

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

07

SECRETARIAT

Basle, 12th November 1991

Monsieur Wim Kok
President of the Council of the
European Communities
Rue de la Loi, 170
B-1040 Bruxelles

Dear Mr. President,

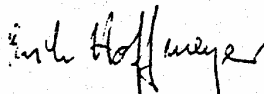
In response to your letter of 31st October 1991, I have the honour to present, in my capacity as Chairman of the Committee of Governors, the Committee's comments on the Dutch Presidency's proposal for a Treaty on Economic and Monetary Union. The Committee has confined its comments to the Statutes of the ESCB and the EMI, annexed as protocols to the Treaty, as well as those Treaty Articles which deal with Monetary Union. In general, the Committee has refrained from commenting again on those matters on which views differed among the Governors.

In order to facilitate the discussions at the Intergovernmental Conference, the Committee of Governors has chosen to express its opinion in the attached document, which on the basis of the relevant provisions and Articles in the Presidency's proposal, indicates by overstriking and new wording in italics the amendments the Committee considers highly desirable. The reasons for the proposed amendments are given in the comments following each Article.

The Committee stands ready, in accordance with Article 102a of the Treaty, to continue to perform an advisory role regarding institutional changes in the monetary area.

With best wishes for a successful conclusion of the negotiations at the Intergovernmental Conference,

Yours sincerely,



Erik Hoffmeyer

Enclosure

SECRETARIAT DU CONSEIL DES COMMUNAUTÉS EUROPÉENNES N° ENREG. 541004 REÇU LE: 14-11-1991 DEST. PRINC.: PINI DEST. COP.: CABINET FERNANDEZ FABREGAS POSTAL ADDRESS: CH-4002 BASLE (CENTRALBAHNPLATZ 2) N° ARCHIVES:

COMMENTS AND SUGGESTIONS BY THE COMMITTEE OF GOVERNORS ON THE
PRESIDENCY'S PROPOSAL FOR A TREATY ON ECONOMIC AND MONETARY UNION

I. STATUTE OF THE ESCB AND OF THE ECB

Article 4 - Advisory functions

4.1 In accordance with Article 108 paragraph 2 of this Treaty, the ECB:

- shall be consulted by the Council and the competent authorities of the Member States regarding any draft legislative provision in the monetary, prudential or financial field. The Council shall, under the procedure laid down in Article 106 paragraph 6 of this Treaty, define the ~~scope of procedure~~ for this consultation;
- may frame opinions for submission to Community institutions or bodies or national authorities on matters in the monetary, prudential or financial field;

~~+ may publish its opinions!~~

4.3 *The ECB may publish its opinions delivered by virtue of Articles 108 and 109 of the Treaty.*

* * *

Comments

The amendment to the first indent of Article 4.1 reflects the consideration that the obligation to consult the ECB should be derived directly from the Treaty. In the opinion of the Committee of Governors, a need for secondary Community legislation exists only in respect of procedural issues. Moreover, in the view of the Committee it is understood that the term "draft legislative provision" also covers international agreements.

The deletion of the last indent of Article 4.1 and the addition of Article 4.3 shall make it clear that the ECB may publish all opinions (including those delivered in accordance with Article 109).

Article 14 - National central banks

14.2 As is stated in Article 108 paragraph 3 of this Treaty, 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 Governing Council of the ECB. The ~~the~~ term of office of a Governor of a national central bank shall be no less than 5 years.*

The Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council.

* * *

Comments

The Governors of the national central banks are members of the Governing Council of the ECB and in this function share the responsibility for the ESCB as a whole and, in particular, its monetary policy. This should also be reflected in the appointment procedure. With this consideration in mind, the Committee of Governors suggests the reintroduction of the requirement to consult the Governing Council of the ECB prior to any appointment of a Governor of a national central bank. Consultation of the Governing Council should be seen as recognition of the fact that the Governor of a national central bank is a member of the supreme decision-making body in charge of the Community's monetary policy.

Article 16 - Notes and coins

16.2 In accordance with Article 108 paragraph 4 of the Treaty, the volume and denomination of coins issued within the Member States shall be subject to the approval of the Governing Council.

