordance with the simplified amendment procedure to be introduced in Chapter IX.*
- e) Article 15.3.: The brackets around "shall" and "may" refer to the fact that in all countries, except the United Kingdom and the Netherlands, coins are put into circulation by the ECB. It is also understood that coin-holdings by central banks should be kept to a minimum in order to avoid any significant funding by the System of the issuers of such coins.

Article 16 - Accounts with the ~~System~~ ECB and the national central banks

In order to conduct its operations, the ~~System~~ 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 17 - Open market and credit operations

17.1. In order to influence money market conditions in the Community, the ~~System~~ 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, and at its discretion, claims and marketable instruments such as Treasury bills and other securities, whether in Community or in foreign currencies, as well as precious metals;
- to conduct credit operations with credit institutions and other market participants.

17.2. The ~~System~~ ECB shall establish general principles for its open market and credit operations including the announcement of conditions under which it stands ready to enter into such transactions.

* * *

Comments

The nature of the credit institutions will have to be circumscribed, with reference to agreed Community definitions.

Article 18 - Minimum reserves

18.1. *Following the procedure under Chapter IX, the ~~System~~ ECB shall be ~~entitled~~ enabled by Community legislation to require credit institutions to hold minimum reserves on accounts with the ~~System~~ ECB and national central banks. Regulations concerning the calculation and determination of the required minimum reserves shall be established by the Council.*

18.2. *The ~~System~~ ECB and national central banks shall be ~~entitled~~ enabled by Community legislation to penalise credit institutions which fail to comply with the obligations referred to in Article 18.1.*

* * *

Comments

- a) For the application of this Article a provision in the Treaty should give the necessary regulatory power to the ~~System~~ ECB and national central banks.

Some of the legal Experts, however, considered that specific provision in Community legislation (following the simplified amendment procedure under Chapter IX) will also have to be made in order to enable the ECB and national central banks to impose minimum reserve requirements on credit institutions and penalise them should they fail to comply with the obligation.

- b) The nature of the credit institution will have to be circumscribed with reference to agreed Community definitions. *The Legal Experts have suggested that a suitable definition can be found in Article 1 of the First Council Directive on the co-ordination of laws and regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC, OJ L322/30).*

Article 19 - Other instruments

The Council may decide [unanimously] [by qualified majority] upon such other methods of monetary control as it sees fit.

* * *

Comments

a) This provision has been suggested to enable the System to adopt ~~other~~ methods of monetary control *other* than those currently in use. However, given the restrictions imposed by Article 2.3, this Article would not seem to allow the System to resort to methods of direct control, even if this might be warranted in certain extreme circumstances.

b) *Some Legal Experts suggested deleting this Article. The Belgian representative proposed replacing the text, together with that of Article 23 by the following: "The System may conduct operations in performing its monetary functions in respect of the principles of liquidity and security of its assets and of stability of the financial markets."*

Moreover, the question was raised about whether provisions relating to emergency powers needed to be included in the Statute.

Article 20 - Operations with public entities

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

20.2. The ~~System~~ ECB and national central banks may act as fiscal agent for Community institutions, governments or other public entities of Member States.

20.3. The function of fiscal agent shall comprise all banking transactions except those referred to in Article 19.1. above.

20.4. Community institutions, governments and other public entities of Member States for which the System acts as fiscal agent shall issue debt instruments either through the System or in consultation with it.

20.5. The provisions under Article 20 shall not apply to publicly-owned credit institutions.

* * *

Comments

- a) Article 20.1.: Most Alternates were of the opinion that the System should not be allowed to purchase public debt instruments on the primary market since such operations would also imply a direct monetary financing of State deficits. One Alternate considered, however, that as fiscal agent the System may find it useful to undertake such operations, although it should be under no constraint to do so.

This provision implies that existing credit facilities to smooth seasonal payment flows will have to be abolished.

- b) Article 20.4. implies no lending by the System to public entities, see Article 20.1.
- c) Article 20.5.: Without the addition of this provision, publicly-owned credit institutions could not be given credit by the System.

