

# THE INTRODUCTION OF THE EURO

COMPILATION OF COMMUNITY LEGISLATION

AND RELATED DOCUMENTS

*(October 1997)*

Directorate General II  
(Economic and Financial Affairs)

A great deal of additional information on the European Union is available on the Internet.  
It can be accessed through the Europa server (<http://europa.eu.int>).

Cataloguing data can be found at the end of this publication.

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# I. COMMUNITY LEGISLATION

## A. **PROVISIONS OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY**

1. Article 3a EC
2. Title VI. Economic and monetary policy  
(Articles 102a to 109m EC)

*Article 3a*

1. For the purposes set out in Article 2, the activities of the Member States and the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.
  
2. Concurrently with the foregoing, and as provided in this Treaty and in accordance with the timetable and the procedures set out therein, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU, and the definition and conduct of a single monetary policy and exchange rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.
  
3. These activities of the Member States and the Community shall entail compliance with the following guiding principles; stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

**TITLE VI**

**ECONOMIC AND MONETARY POLICY**

**CHAPTER I**

**ECONOMIC POLICY**

*Article 102a*

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community, as defined in Article 2, and in the context of the broad guidelines referred to in Article 103(2). The Member States and the Community shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 3a.

*Article 103*

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of Article 102a.
2. The Council shall, acting by a qualified majority on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Community, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Community.

On the basis of this conclusion, the Council shall, acting by a qualified majority, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Community as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardizing the proper functioning of economic and monetary union, the Council may, acting by a qualified majority on a recommendation from the Commission, make the necessary recommendations to the Member State concerned. The Council may, acting by a qualified majority on a proposal from the Commission, decide to make its recommendations public.

The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent Committee of the European Parliament if the Council has made its recommendations public.

5. The Council, acting in accordance with the procedure referred to in Article 189c, may adopt detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4 of this Article.

*Article 103a*

1. Without prejudice to any other procedures provided for in this Treaty, the Council may, acting unanimously on a proposal from the Commission, decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products.
2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by exceptional occurrences beyond its control, the Council may, acting unanimously on a proposal from the Commission, grant, under certain conditions, Community financial assistance to the Member State concerned. Where the severe difficulties are caused by natural disasters, the Council shall act by qualified majority. The President of the Council shall inform the European Parliament of the decision taken.

*Article 104*

1. Overdraft facilities or any other type of credit facility with the ECB or with the central banks of the Member States (hereinafter referred to as 'national central banks') in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.
2. Paragraph 1 shall not apply to publicly-owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

*Article 104a*

1. Any measure, not based on prudential considerations, establishing privileged access by Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions shall be prohibited.
2. The Council, acting in accordance with the procedure referred to in Article 189c, shall, before 1 January 1994, specify definitions for the application of the prohibition referred to in paragraph 1.

*Article 104b*

1. The Community shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.
2. If necessary, the Council, acting in accordance with the procedure referred to in Article 189c, may specify definitions for the application of the prohibition referred to in Article 104 and in this Article.

*Article 104c*

1. Member States shall avoid excessive government deficits.



2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:
  - (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless
    - either the ratio has declined substantially and continuously and reached a level that comes close to the reference value;
    - or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
  - (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to this Treaty.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium term economic and budgetary position of the Member State. The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.
4. The Committee provided for in Article 109c shall formulate an opinion on the report of the Commission.
5. If the Commission considers that an excessive deficit in a Member State exists or may occur, the Commission shall address an opinion to the Council.
6. The Council shall, acting by a qualified majority on a recommendation from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.
7. Where the existence of an excessive deficit is decided according to paragraph 6, the Council shall make recommendations to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to the provisions of paragraph 8, these recommendations shall not be made public.
8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.
9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

In such case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. The rights to bring actions provided for in Articles 169 and 170 may not be exercised within the framework of paragraphs 1 to 9 of this Article.
11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:
  - to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities;
  - to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned;
  - to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Community until the excessive deficit has, in the view of the Council, been corrected;
  - to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the decisions taken.

