
Committee of Alternates

DRAFT STATUTE OF THE [EUROPEAN SYSTEM OF CENTRAL BANKS]
[EUROPEAN CENTRAL BANK SYSTEM]

Articles and Comments

CHAPTER I - CONSTITUTION

Article 1 - The "System"

A ["System"], consisting of the participating central banks of the Members States of the Community (hereinafter "national central banks") and of a central institution, is hereby established.

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

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Comments

- a) Name of the System: the term European System of Central Banks was used in the English and French versions of the Delors Report and was broadly supported by the Alternates. Some Alternates, however, supported the term European Central Bank System, as used in the German version of the Delors Report, since they felt it reflected more appropriately the indivisibility of monetary policy in the Union. In the absence of a decision with regard to the name, the word "System" has been used throughout the following draft articles.
- b) 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.

- c) Name of central institution: the name of the central institution requires clarification; some Alternates strongly supported the name "European Central Bank". This name would probably imply that the central institution carries out a substantial share of the operations of the System. Other Alternates supported a name reflecting a lower profile (Authority, Agency) which would indicate a more decentralised pattern of operations, in line with the principle of subsidiarity.
- d) Legal structure: the issue of the legal personality of the System and the central institution is important and should be solved as well as the legal status of the System in relation to Community institutions. In this respect, legal experts shall be consulted to clarify the options and implications. The Alternates will then revert to this issue and report to the Governors.

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.

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Article 3 - Tasks

3.1. The basic tasks of the System shall be:

- to formulate and implement the monetary policy of the Community;
- to determine the supply of money and credit;
- 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.

3.2. Following a proposal from the System, other tasks may be conferred by a [unanimous] [qualified majority] 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 present Statute.

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Comments

- a) Article 3.1., Indent 4: 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.
- b) Article 3.2.: Some Alternates felt that the requirement of unanimity would be too restrictive.

Article 4 - Advisory functions

4.1. The System shall be consulted regarding any draft Community legislation in the monetary, banking or financial field.

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

4.3. The System 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 may publish its opinions.

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Comments

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

Article 5 - Collection of statistical information

5.1. In order to perform its functions, the System shall collect necessary 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 and with international organisations.

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

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

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Article 6 - International co-operation

In the field of international co-operation where it relates to the tasks entrusted to the System, the national central banks shall be represented by the System. The Council shall decide the methods of this representation. The System may participate in international monetary institutions.

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CHAPTER III - THE GOVERNING BODIES

Article 7 - Decision-making bodies of the System

7.1. The decision-making bodies of the System shall be the Council and the Executive Board.

7.2. The President, or, in his absence, the Vice President shall chair these bodies.

7.3. The President or his nominee shall represent the System externally.

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Article 8 - Independence

In exercising the powers and performing the duties conferred upon them by the Treaty and this Statute, the System and all members of its decision-making bodies may neither seek nor receive any instructions from Community institutions, national governments or any other body.

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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. 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 [2/3rds] [1/2 + 1] of the members [who have the right to vote].

[9.3. Weighted voting shall apply to decisions pursuant to Article ... When weighted voting applies, the Governors' votes shall be based on the capital share of their respective national central bank. 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 establish Rules of Procedure.

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Comments

- a) Article 9.2.: While there was broad agreement to apply the principle of "one person, one vote" for monetary policy decisions, no consensus has yet been reached.

The brackets around 'all' and 'who have the right to vote' in Article 9.2. refer to two basic questions:

- should all the members of the Executive Board have a vote in the Council or only the President of the System; the latter option was suggested by some Alternates but other Alternates were not inclined to give the President such standing;
- should all Governors on the Council have a vote or should there be a system under which only a limited number of Governors would vote, with their voting power being determined on the basis of a

constituency arrangement (the details of which would have to be set out in the Rules of Procedure)?

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 base the key on capital shares.

A decision has to be taken on whether the principle of weighted voting should apply also to decisions other than those concerning capital assets and profit, and what the key for weighted voting should then be.

It should also be decided what weights, if any, should 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.

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, which shall be confidential [and after consultation with the European Parliament]. The President may not be reappointed.

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 on a proposal from the Council of the System. They may be re-appointed once.

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).

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.

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Comments

- a) Start-up procedures: they should be dealt with in articles concerning questions of transitional arrangement, see Chapter VI.

Article 11 - Responsibilities of the governing bodies

General Comments*

Options A and B differ in respect of the distribution of the competences between the Council and the Executive Board.

