

12th April 1991

To the members of the Committee of Alternates

Please find attached the revised text of the draft Statute and the explanatory Commentary, as well as a draft letter of transmittal. The Statute incorporates the changes and additions adopted by the Governors at their meeting on 9th April 1991 as well as certain drafting amendments proposed by the Secretariat. The changes are outlined below.

I would be grateful if you would send your remarks and observations to the Secretariat not later than Wednesday, 17th April 1991. If it proves difficult to finalise the texts by written procedure, a teleconference will be held on Monday, 22nd April 1991, at 11.45 am.

As far as the draft Statute is concerned, please note the following changes in comparison with the version sent to the Presidency on 27th November 1990:

- Chapter VI has been amended as agreed by the Governors on the basis of the Secretariat's note of 8th April 1991 (which was circulated on the morning of the Governors' meeting on 9th April 1991). However, Article 29a - Voting on financial matters - has been transferred to Article 10.3 where it replaces the first sentence in the previous draft. This change is suggested in order to improve the clarity of the Statute. Please note that Article 31 is not referred to in the new Article 10.3, since it does not involve a "patrimonial decision" but only an ECB decision taken with a view to monetary policy implications. Furthermore, since the distribution of subscribed capital among the shareholders is now automatic, a certain redraft has become necessary in Article 10.3;
- Chapter VII has been amended as agreed by the Governors on the basis of the Secretariat's note of 8th April 1991. However, in departure from the presentation in this note the Secretariat has merged the two Articles dealing with regulatory powers and enforcement into a single Article 34, since the matters dealt with in the two Articles are closely related;
- Chapter IX has been completed in accordance with the agreed text in the Secretariat's note of 8th April 1991. However, the Secretariat has changed the order of Chapters VIII and IX, since this would result in a more logical structure of the Statute. Moreover, since the reference to Article 3 has been omitted in

Article 41.1, Article 41.2 is no longer a derogation to Article 41.1 but an Article in its own right. Hence, the reference to Article 41.2 has been dropped in Article 41.1 and Article 41.2 has been adjusted.

In the other parts of the Statute the following changes have been made:

- in accordance with the agreement on Article 39, Article 13.2 has been amended as proposed in the Secretariat's note of 8th April 1991;
- moreover, the following minor amendments which had been proposed by the Secretariat in its note entitled "Suggestions for minor amendments to the draft Statute", dated 5th April 1991 (and circulated at the Alternates' special meeting on 7th April) have been incorporated into the draft Statute:
 - in Article 2.3 the words "the principles" have been added;
 - in Article 15.4 the second sentence has been deleted and incorporated in a new Article 15.6;
 - in Article 21 the text has been amended to take into account that in a legal sense the Community and the Member States are the borrowers and not, as previously stated, the Community institutions or the governments of the Member States.

Please note also that the "Council" has been changed to "Council of the ECB" throughout the Statute in order to give recognition to the fact that in the Treaty the term "Council" is reserved for the "Council of the European Communities". However, the notion "Council of the European Communities" has been retained in the Statute for the time being in order to avoid confusion.

With regard to the Commentary, all changes are indicated by print in italics.

With regard to the draft letter of transmittal, there is a question as to whether the central banks wish to transmit the revised draft Statute in due course in all official Community languages or, for the time being, only in French and German, which, together with English, are the working languages of the IGC.

With kind regards,



Gunter D. Baer

12th April 1991

Dear Mr. President,

As you know, on 27th November 1990, in my capacity as Chairman of the Committee of Governors, I presented to your predecessor as President of the Council of the European Communities the draft Statute of the European System of Central Banks and of the European Central Bank. At that time I pointed out that some questions were still open and that the Committee of Governors had the intention of submitting the missing provisions in the course of the Intergovernmental Conference.

I now have the honour of presenting to you the complete text of the Statute addressing Stage Three of Economic and Monetary Union, together with a revised commentary. The amended Statute has so far been prepared only in English; versions in [French and German] [the other official Community languages] will follow in due course.

Apart from minor editorial changes the Statute has been amended in three major respects: the financial provisions have been completed, the Chapter on general provisions has been revised, and proposals for a simplified amendment procedure and complementary Community legislation have been added. The Statute does not yet contain provisions concerning the transitional arrangements; the Committee intends to present these at a later stage of the Intergovernmental Conference.

The Committee of Governors wishes to emphasise that the proposed Statute establishes the foundations of a consistent and coherent System designed to perform the functions and tasks necessary for the attainment of its primary objective of price stability. A change in one of the principal elements might therefore call into question the Statute's internal consistency and the capacity of the System to achieve its objectives.