12. The Council shall abrogate some or all of its decisions referred to in paragraphs 6 to 9 and 11 to the extent that the excessive deficit in the Member State concerned has, in the view of the Council, been corrected. If the Council has previously made public recommendations, it shall, as soon as the decision under paragraph 8 has been abrogated, make a public statement that an excessive deficit in the Member State concerned no longer exists.
13. When taking the decisions referred to in paragraphs 7 to 9, 11 and 12, the Council shall act on a recommendation from the Commission by a majority of two thirds of the votes of its members weighted in accordance with Article 148(2), excluding the votes of the representative of the Member State concerned.
14. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure annexed to this Treaty.

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the ECB, adopt the appropriate provisions which shall then replace the said Protocol.

Subject to the other provisions of this paragraph the Council shall, before 1 January 1994, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, lay down detailed rules and definitions for the application of the provisions of the said Protocol.

## CHAPTER 2

### MONETARY POLICY

#### *Article 105*

1. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 3a.

2. The basic tasks to be carried out through the ESCB shall be:
  - to define and implement the monetary policy of the Community;
  - to conduct foreign exchange operations consistent with the provisions of Article 109;
  - to hold and manage the official foreign reserves of the Member States;
  - to promote the smooth operation of payment systems.
3. The third indent of paragraph 2 shall be without prejudice to the holding and management by the governments of Member States of foreign exchange working balances.
4. The ECB shall be consulted:
  - on any proposed Community act in its fields of competence;
  - by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 106(6).

The ECB may submit opinions to the appropriate Community institutions or bodies or to national authorities on matters in its fields of competence.

5. The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.
6. The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

#### *Article 105a*

1. The ECB shall have the exclusive right to authorize the issue bank notes within the Community. The ECB and the national central banks may issue such notes. The bank notes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Community.
2. Member States may issue coins subject to approval by the ECB of the volume of the issue. The Council may, acting in accordance with the procedure referred to in Article 189c and after consulting the ECB, adopt measures to harmonize the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Community.

#### *Article 106*

1. The ESCB shall be composed of the ECB and of the national central banks.
2. The ECB shall have legal personality.
3. The ESCB shall be governed by the decision-making bodies of the ECB which shall be the Governing Council and the Executive Board.
4. The Statute of the ESCB is laid down in a Protocol annexed to this Treaty.

5. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission or unanimously on a proposal from the Commission and after consulting the ECB. In either case, the assent of the European Parliament shall be required.
6. The Council, acting by a qualified majority either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB.

*Article 107*

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

*Article 108*

Each Member State shall ensure, at the latest at the date of the establishment of the ESCB, that its national legislation including the statutes of its national central bank is compatible with this Treaty and the Statute of the ESCB.

*Article 108a*

1. In order to carry out the tasks entrusted to the ESCB, the ECB shall, in accordance with the provisions of this Treaty and under the conditions laid down in the Statute of the ESCB:
  - make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and in cases which shall be laid down in the acts of the Council referred to in Article 106(6);
  - take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and the Statute of the ESCB;
  - make recommendations and deliver opinions.
2. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

Recommendations and opinions shall have no binding force.

A decision shall be binding in its entirety upon those to whom it is addressed.

Articles 190 to 192 shall apply to regulations and decisions adopted by the ECB.

The ECB may decide to publish its decisions, recommendations and opinions.

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 106(6), the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

*Article 109*

1. By way of derogation from Article 228, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange rate system for the ECU in relation to non-Community currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the ECU within the exchange rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the ECU central rates.
2. In the absence of an exchange rate system in relation to one or more non-Community currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on a recommendation from the Commission and after consulting the ECB or on a recommendation from the ECB, may formulate general orientations for exchange rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.
3. By way of derogation from Article 228, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Community with one or more States or international organizations, the Council, acting by a qualified majority on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.

Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Community, on the ECB and on Member States.

4. Subject to paragraph 1, the Council shall, on a proposal from the Commission and after consulting the ECB, acting by a qualified majority decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and, acting unanimously, decide its representation in compliance with the allocation of powers laid down in Articles 103 and 105.
5. Without prejudice to Community competence and Community agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

CHAPTER 3

INSTITUTIONAL PROVISIONS

*Article 109a*

1. The Governing Council of the ECB shall comprise the members of the Executive Board of the ECB and the Governors of the national central bank
2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.  
  