Option A confers upon the Executive Board greater responsibilities than Option B. For example, in the field of monetary policy, Option A gives the Executive Board certain latitude in the area of interest rate management. The proponents of Option A consider this justified by the aim of:

- strengthening the centre of System;
- increasing the flexibility in the implementation of monetary policy within the System.

The proponents of Option B consider that the Council should remain the supreme decision-making body with only day-to-day policy implementation being entrusted to the Executive Board, thereby giving it very limited room for manoeuvre. In their view, this approach would be more in line with the principle of federalism. Moreover, this approach would allow gradual movement to Option A in that it gives the authority to the Council to delegate tasks and functions to the Executive Board.

The choice of option has implications for the frequency of Council meetings. Under Option B it would seem necessary for the Council to meet more frequently than under Option A. The frequency of meetings will be laid down in the Rules of Procedure.

The options also have implications concerning emergency procedures. In Option A such a procedure is not required as the Executive Board has the relevant authority to take the necessary policy decisions within the broad guidelines determined by the Council. In Option B, however, a provision might be necessary. Some Alternates felt in this respect that emergency procedures were unnecessary, given the availability, inter alia, of teleconference networks.

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* At the meeting of the Committee of Governors, President Pöhl proposed to provide a third option.

OPTION A

- 11.1. The Council shall take the decisions necessary for the performance of tasks entrusted to the System under the present Statute. The Council shall formulate the monetary policy of the Community. It shall give the Executive Board the necessary guidelines for the implementation of monetary policy.

(See Article 11.2, last sentence, Option A)

The Council may delegate such powers as it may specify to the Executive Board and may, at its discretion, revoke such powers.

- 11.2. The Executive Board shall be responsible for implementing the policy decisions entrusted to it by the Council and shall give the necessary instructions to national central banks. In

OPTION B

- 11.1. The Council shall take the decisions necessary for the performance of tasks entrusted to the System under the present Statute. The Council shall formulate the monetary policy of the Community and fix the rates, terms and conditions for discounting, advances, loans and other operations which the System undertakes with credit institutions and in the market. It shall give the Executive Board the necessary instructions for implementing monetary policy.

The Council shall act on all matters not expressly reserved for the Executive Board by this Statute or the Rules of Procedure.

The Council may delegate such powers as it may specify to the Executive Board and may, at its discretion, revoke such powers.

- 11.2. The Executive Board shall be responsible for implementing the policy decisions laid down by the Council and shall give the necessary instructions to national central banks.

so doing, it shall be empowered to fix the rates, terms and conditions for discounting, advances, loans and other operations which the System undertakes with credit institutions and in the market. It shall act in accordance with the Council's guidelines.

The Executive Board shall have responsibility for the preparation of the meetings of the Council. It shall be responsible for administering the central institution.

The Executive Board shall act on all matters not expressly reserved for the Council by the Statutes or the Rules of Procedure.

It shall act in accordance with the Council's instructions. The Executive Board shall be responsible for the preparation of the meetings of the Council. It shall be responsible for administering the central institution.

Article 12 - [Permanent central institution staff]

(Details to be given).

Article 13 - National central banks

13.1. The statutes of national central banks shall be made compatible with 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 following consultation with the Council of the System. The term of office shall be no less than 5 years and the Governor may be relieved from office only for serious cause resting in his person. A decision to this effect must be submitted to the European Council for approval.

13.3 Subject to Article 13.5., the national central banks are an integral part of the System and shall act 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 tasks of the System [may] [shall normally] be executed by the national central banks. The execution of these tasks shall be in accordance with the terms laid down by the Executive Board.

13.5. National central banks may continue to perform 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.

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Comments

- a) 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.

- b) Article 13.4.: The brackets reflect a disagreement about the degree of decentralisation in the execution of the tasks of the System.
- c) Article 13.5.: The appropriate majority would have to be specified.

Article 14 - Inter-institutional co-operation

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 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 shall draw up an annual report on its activities 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 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.

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Comments

- a) Article 14.2.: this provision should be repeated in the Treaty.

CHAPTER IV - 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) As drafted, the text does not prejudge the question of whether operations are carried out at the level of the central institution 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 System shall have the exclusive right to issue notes in the Community which shall be the only legal tender.

15.2. The volume and denomination of coins issued within the Community shall be subject to approval of the Council of the System.

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Comments

- a) The provisions of Articles 15.1. and 15.2. should also be stated in the Treaty.
- b) Issuing of bank notes: 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.