Article 21 - Clearing and payment systems

The ~~System~~ ECB [and national central banks] may provide facilities and establish provisions to ensure efficient and sound clearing and payment systems inside the Community and with third countries.

* * *

Article 22 - Operations in respect of financial relations with third countries and external assets

22.1. The ~~System~~ ECB shall be entitled to establish *financial* relations with central banks and financial institutions in third countries and, where appropriate, with international organisations.

22.2. It is entitled to acquire and sell foreign exchange, precious metals and securities. The term 'securities' shall include securities and assets in currency of any country and in whatever form held.

22.3. In relation to third countries it is entitled to conduct ~~all~~ ~~types~~ of banking transactions *necessary to fulfil its functions*.

* * *

Comments

The Alternates intend to ask the Foreign Exchange Policy Sub-Committee to examine this Article.

Article 23 - Other operations

In addition to operations arising from its tasks, the System may enter into operations that serve its administrative purposes or for its staff.

* * *

CHAPTER V - PRUDENTIAL SUPERVISION

The Banking Supervisory Sub-Committee is preparing the relevant provision(s) to be included in this section concerning the exercise of the System's competence in this field.

CHAPTER VI - FINANCIAL PROVISIONS

General Comments

The provisions in Chapter VI are closely related to the legal structure of the System (see Article 1) and the degree of centralisation of the System's operations. These issues need further examination by the Alternates and therefore the following Articles are still preliminary.

Article 24 - Financial structure

24.1. The System's financial operations shall be recorded in the balance sheets of either the ECB or the national central banks.

24.2. For analytical and statistical purposes, the Board shall draw up a consolidated balance sheet of the System, comprising the assets and liabilities of the ECB and the national central banks.

24.3. For the application of Article 24.2., the Council shall establish rules relating to the standardisation of national central banks' balance sheets.

* * *

Comments

- a) Article 24.1.: It is assumed here that the national central banks keep their legal personality and that legal personality is also conferred upon the ECB. The System as such has no legal personality and assets and liabilities of the System are held by its components. The question of transfer of assets and liabilities from the national central banks to the ECB is dealt with in Article 27.
- b) Article 24.2. provides for consolidation within a single balance sheet structure in order to reflect the existence of a single monetary policy and to provide proper information on money creation within the System.
- c) Article 24.3.: The establishment of a consolidated balance sheet presupposes standardisation of national central banks' balance sheets.

Article 25 - Voting on financial matters

25.1. For the purposes of Articles 26 to 29, 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 on the total of [...].

25.2. The key referred to in Article 25.1. may be modified in accordance with Article of the Treaty, as amended by

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Comments

- a) Article 25.1.: The key referred to in this Article is also used for the provision of capital to the ECB and the distribution of profits of the ECB (or possibly the System's profits). It should be determined on the basis of objective criteria which still have to be elaborated.
- b) Article 25.2.: Given the important financial implications of this key, its modification cannot be left to the bodies of the System, but would require a political decision. The procedure needs to be defined in an Article of the Treaty.

Article 26 - Capital of the ECB

26.1. 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.

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

[26.3. The Council shall determine the form in which capital shall be paid-up.]

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Comments

- a) Article 26.1. has been drafted on the working assumption that national central banks are the sole holders of the capital of the ECB (see Article 26.2.). There is the question of whether increases in the capital of the ECB can be decided by the System itself or whether such decisions need to receive external approval (e.g. by ECOFIN) if they imply the transfer of foreign reserves.
- b) Most Alternates consider it premature to specify the initial amount of the capital of the ECB. One Alternate proposed an amount equivalent to the total of the debtor quotas of the short-term monetary support mechanism, i.e. around ecu 9 billion.
- c) Some Alternates were not in favour of a provision according to which the capital could be paid up only in part because this might undermine the credibility of the System. If at the start of the System, the limited functions of the ECB warranted paying up only part of the capital, this should be dealt with in a transitory provision.
- d) Article 26.2. assumes that national central banks keep their legal personality and that no change in their shareholder structure is therefore required. Seen on a consolidated basis, the shareholders of national central banks are therefore "shareholders" of the System. With regard to the key for

apportionments and its possible modification, see comments on Article 25.