As mentioned in my previous letter the Committee of Governors notes that in accordance with Article 102a of the Treaty, it shall be consulted regarding institutional changes in the monetary area. Furthermore, it may also on its own initiative wish to give further consideration to certain provisions of the draft Statute.

I have taken the opportunity of sending copies of this letter and the amended Statute and the accompanying commentary to your colleagues on the ECOFIN Council and to the President of the EC Commission.

Yours sincerely,

Karl Otto Pöhl

Enclosures

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

12th APRIL 1991

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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 the principles of 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 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

the ECB's 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 of the ECB and the Executive Board.

Article 10 - The Council of the ECB

10.1 The Council of the ECB 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 of the ECB 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 of the ECB who is prevented from voting for a prolonged period may appoint an alternate as a member of the Council of the ECB.

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

In order for the Council of the ECB 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 For any decisions to be taken under Articles 28, 29, 30 and 32, the votes in the Council of the ECB shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. A decision by a qualified majority shall be approved if the votes cast in favour represent at least [..]% of the subscribed capital of the ECB. 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 of the ECB may decide to make the outcome of its deliberations public.

10.5 The Council of the ECB 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 of the ECB, 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 of the ECB 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 of the ECB 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 of the ECB on the proposal of a Committee comprising three members appointed by the Council of the ECB 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 of the ECB 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 of the ECB shall take the decisions necessary to ensure the performance of tasks entrusted to the System under the present Statute. The Council of the ECB 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 of the ECB shall delegate to the Executive Board such necessary operational powers as it thinks fit for implementing the monetary policy decisions and guidelines. The Council of the ECB 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 of the ECB.]

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

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

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

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

12.5 The Council of the ECB 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 of the ECB and the Executive Board of the ECB.

13.2 Without prejudice to Article 39, the President or his nominee shall present the views of 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 of the ECB. 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 of the ECB.

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.

The Council of the ECB 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 of the ECB, 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 of the ECB 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 of the ECB. They may take part in the Council of the ECB'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 and publish reports on the activities of the System at regular intervals.

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

15.6 The reports and statements referred to above shall be made available to interested parties free of charge.

CHAPTER IV - MONETARY FUNCTIONS AND OPERATIONS OF THE SYSTEM

Article 16 - Notes and coins

16.1 The Council of the ECB 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 of the ECB 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 of the ECB. 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 of the ECB. 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 of the ECB may decide, by a 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 the Community, Member States and other public entities in the Member States or purchase debt instruments directly from them.

21.2 The ECB and national central banks may act as fiscal agents for the entities referred to in Article 21.1.

21.3 The function of fiscal agent shall comprise all banking transactions except those referred to in Article 21.1 above.

21.4 The entities for which the ECB and national central banks act as fiscal agents in accordance with Articles 21.2 and 21.3 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 of the ECB. The accounts shall be approved by the Council of the ECB 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 of the ECB 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 of the ECB 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 - Capital of the ECB

28.1 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 of the ECB acting by a qualified majority.

28.2 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 established pursuant to Article 29.

28.3 The Council of the ECB, acting by a qualified majority, shall determine the extent to which and the form in which capital shall be paid up.

28.4 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 of the ECB.

28.5 If the key referred to in Article 29 is adjusted, 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 adjusted key. The Council of the ECB shall determine the terms and conditions of such transfers.

Article 29 - Key for capital subscription

29.1 At the entry into force of this Statute, the key for subscription of the ECB's capital shall be established. Each national central bank shall be assigned a weight in this key which shall be equal to the sum of:

- .7 of the share of its respective country in the population of the Community in the penultimate year preceding the entry into force of the Statute;
- .7 of the share of its respective country in the gross domestic product at market prices of the Community as recorded in the last five years preceding the penultimate year before the entry into force of the Statute.

29.2 The statistical data to be used for the application of this Article shall be calculated by the Statistical Office of the European Communities in accordance with Community legislation.

29.3 The weights assigned to the national central banks shall be adjusted every five years after the entry into force of this Statute in analogy to the provisions laid down in Article 29.1. The adjusted key shall apply with effect from the first day of the following year.

29.4 The Council of the ECB shall take all other measures necessary for the application of this Article.

Article 30 - Transfer of foreign reserve assets to the ECB

30.1 Without prejudice to the provisions of Article 28, 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 of the ECB shall decide upon 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 its share in the subscribed capital of the ECB.

30.3 Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Council of the ECB 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 of the ECB 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 of the ECB shall issue guidelines with a view to facilitating such operations.

Article 32 - Allocation of monetary income of national central banks

32.1 The income accruing to the national central banks in the performance of the System's monetary policy function (called hereafter "monetary income") shall be allocated at the end of each financial year in accordance with the provisions hereafter.