* * *

Comments

Coins are a component of the monetary base which has to be under the control of the ESCB if the indivisibility of monetary policy is to be preserved. Thus, the Committee of Governors considers it necessary to make the volume and denomination of coins subject to the approval of the ECB. In the opinion of the Committee of Governors, the proposed text reconciles the interest of national Treasuries in maintaining the right to issue coins with the requirement of effective control of the monetary base.

Article 22 - Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may issue ECB regulations, to ensure efficient and sound clearing and payment systems *within and between* the Member States and with other countries.

* * *

Comments

The addition attempts to rule out any possible misunderstanding about the scope of Article 22.

Article 27 - Auditing

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

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Comments

For the sake of legal clarity, it appears advisable to rule out explicitly the applicability of the provisions contained in Article 203 of the Treaty.

Article 28 - Capital of the ECB

28.4 ~~The~~ Subject to Article 28.5, 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 Governing Council.~~

* * *

Comments

The amendment to Article 28.4 makes it clear that shares in the capital of the ECB cannot be transferred, except in the context of a revision of the key in accordance with Article 29.

Article 29 - Key for capital subscription

29.1 When in accordance with the procedure mentioned in Article 109H paragraph 1 of this Treaty the ESCB and the ECB have been established, the key for subscription of the ECB's capital shall be established. Each national central bank shall be assigned a weighting in this key which shall be based on/ equal to the sum of:

- [...%] of the share of its respective Member State in the population of the Community in the penultimate year preceding the implementation of the Statute;

- [...%] of the share of its respective Member State in the gross domestic produce at market prices of the Community as recorded in the last five years preceding the penultimate year before the implementation of the Statute;

+ [1/2] of the share of its respective Member State in the relative extra-EC exports of the Community as recorded in the last five years preceding the penultimate year before the implementation of the Statute/

[The weightings shall be established by the Council acting by unanimity of the Member States on a proposal from the Commission/]

* * *

Comments

The amendments to Article 29.1 reflect the Committee of Governors' view that the distribution of rights and obligations in financial matters should not be subject to political decisions, but should be determined by objective indicators which reflect the relative economic importance of Member States and bear a relationship with central bank income from seigniorage. A key defined by criteria and weights laid down in the Statute would also avoid further political arguments and fresh uncertainty when new members join the Economic and Monetary Union.

GDP and population have been proposed by the Committee of Governors because they constitute the most appropriate criteria for a single key, which, inter alia, is also used for the allocation of monetary income. However, as mentioned in the Commentary on the Statute of the ESCB, transmitted to the Presidency on 26th April 1991, some Governors are of the view that the criteria for establishing the key should also include financial indicators.

Article 30 - Transfer of foreign reserve assets to the ECB

30.1 Without prejudice to the provisions of Article 28, the ECB shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, ~~and~~ ECUs, *IMF reserve positions and SDRs*, up to an amount equivalent to ECU 50,000 million. The Governing Council shall decide upon the proportion to be called up by the ECB at the implementation of this Statute and the amounts called up at later dates. The ECB shall have the full right to hold and manage the foreign reserves that are transferred to it *and to use them for the purposes set out in this Statute.*

30.5 The ECB ~~shall be entitled to accept the pooling of~~ *may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets.*

* * *

Comments

The first amendment to Article 30.1 makes clear that IMF reserve positions and SDRs are not subject to mandatory transfers; for the latter assets, the provisions of Article 30.5 would apply (see hereafter).

The second amendment to Article 30.1 is designed to rule out any ambiguity with respect to the right of the ECB not only to hold and manage the reserves transferred to it under Article 30.1, but also to use them for foreign exchange operations in accordance with the Statute (i.e. Article 3 and, by implication, Article 109 of the Treaty).

The amendment to Article 30.5 makes clear that this Article is an enabling clause.

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 Governing Council, which may not exceed 20% of the net profit, shall be transferred to the general reserve fund ~~within the limit of 100% of the capital;~~
- (b) the remaining net profit shall be distributed to the shareholders of the ECB ~~in shares~~ 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~~ *general reserve fund* of the ECB and, if necessary, following a decision by the Governing Council, against ~~a further contribution decided on in accordance with the procedure laid down in Article 28/1 and 28/2~~ *the monetary income of the financial year concerned in proportion and up to the amounts allocated to the national central banks in accordance with Article 32.5.*

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Comments

Article 33.1: The Committee of Governors considers that the limit of 100% of the capital unduly restricts the ability of the ECB to build up reserves necessary for covering risks (in particular related to valuation changes in its foreign reserve holdings).