(b) The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognized standing and professional experience in monetary or banking matters by common accord of the Governments of the Member States

at the level of Heads of State or of Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

*Article 109b*

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.

The President of the Council may submit a motion for deliberation to the Governing Council of the ECB.

2. The President of the ECB shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.
3. The ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the ECB shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the ECB and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent Committees of the European Parliament.

*Article 109c*

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, a Monetary Committee with advisory status is hereby set up.

It shall have the following tasks:

- to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission;
- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;
- without prejudice to Article 151, to contribute to the preparation of the work of the Council referred to in Articles 73f, 73g, 103(2), (3), (4) and (5), 103a, 104a, 104b, 104c, 109e(2), 109f(6), 109h, 109i, 109j(2) and 109k(1);
- to 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 adopted by the Council; the examination shall cover all measures relating to capital movements 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 shall each appoint two members of the Monetary Committee.

2. At the start of the third stage, an Economic and Financial Committee shall be set up. The Monetary Committee provided for in paragraph 1 shall be dissolved.

The Economic and Financial Committee shall have the following tasks:

- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;
- 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 to 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 73f, 73g, 103(2), (3), (4) and (5), 103a, 104a, 104b, 104c, 105(6), 105a(2), 106(5) and (6), 109, 109h, 109i(2) and (3), 109k(2), 109l(4) and (5), and to carry out other advisory and preparatory tasks assigned to it by the Council;
- to 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 adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

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

3. 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, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.
4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Articles 109k and 109l, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

#### *Article 109d*

For matters within the scope of Articles 103(4), 104c with the exception of paragraph 14, 109, 109j, 109k and 109l(4) and (5), the Council or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council without delay.

### CHAPTER 4

#### TRANSITIONAL PROVISIONS

#### *Article 109e*

1. The second stage for achieving economic and monetary union shall begin on 1 January 1994.
2. Before that date
  - (a) each Member State shall

- adopt, where necessary, appropriate measures to comply with the prohibitions laid down in Article 73b, without prejudice to Article 73e, and in Articles 104 and 104a(1);
  - adopt, if necessary, with a view to permitting the assessment provided for in subparagraph (b), multiannual programmes intended to ensure the lasting convergence necessary for the achievement of economic and monetary union, in particular with regard to price stability and sound public finances;
- (b) the Council shall, on the basis of a report from the Commission, assess the progress made with regard to economic and monetary convergence, in particular with regard to price stability and sound public finances, and the progress made with the implementation of Community law concerning the internal market.
3. The provisions of Articles 104, 104a(1), 104b(1) and 104c with the exception of paragraphs 1, 9, 11 and 14 shall apply from the beginning of the second stage.
- The provisions of Articles 103a(2), 104c(1), (9) and (11), 105, 105a, 107, 109, 109a, 109b and 109c(2) and (4) shall apply from the beginning of the third stage.
4. In the second stage, Member States shall endeavour to avoid excessive government deficits.
5. During the second stage, each Member State shall, as appropriate, start the process leading to the independence of its central bank, in accordance with Article 108.

*Article 109f*

1. At the start of the second stage, a European Monetary Institute (hereinafter referred to as 'EMI') shall be established and take up its duties; it shall have legal personality and be directed and managed by a Council, consisting of a President and the Governors of the national central banks, one of whom shall be Vice-President.

The President shall be appointed by common accord of the Governments of the Member States at the level of Heads of State or of Government, on a recommendation from, as the case may be, the Committee of Governors of the central banks of the Member States (hereinafter referred to as 'Committee of Governors') or the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognized standing and professional experience in monetary or banking matters. Only nationals of Member States may be President of the EMI. The Council of the EMI shall appoint the Vice-President.

The Statute of the EMI is laid down in a Protocol annexed to this Treaty.

The Committee of Governors shall be dissolved at the start of the second state.

2. The EMI shall:
- strengthen cooperation between the national central banks;
  - strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability;
  - monitor the functioning of the European Monetary System;
  - hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;



- take over the tasks of the European Monetary Cooperation Fund, which shall be dissolved; the modalities of dissolution are laid down in the Statute of the EMI;
- facilitate the use of the ECU and oversee its development, including the smooth functioning of the ECU clearing system.