- e) Article 26.3.: Some Alternates felt that the form in which capital should be paid up could not be left to a decision taken by the System itself, but should be defined in the Statute. There is unanimity among the Alternates that the capital should be paid up out of the assets of the national central banks, i.e. without entailing an increase in national central banks' liabilities, but the question needs further examination.

Article 27 - Transfer of assets and liabilities to the ECB

Articles to be drafted.

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Comments

The subscription to the capital of the ECB by the national central banks will result in the transfer of ownership of certain assets to that institution. However, in the context of the evolution of the tasks of the ECB the balance sheet would have to grow through other means than capital increases. A provision would therefore have to be included to this end, involving:

- pooling of all or part of foreign exchange reserves;
- transfer of other assets and liabilities of national central banks.

One may envisage that a decision to this effect be left at the discretion of the Council of the System according to a procedure that would have to be described in this Article. This would accommodate, with the necessary degree of flexibility, the evolutionary character of the System and the progressive centralisation of its operations.

Some Alternates, however, considered that given the highly political nature of this issue it would be necessary, at least with respect to the pooling of reserves, to define precisely in the Statute or by secondary Community legislation the extent of the pooling and the nature of the assets to be transferred to the ECB. If deemed necessary, supplementary transfers could be made possible through a provision describing a procedure involving either the Council alone or, if proposed by the Council, with the political authorities.

Article 28 - Allocation of income, losses and profits of the System

Articles to be drafted.

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Comments

This issue needs further clarification. Three options have been mentioned:

- according to the first option, profits and losses resulting from the System's operations (independently from where they were booked but excluding those emanating from operations under Article 13.5) would be pooled and shared out according to the key attached to the Statute;
- the second option would distinguish between operations carried out on the instruction of the ECB, the profits and losses of which would be pooled, and those undertaken at the discretion of the national central banks (such as the management of its residual foreign exchange portfolio) the revenue of which would remain with the national central banks;
- according to the third option, profits and losses emanating from domestic transactions (which would continue to be recorded in national central banks' balance sheets) would be for the account of the respective national central banks and their shareholders. Profits and losses arising from external transactions and the management of foreign exchange reserves (which would be transferred to the ECB) would be for the account of the ECB and its shareholders.

Further examination is needed to ensure that the option retained:

- does not entail a major redistribution of resources which would not be justified on economic grounds;
- would be operationally feasible and not bring about excessive rigidity of the System;
- would not encumber the management of the System with considerations pertaining to the distribution of profits and losses.

Article 29 - Accounts

Article to be drafted.

CHAPTER VII - GENERAL MISCELLANEOUS PROVISIONS

Article 30 - [Monthly] [Weekly] returns

A consolidated financial statement of the System shall be published each [month] [week].

Remaining Articles under this Chapter are to be drafted.

CHAPTER VIII - TRANSITIONAL PROVISIONS

Comments

The decisions to be taken concerning the contents of Stage Two and the transition from Stage Two to Stage Three will determine the transitional provisions relating to the establishment of the System and its functions. These transitional provisions may have to accommodate a number of hypotheses:

- Progressive establishment of Economic and Monetary Union

If the transfer of functions entrusted to the System is progressive the Statute must accommodate this and stipulate that measures will be taken to ensure that the tasks are carried out.

- Participation in the union

If the union enters into force on different dates in the different Member States, the implications of these successive accessions should be accommodated by spelling out the restricted rights and obligations of those who join the union at a later date (see comments on Article 1).

- Start-up procedures

Start-up procedures should define, in particular, the role of the Committee of the Governors of the EC Member States of the Community in the appointment of the first President of the System and the first members of the Executive Board. Mandates of unequal length should be considered to ensure successive rather than collective renewals of the membership of the Executive Board in the first period.

CHAPTER IX - AMENDMENT PROVISIONS

To be drafted.