Article 33.2: The procedure proposed by the Presidency for loss-covering would be inconsistent with the integral character of the ESCB. Indeed, all income arising from the ESCB's monetary functions is common to the ESCB, irrespective of where it actually accrues. The ECB's income forms part of this common income. All profits earned by the ECB (other than those transferred to its reserves) will be rechannelled to the national central banks and the same procedure should apply equally to the allocation of losses to the extent that they are not covered by the ECB's general reserve fund. This would be in line with the present national practices which ensure that losses of national central banks are deducted from income before profit distribution.

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, within its field of competence, institute proceedings under the same conditions as the Council and the Commission. Articles 173 to 178/ 183 and Article 184 of this Treaty shall be applicable accordingly.

35.2 *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.*

35.3 ~~183/2~~ The ECB shall be subject to the liability regime as provided for in Article 215 of this Treaty. *The national central banks shall be liable according to their respective national law.*

Articles 35.3 to 35.5 of the Presidency's proposal: unchanged.

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Comments

The amendments to Article 35 have been proposed by the Committee of Governors for the sake of legal clarity. In Article 35.1 the reference to Article 183 can be omitted because this provision is stated explicitly in 35.2.

Article 40 - Privileges and immunities

Comments

The Presidency's proposal for Article 40 leaves open which privileges and immunities should apply to the ECB since no conditions have been laid down in the Statute. One possibility for amending this Article would be to make reference to the Protocol on the privileges and immunities of the European Community, which, however, would have to be adapted to apply explicitly also to the ECB.

* * *

Article 41 - Simplified amendment procedure

41.1 As is set out in Article 106 paragraph 5 of this Treaty, and ~~by way of derogation from~~ without prejudice to Article 236 of this Treaty, Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6 and 36 of this Statute may be amended by the Council, acting ~~unanimously~~ by a qualified majority on a recommendation from the ECB, and after consulting the Commission and [after receiving the assent of] the European Parliament, or on a proposal from the Commission and after ~~consulting the ECB and [after receiving the assent of] the European Parliament~~ receiving the approval of the ECB and [after consulting] the European Parliament. The Council shall act unanimously if a proposal from the Commission does not receive the approval of the ECB [and the European Parliament].

41.2 A recommendation made, or an approval given, by the ECB shall require a unanimous decision by the Governing Council.

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Comments

A simplified amendment procedure has understandably raised questions and can only be justified if it is beyond doubt that it is limited to technical issues. For this reason the Governors had proposed to make it dependent on an initiative solely by the ECB and not a more political body like the Commission. If, however, the Commission is given a competing right of initiative, an amendment under the procedure of Article 41 should be subject to the approval of the ECB.

The decision by the Council should be taken by qualified majority, unless a proposal from the Commission has not received the approval of the ECB; in this case, the Council should act unanimously.

Article 42 - Complementary legislation

As is set out in Article 196 paragraph 6 of this Treaty, the Council shall:

- acting [by a qualified majority on a proposal] / [on a recommendation which the Council shall adopt or amend by qualified majority] from the Commission ~~or from the EMI or from the ECB~~ and after consulting the EMI or the ECB and the European

Parliament, or acting by a qualified majority on a proposal from the EMI or the ECB and after consulting the Commission and the European Parliament adopt the provisions referred to in Articles 4.1, 5.3, 28.1, 29.2 and 50.4 of this Statute;
- according to the same procedure, in co-operation with the European Parliament, adopt the provisions referred to in Articles 19 and 34.3 of this Statute.

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Comments

The proposed amendments provide for reciprocal consultation procedures depending on whether the Commission or the EMI or the ECB exercise the right of initiative.

CHAPTER IX - TRANSITIONAL PROVISIONS FOR THE ESCB

Given divergent views on how to define the relationship between the central banks of Member States with and without derogations or an exemption status, the Committee of Governors wishes to limit its comments to Article 51.

Article 51 - Derogation from Article 32

51.1 If, following the entry into Stage Three of EMU ~~at the implementation of this Statute~~, the Governing Council, acting by a qualified majority, decides that the application of Article 32 of this Statute results in significant changes in national central banks' relative income positions, the amount of income to be allocated pursuant to Article 32 shall be reduced by a uniform percentage which shall not exceed [60][30]% in the first financial year after the entry into stage three of EMU and which shall decrease by at least [20][12][106] percentage points in each subsequent financial year.