Article 16 - Accounts with the System

The System may open accounts for credit institutions, public entities and other market participants in order to conduct its operations.

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Article 17 - Open markets operations and operations with credit institutions

General comments on Articles 17 and 18

The scope of the operations of the System will have to be defined in the light of monetary policy considerations. The nature of the credit institutions will have to be circumscribed, with reference to agreed Community definitions.

Some Alternates favoured a relatively general wording of Article 17 because it relates to market based operations undertaken with willing counterparts; in contrast, Article 18 imposes obligations on credit institutions and should therefore set out in detail the terms and conditions for the use of minimum reserves. Some other Alternates felt that Articles 17 and 18 should contain an equivalent degree of detail. However, the more detailed the list of operational procedures, the greater probably will be the need to change its contents as circumstances evolve and this should be taken into account when determining the amendment procedures.

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17.1. The System shall be entitled to operate in the financial markets to influence money market conditions in the Community. For this purpose:

- it may buy and sell outright or under repurchase agreement, and at its discretion, marketable instruments such as Treasury bills and other securities and claims in Community and foreign currencies as well as precious metals;
- it may establish general principles for its open market operations including the announcement of conditions at which it stands ready to enter into such transactions.

17.2. The System shall also be entitled to conduct credit operations with credit institutions [against suitable collateral].

17.3. All such operations shall be conducted in a non-discriminatory manner with the sole purpose of implementing the monetary policy of the System.

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Comments

- a) Article 17.2.: Some Alternates pointed out that certain central banks undertake credit operations without collateral. One Alternate emphasised that these credit operations should not be conducted at subsidised interest rates.

Article 18 - Minimum reserves

The System shall be entitled to demand that credit institutions maintain deposits with it. It is authorised to establish general principles concerning the application of this rule [which take account of the following guidelines. The size of the required deposit shall be related to the increase in or outstanding amounts of the eligible liabilities [assets] of credit institutions vis-à-vis non-credit institutions or institutions which themselves are not subject to minimum reserves. The System shall be entitled to penalise credit institutions which fail to comply with the above obligation.

The reserve coefficient shall not exceed ... percent of the outstanding amount of the respective items of the eligible liabilities [assets].

In the case of external disturbances the System shall be entitled to differentiate concerning its reserve requirement between internal and external liabilities [assets].]

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Comments

Some Alternates considered the use of minimum reserves unnecessary for the control of monetary conditions; if such reserves were nevertheless imposed, they felt that:

- the imposition of such requirements should be subject to a decision taken by the Council on the basis of a qualified majority;
- such a decision should be subject to periodic reconfirmation by the Council;
- such minimum reserve requirements should be remunerated at market rates, in order that they are not regarded as a tax on the banking industry;
- the aggregate percentage burden should be low.

In addition, it will be necessary to examine whether the minimum reserve requirement applies both to liabilities and/or assets.

A provision in the Treaty should give the necessary regulatory power to the System in this respect.

Article 19 - Operations with public entities

19.1. The System shall act as a fiscal agent for Community institutions. Governments of Member States and other [major] public authorities using other fiscal agents shall conduct their operations following consultation with the System.

19.2. Public entities for which the System acts as fiscal agent [shall normally] [may] issue debt instruments via the System. Such public entities shall maintain their liquid funds on accounts with the System except for express arrangements to the contrary with the System.

19.3. Public entities shall not be given overdraft or any other type of credit facilities.

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Comments

- a) Article 19.2.: the first sentence does not imply any lending by the System to public entities, see Article 19.3.
- b) Article 19.3.: some Alternates raised the question of whether allowance should be made for facilities to smooth seasonal payment flows in order to neutralise adverse monetary effects.

Article 20 - Clearing and payment systems

The System may provide facilities to ensure efficient clearing and payment systems inside the Community and with third countries.

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Comments

The Alternates suggested contacting the Chairman of the Netting Group with regard to the implications of this Article.

Article 21 - Operations in relation to third countries and external assets

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

21.2. 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.

21.3. In relation to third countries it is entitled to conduct all types of banking transactions.

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Article 22 - 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.

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Article 23 - Prudential ratios

Comments: The Secretariat will consult the Chairman of the Banking Supervisory Sub-Committee regarding the provisions to be contained in this Article.

Article 24 - Publication

[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.]

CHAPTER V - FINANCIAL PROVISIONS

To be completed following further discussions of the Alternates.

CHAPTER VI - 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 in 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.