3. For the preparation of the third stage, the EMI shall:

- prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage;
- promote the harmonization, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence;
- prepare the rules for operations to be undertaken by the national central banks within the framework of the ESCB;
- promote the efficiency of cross-border payments;
- supervise the technical preparation of ECU bank notes.

At the latest by 31 December 1996, the EMI shall specify the regulatory, organizational and logistical framework necessary for the ESCB to perform its tasks in the third stage. This framework shall be submitted for decision to the ECB at the date of its establishment.

4. The EMI, acting by a majority of two thirds of the members of its Council, may:

- formulate opinions or recommendations on the overall orientation of monetary policy and exchange rate policy as well as on related measures introduced in each Member State;
- submit opinions or recommendations to Governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the European Monetary System;
- make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.

5. The EMI, acting unanimously, may decide to publish its opinions and its recommendations.

6. The EMI shall be consulted by the Council regarding any proposed Community act within its field of competence.

Within the limits and under the conditions set out by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall be consulted by the authorities of the Member States on any draft legislative provision within its field of competence.

7. The Council may, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the EMI, confer upon the EMI other tasks for the preparation of the third stage.

8. Where this Treaty provides for a consultative role for the ECB, references to the ECB shall be read as referring to the EMI before the establishment of the ECB.

Where this Treaty provides for a consultative role for the EMI, references to the EMI shall be read, before 1 January 1994, as referring to the Committee of Governors.

9. During the second stage, the term 'ECB' used in Articles 173, 175, 176, 177, 180 and 215 shall be read as referring to the EMI.

*Article 109g*

The currency composition of the ECU basket shall not be changed.

From the start of the third stage, the value of the ECU shall be irrevocably fixed in accordance with Article 109l(4).

*Article 109h*

1. Where a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardize the functioning of the common market or the progressive implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the provisions of this Treaty. The Commission shall state what measures it recommends the State concerned to take.

If the action taken by a Member State and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the Committee referred to in Article 109c, recommend to the Council the granting of mutual assistance and appropriate methods therefor.

The Commission shall keep the Council regularly informed of the situation and of how it is developing.

2. The Council, acting by a qualified majority, shall grant such mutual assistance; it shall adopt directives or decisions laying down the conditions and details of such assistance, which may take such forms as:
  - (a) a concerted approach to or within any other international organizations to which Member States may have recourse;
  - (b) measures needed to avoid deflection of trade where the State which is in difficulties maintains or reintroduces quantitative restrictions against third countries;
  - (c) the granting of limited credits by other Member States, subject to their agreement.
3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorize the State which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

Such authorization may be revoked and such conditions and details may be changed by the Council acting by a qualified majority.

4. Subject to Article 109k(6), this Article shall cease to apply from the beginning of the third stage.

*Article 109i*

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 109h(2) is not immediately taken, the Member State concerned may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the common market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.
2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under Article 109h.
3. After the Commission has delivered an opinion and the Committee referred to in Article 109c has been consulted, the Council may, acting by a qualified majority, decide that the State concerned shall amend, suspend or abolish the protective measures referred to above.
4. Subject to Article 109k(6), this Article shall cease to apply from the beginning of the third stage.

*Article 109j*

1. The Commission and the EMI shall report to the Council on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each Member State's national legislation, including the statutes of its national central bank, and Articles 107 and 108 of this Treaty and the Statute of the ESCB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:
  - the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability;
  - the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 104c(6);
  - the observance of the normal fluctuation margins provided for by the Exchange Rate Mechanism of the European Monetary System, for at least two years, without devaluing against the currency of any other Member State;
  - the durability of convergence achieved by the Member State and of its participation in the Exchange Rate Mechanism of the European Monetary System being reflected in the long-term interest rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in a Protocol annexed to this Treaty. The reports of the Commission and the EMI shall also take account of the development of the ECU, the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

2. On the basis of these reports, the Council, acting by a qualified majority on a recommendation from the Commission, shall assess:
  - for each Member State, whether it fulfils the necessary conditions for the adoption of a single currency;

- whether a majority of the Member States fulfil the necessary conditions for the adoption of a single currency,

and recommend its findings to the Council, meeting in the composition of the Heads of State or of Government. The European Parliament shall be consulted and forward its opinion to the Council, meeting in the composition of the Heads of State or of Government.