51.2 Article 51.1 ~~Paragraph 1~~ shall be applicable for not more than ~~three~~ five full financial years after the entry into stage three of EMU.

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Comments

The Committee of Governors proposes that the transitional derogation (from Article 32) should apply for a maximum of five financial years. Accordingly, the percentages for the annual minimum decrease of monetary income not subject to the allocation scheme have been adjusted in Article 51.

II. ARTICLES 106, 108, 109A, 109B OF THE TREATY ON EMU

ARTICLE 106

5. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6 and 36 of the Statute of the ESCB may be amended by the Council, acting ~~unanimously~~ *by a qualified majority* on a recommendation from the ECB and after consulting the Commission and [after receiving the assent of] the European Parliament, or on a proposal from the Commission and after ~~consulting the ECB and [after receiving the assent of] the European Parliament~~ *receiving the approval of the ECB and [after consulting] the European Parliament. The Council shall act unanimously if a proposal from the Commission does not receive the approval of the ECB [and the European Parliament].*

6. The Council shall, acting [by a qualified majority on a proposal] / [on a recommendation which the Council shall adopt or amend by qualified majority] from the Commission ~~or from the EMI or from the ECB~~ and after consulting ~~the EMI or the ECB~~ and the European Parliament, or acting by a qualified majority on a proposal from the EMI or the ECB and after consulting the Commission and the European Parliament adopt the provisions referred to in Articles 4.1, 5.3, 28.1, 29.2 and 30.4 of the Statute of the ESCB. According to the same procedure, the Council shall, in co-operation with the European Parliament, adopt the provisions referred to in Articles 19 and 34.3 of the Statute of the ESCB.

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Comments

See comments on Articles 41 and 42 of the Statute.

ARTICLE 108

2. The ECB:

- shall be consulted by the Council and the competent authorities of the Member States regarding any draft legislative provision in the monetary, prudential or financial field; the Council shall, under the procedure laid down in Article 106 paragraph 6, define the ~~steps~~ *of procedure for this consultation*;
- may frame opinions for submission to Community institutions or bodies or national authorities on matters in the monetary, prudential or financial field;
- may publish its opinions *delivered by virtue of this paragraph and of Article 109.*

3. The Member States shall ensure, before the beginning of the third stage, that their national legislation including the Statutes of the national central banks is compatible with this Treaty and the Statute of the ESCB.

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 Governing Council of the ECB. The ~~the~~ term of office of a Governor of a national central bank shall be no less than 5 years. The Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council of the ECB.*

4. The Council shall, acting by qualified majority on a proposal from the Commission and after consulting the ECB and [in co-operation with] the European Parliament, issue the regulations concerning the issue of coins within the Member States and the volume thereof. *These regulations shall provide that the volume and denomination of coins issued within the Member States be subject to approval of the Governing Council of the ECB and that the coins be put into circulation by the ECB and/or the national central banks. The Council may, according to the same procedure, decide to harmonise the denominations and specifications of all circulation coins issued within the Member States. These regulations shall provide for the right for Member States to issue commemorative coins subject to the*

approval of the Council as regards the volume and denominations of such coins.

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Comments

See comments on Articles 4, 14.2 and 16.2 of the Statute.

ARTICLE 109A

1. The President of the Council and a member of the Commission may participate, ~~without having the right to vote~~ in meetings of the Governing Council of the ECB. ~~They may take part in the deliberations of the Governing Council of the ECB, but not the voting.~~

~~The President of the Council may in this context submit a motion for deliberation to the Governing Council of the ECB.~~

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Comments

The Committee of Governors notes that the term "motion" is not defined in Community legislation. If it were to mean that the President of the Council of Ministers had the right to make formal proposals and, thus, to influence the agenda of the Governing Council of the ECB and to request voting on this matter, such a provision would not be compatible with the undertaking in Article 107 not to seek to influence the members of the decision-making bodies of the ECB. For these reasons, the Committee of Governors would prefer that its original text of Article 15.1 of the Statute be reflected in Article 109A(1). The right for the President of the Council of Ministers and for a member of the Commission "to take part in the deliberations" should be sufficient to ensure that the points of views of the Council and of the Commission be taken adequately into consideration.