32.2 Subject to Article 32.3 the amount of each national central bank's monetary income shall be equal to its annual income derived from its assets held against notes in circulation and deposit liabilities vis-à-vis credit institutions. These assets shall be earmarked by each national central bank in accordance with guidelines to be established by the Council of the ECB.

32.3 If at the entry into force of this Statute, in the judgement of the Council of the ECB, the balance sheet structures of the national central banks do not permit the application of Article 32.2, the Council of the ECB, acting by a qualified majority, may decide that, by way of derogation to Article 32.2, the monetary income shall be measured according to an alternative method for a period of not more than five years.

32.4 The amount of each national central bank's monetary income shall be reduced by an amount equivalent to any interest paid by that central bank on its deposit liabilities vis-à-vis credit institutions in accordance with Article 19.

The Council of the ECB may decide that national central banks shall be indemnified for cost incurred in connection with the issuance of bank notes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the System. The indemnification shall be in the form deemed appropriate in the judgment of the Council of the ECB; these amounts may be offset against the national central banks' monetary income.

32.5 The sum of the national central banks' monetary income shall be allocated to the national central banks in proportion to their subscribed shares in the capital of the ECB, subject to any decision taken by the Council of the ECB pursuant to Article 33.2.

32.6 The clearing and settlement of the balances arising from the allocation of monetary income shall be carried out by the ECB in accordance with the guidelines established by the Council of the ECB.

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

Article 33 - Allocation of net profits and losses of the ECB

33.1 The net profit of the ECB shall be transferred in the following order:

- (a) an amount to be determined by the Council of the ECB shall be transferred to the general reserve fund;
- (b) the remaining net profit shall be distributed to the shareholders of the ECB in proportion to their subscribed shares.

33.2 In the event of a loss incurred by the ECB, the shortfall may be offset against the own funds of the ECB or, following a decision by the Council of the ECB, against contributions from national central banks, in proportion to their subscribed shares.

CHAPTER VII - GENERAL PROVISIONS

Article 34 - Regulatory power

34.1 The ECB shall make the regulations and take the decisions, necessary for the performance of tasks entrusted to the System under the present Statute.

34.2 A regulation shall have general application. It shall be binding in its entirety and directly applicable. A decision shall be binding in its entirety upon those to whom it is addressed. Articles 191 and 192 of the Treaty establishing the EEC are applicable in all respects to the regulations made and decisions taken by the ECB.

34.3 According to Community legislation, 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 vis-à-vis regulations and decisions referred to in this Article.

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 under 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 an action before the Court of Justice shall be taken by the Council of the ECB.

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

35.6 The Court of Justice shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under this Statute, it may bring the matter before the Court of Justice.

Article 36 - Staff

36.1 The Council of the ECB, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.

36.2 Disputes between the ECB and its staff may be brought before the Court of Justice which shall have jurisdiction.

Article 37 - Seat

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

Article 38 - Professional secrecy

38.1 Members of the governing bodies and the staff 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 - Signatories

The ECB shall be legally committed vis-à-vis third parties by the signature of the President or by the signatures of two members of the Executive Board or by those of two members of the staff of the ECB who have been duly authorised by the President to sign on behalf of the ECB.

Article 40 - 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 and its staff to the extent necessary for the performance of the ECB's tasks.

CHAPTER VIII - AMENDMENT OF THE STATUTE AND COMPLEMENTARY LEGISLATION

Article 41 - Simplified amendment procedure

41.1 By way of derogation to Article 236 of the EEC Treaty, Articles 5, 17, 18, 19, 21.2, 21.3, 21.4, 21.5, 22, 23, 24, 26, 32 and 36 may be amended by the Council of the European Communities, at the request of the ECB and after consulting the European Parliament and the Commission. The approval of the ECB's request for amendment requires a decision of the Council of the European Communities acting by a qualified majority.

41.2 Article 3 may be amended by the Council of the European Communities in accordance with the procedure referred to in Article 41.1 to the extent necessary to confer upon the System additional tasks which are not at variance with the System's objectives stated in Article 2 and do not impinge on the System's basis tasks defined in Article 3.

41.3 A request made by the ECB under this Article shall require a unanimous decision by the Council of the ECB.

Article 42 - Complementary legislation

The Council of the European Communities, acting by a qualified majority on a proposal from the Commission and after consulting the ECB and the European Parliament, shall enact the legislation necessary for the application of Articles 4.1, 5.3, 16.2, 25.2, 29.2, 30.4 and 34.3.

CHAPTER IX - TRANSITIONAL PROVISIONS FOR THE SYSTEM