3. Taking due account of the reports referred to in paragraph 1 and the opinion of the European Parliament referred to in paragraph 2, the Council, meeting in the composition of Heads of State or of Government, shall, acting by a qualified majority, not later than 31 December 1996:

- decide, on the basis of the recommendations of the Council referred to in paragraph 2, whether a majority of the Member States fulfil the necessary conditions for the adoption of a single currency;
- decide whether it is appropriate for the Community to enter the third stage,

and if so:

- set the date for the beginning of the third stage.

4. If by the end of 1997 the date for the beginning of the third stage has not been set, the third stage shall start on 1 January 1999. Before 1 July 1998, the Council, meeting in the composition of Heads of State or of Government, after a repetition of the procedure provided for in paragraphs 1 and 2, with the exception of the second indent of paragraph 2, taking into account the reports referred to in paragraph 1 and the opinion of the European Parliament, shall, acting by a qualified majority and on the basis of the recommendations of the Council referred to in paragraph 2, conform which Member States fulfil the necessary conditions for the adoption of a single currency.

#### *Article 109k*

1. If the decision has been taken to set the date in accordance with Article 109j(3), the Council shall, on the basis of its recommendations referred to in Article 109j(2), acting by a qualified majority on a recommendation from the Commission, decide whether any, and if so which, Member States shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as 'Member States with a derogation'.

If the Council has confirmed which Member States fulfil the necessary conditions for the adoption of a single currency, in accordance with Article 109j(4), those Member States which do not fulfil the conditions shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as 'Member States with a derogation'.

2. At least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB shall report to the Council in accordance with the procedure laid down in Article 109j(1). After consulting the European Parliament and after discussion in the Council, meeting in the composition of the Heads of State or of Government, the Council shall, acting by a qualified majority on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in Article 109j(1), and abrogate the derogations of the Member States concerned.
3. A derogation referred to in paragraph 1 shall entail that the following Articles do not apply to the Member State concerned: Articles 104c(9) and (11), 105(1), (2), (3) and (5), 105a, 108a, 109, and 109a(2)(b). The exclusion of such a Member State and its national central bank from rights and obligations within the ESCB is laid down in Chapter IX of the Statute of the ESCB.

4. In Articles 105(1), (2) and (3), 105a, 108a, 109 and 109a(2)(b), 'Member States' shall be read as 'Member States without a derogation'.
5. The voting rights of Member States with a derogation shall be suspended for the Council decisions referred to in the Articles of this Treaty mentioned in paragraph 3. In that case, by way of derogation from Articles 148 and 189a(1), a qualified majority shall be defined as two thirds of the votes of the representatives of the Member States without a derogation weighted in accordance with Article 148(2), and unanimity of those Member States shall be required for an act requiring unanimity.
6. Articles 109h and 109i shall continue to apply to a Member State with a derogation.

*Article 109l*

1. Immediately after the decision on the date for the beginning of the third stage has been taken in accordance with Article 109j(3), or, as the case may be, immediately after 1 July 1998:
  - the Council shall adopt the provisions referred to in Article 106(6);
  - the governments of the Member States without a derogation shall appoint, in accordance with the procedure set out in Article 50 of the Statute of the ESCB, the President, the Vice-President and the other members of the Executive Board of the ECB. If there are Member States with a derogation, the number of members of the Executive Board may be smaller than provided for in Article 11.1 of the Statute of the ESCB, but in no circumstances shall it be less than four.

As soon as the Executive Board is appointed, the ESCB and the ECB shall be established and shall prepare for their full operation as described in this Treaty and the Statute of the ESCB. The full exercise of their powers shall start from the first day of the third stage.