ARTICLE 109B

2. As from the date on which the ESCB will have full exercise of its powers as described in this Treaty, an Economic and Financial Committee shall be set up. The Monetary Committee provided for in paragraph 1 of this Article shall cease to exist. The Economic and Financial Committee shall have the following tasks:

- to deliver opinions, at the request of the Council, the Commission, or on its own initiative, for submission to them;
- to keep under review the economic and financial situation of the Member States and of the Community and to report regularly thereon to the Council and the Commission, in particular on financial relations with third countries and international institutions;
- without prejudice to Article 151, to contribute to the preparation of the work of the Council referred to in Articles 73E, [75F], 103 paragraphs 2, 3, 4, and 5, 103A, 104A, 104B, 106 paragraphs 5 and 6, 108 paragraphs 4 and 5, 109, 109E bis, 109G paragraph 3, 109H paragraphs 3 and 4, and to carry out the tasks assigned to it by the Council;
- examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures of the Council; the examination shall cover all measures which could have a specific impact on capital movements and on all other aspects of this Chapter relating to capital and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States/ and the Commission ~~and the ECB~~ shall each appoint no more than two members of the Committee.

The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the ECB and the Committee referred to in this Article, enact the statutes and lay down detailed provisions concerning the composition of the Committee.

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Comments

The Committee of Governors considers that the co-operation between the ESCB and the institutions of the Community is dealt with adequately and comprehensively in Article 109A and that there would be no requirement to include ESCB representatives among the full members of the Economic and Financial Committee. To the extent that contacts between the ESCB and this Committee were considered desirable, they might be established in appropriate ways.

III. STATUTE OF THE EUROPEAN MONETARY INSTITUTE

Article 5 - Advisory functions

5.2 The EMI may, ~~acting unanimously,~~ make recommendations to the national central banks concerning the conduct of their monetary policy.

5.3 In accordance with Article 109D(5) of this Treaty, the EMI shall be consulted regarding any proposed Community act ~~which could affect the monetary situation~~ in the monetary, prudential or financial field; it shall also be consulted by national authorities regarding draft legislative provisions within its field of competence, in particular with regard to Article 4.3.

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Comments

Article 5.2: The Committee feels that only the publication of recommendations, but not their adoption, should require unanimity in the Council of the EMI.

Article 5.3: The Committee considers that the EMI should be consulted in the same way as the ECB.

Article 10 - Meetings of the Council of the EMI and voting procedures

10.2 ~~[Subject to Article 10/5]~~ each member of the Council of the EMI Governor or his/her nominee shall have one vote.

10.3 Save as otherwise provided for in the present Statute, the Council of the EMI shall act by simple majority of ~~its members~~ the Governors.

10.4 Decisions to be taken in the context of Articles 4.3, 5.5, 6.2 and 6.3 shall require unanimity among the ~~members of the Council of the EMI~~ Governors. The adoption of recommendations in the context of ~~Article 4/3~~ Article 5.2 and of decisions on guidelines as referred to in Article 14.3 shall require a qualified majority of two-thirds of the Governors ~~shall require a qualified majority of two-thirds of the members of the Council of the EMI.~~

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Comments

Although there was no agreement among the Governors as to whether the President and the Vice-President should be appointed externally, the Committee was unanimous in considering that, if so, they should not have the right to vote. Therefore "member of the Council of the EMI" should read "Governor".

The proposed amendments to Article 10.4 serve to make the Presidency's text consistent with Articles 5.2 and 14.

Article 19 - Judicial control and related matters

19.1 The acts of the EMI 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 EMI may, within its field of competence, institute proceedings under the same conditions as the Council and the Commission. Articles 173 to 176/ ~~183~~ and 184 of the Treaty shall be applicable accordingly.

19.2 Disputes between the EMI, on the one hand, and its creditors, debtors or any other person, on the other, shall fall within the jurisdiction of the competent national courts, save where jurisdiction has been conferred upon the Court of Justice.

19.2-19.4 of the Presidency's text.

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Comments

The amendments to Article 19 have been proposed by the Committee of Governors for the sake of legal clarity. In Article 19.1 the reference to Article 183 can be omitted because this provision is stated explicitly in 19.2.

Article 21 - Privileges and immunities

Comments

See comments on Article 40 of the Statute of the ESCB and of the ECB.

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