2. As soon as the ECB is established, it shall, if necessary, take over tasks of the EMI. The EMI shall go into liquidation upon the establishment of the ECB; the modalities of liquidation are laid down in the Statute of the EMI.
3. If and as long as there are Member States with a derogation, and without prejudice to Article 106(3) of this Treaty, the General Council of the ECB referred to in Article 45 of the Statute of the ESCB shall be constituted as a third decision-making body of the ECB.
4. At the starting date of the third stage, the Council shall, acting with the unanimity of the Member States without a derogation, on a proposal from the Commission and after consulting the ECB, adopt the conversion rates at which their currencies shall be irrevocably fixed and at which irrevocably fixed rate the ECU shall be substituted for these currencies, and the ECU will become a currency in its own right. This measure shall by itself not modify the external value of the ECU. The Council shall, acting according to the same procedure, also take the other measures necessary for the rapid introduction of the ECU as the single currency of those Member States.
5. If it is decided, according to the procedure set out in Article 109k(2), to abrogate a derogation, the Council shall, acting with the unanimity of the Member States without a derogation and the Member State concerned, on a proposal from the Commission and after consulting the ECB, adopt the rate at which the ECU shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the ECU as the single currency in the Member State concerned.

*Article 109m*

1. Until the beginning of the third stage, each Member State shall treat its exchange rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in the developing the ECU, and shall respect existing powers in this field.
2. From the beginning of the third stage and for as long as a Member State has a derogation, paragraph 1 shall apply by analogy to the exchange rate policy of that Member State.

## **B. PROTOCOLS AND DECLARATIONS ANNEXED TO THE TREATY**

1. Statute of the European System of Central Banks  
and the European Central Bank (Protocol N° 3)
2. Statute of the European Monetary Institute  
(Protocol N° 4)
3. Other protocols (N° 5, 6, 7, 8, 9, 10, 11, 12, 13)
4. Declarations (N° 3, 4, 5, 6, 8, 10, 33)

**PROTOCOL (N° 3)**

**on the Statute of the European System of Central Banks  
and of the European Central Bank**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European System of Central Banks and of the European Central Bank provided for in Article 4a of the Treaty establishing the European Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

CHAPTER I

CONSTITUTION OF THE ESCB

*Article 1*

**The European System of Central Banks**

- 1.1. The European System of Central Banks (ESCB) and the European Central Bank (ECB) shall be established in accordance with Article 4a of this Treaty; they shall perform their tasks and carry on their activities in accordance with the provisions of this Treaty and of this Statute.
- 1.2. In accordance with Article 106(1) of this Treaty, the ESCB shall be composed of the ECB and of the central banks of the Member States ('national central banks'). The Institut monétaire luxembourgeois will be the central bank of Luxembourg.

CHAPTER II

OBJECTIVES AND TASKS OF THE ESCB

*Article 2*

**Objectives**

In accordance with Article 105(1) of this Treaty, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of this Treaty. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 3a of this Treaty.

*Article 3*

**Tasks**

- 3.1. In accordance with Article 105(2) of this Treaty, the basic tasks to be carried out through the ESCB shall be:



- to define and implement the monetary policy of the Community;
  - to conduct foreign exchange operations consistent with the provisions of Article 109 of this Treaty;
  - to hold and manage the official foreign reserves of the Member States;
  - to promote the smooth operation of payment systems.
- 3.2. In accordance with Article 105(3) of this Treaty, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign exchange working balances.
- 3.3. In accordance with Article 105(5) of this Treaty, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

*Article 4*

**Advisory functions**

In accordance with Article 105(4) of this Treaty:

- (a) the ECB shall be consulted:
- on any proposed Community act in its fields of competence;
  - by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 42;
- (b) the ECB may submit opinions to the appropriate Community institutions or bodies or to national authorities on matters in its fields of competence.

*Article 5*

**Collection of statistical information**

- 5.1. In order to undertake the tasks of the ESCB, 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 cooperate with the Community institutions or bodies and with the competent authorities of the Member States or third countries and with international organizations.
- 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 contribute to the harmonization, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence.
- 5.4. The Council, in accordance with the procedure laid down in Article 42, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

*Article 6*

**International cooperation**

- 6.1. In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented.
- 6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.
- 6.3. Articles 6.1 and 6.2 shall be without prejudice to Article 109(4) of this Treaty.

CHAPTER III

ORGANIZATION OF THE ESCB

*Article 7*

**Independence**

In accordance with Article 107 of this Treaty, when exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty and this Statute, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body. The Community institutions and bodies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

*Article 8*

**General principle**

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

*Article 9*

**The European Central Bank**

- 9.1. The ECB which, in accordance with Article 106(2) of this Treaty, shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
- 9.2. The ECB shall ensure that the tasks conferred upon the ESCB under Article 105(2), (3) and (5) of this Treaty are implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Articles 12.1 and 14.
- 9.3. In accordance with Article 106(3) of this Treaty, the decision-making bodies of the ECB shall be the Governing Council and the Executive Board.

## *Article 10*

### **The Governing Council**

- 10.1. In accordance with Article 109a(1) of this Treaty, the Governing Council shall comprise the members of the Executive Board of the ECB and the Governors of the national central banks.
- 10.2. Subject to Article 10.3, only members of the Governing Council present in person shall have the right to vote. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules shall also provide that a member of the Governing Council who is prevented from voting for a prolonged period may appoint an alternate as a member of the Governing Council.

Subject to Articles 10.3 and 11.3, each member of the Governing Council shall have one vote. Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority. In the event of a tie, the President shall have the casting vote.

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

- 10.3. For any decisions to be taken under Articles 28, 29, 30, 32, 33 and 51, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. The weights of the votes of the members of the Executive Board shall be zero. A decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two thirds of the subscribed capital of the ECB and represent at least half of the shareholders. 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 Governing Council may decide to make the outcome of its deliberations public.
- 10.5. The Governing Council shall meet at least ten times a year.

## *Article 11*

### **The Executive Board**

- 11.1. In accordance with Article 109a(2)(a) of this Treaty, the Executive Board shall comprise the President, the Vice- President and four other members.

The members shall perform their duties on a full-time basis. No member shall engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Governing Council.

- 11.2. In accordance with Article 109a(2)(b) of this Treaty, the President, the Vice-President and the other Members of the Executive Board shall be appointed from among persons of recognized *standing and professional experience in monetary or banking matters by common accord* of the governments of the Member States at the level of the Heads of State or of Government, on a recommendation from the Council after it has consulted the European Parliament and the Governing Council.

Their term of office shall be 8 years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

- 11.3. 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 the subject of contracts with the ECB and shall be fixed by the Governing Council on a proposal from a Committee comprising three members appointed by the Governing Council and three members appointed by the Council. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.
- 11.4. 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 Governing Council or the Executive Board, compulsorily retire him.
- 11.5. 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 shall be specified in the Rules of Procedure referred to in Article 12.3.
- 11.6. The Executive Board shall be responsible for the current business of the ECB.
- 11.7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with Article 11.2.

#### *Article 12*

##### **Responsibilities of the decision-making bodies**

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

The Executive Board shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council. In doing so the Executive Board shall give the necessary instructions to national central banks. In addition the Executive Board may have certain powers delegated to it where the Governing Council so decides.

To the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB.

- 12.2. The Executive Board shall have responsibility for the preparation of meetings of the Governing Council.
- 12.3. The Governing Council shall adopt Rules of Procedure which determine the internal organization of the ECB and its decision-making bodies.
- 12.4. The Governing Council shall exercise the advisory functions referred to in Article 4.
- 12.5. The Governing Council shall take the decisions referred to in Article 6.

### *Article 13*

#### **The President**

- 13.1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the ECB.
- 13.2. Without prejudice to Article 39, the President or his nominee shall represent the ECB externally.

### *Article 14*

#### **National central banks**

- 14.1. In accordance with Article 108 of this Treaty, each Member State shall ensure, at the latest at the date of the establishment of the ESCB, that its national legislation, including the statutes of its national central bank, is compatible with this Treaty and this Statute.
- 14.2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than 5 years.

A 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 on grounds of infringement of this Treaty or of any rule of law relating to its application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

- 14.3. The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.
- 14.4. National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB.

### *Article 15*

#### **Reporting commitments**

- 15.1. The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.
- 15.2. A consolidated financial statement of the ESCB shall be published each week.
- 15.3. In accordance with Article 109b(3) of this Treaty, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.
- 15.4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

*Article 16*

**Bank notes**

In accordance with Article 105a(1) of this Treaty, the Governing Council shall have the exclusive right to authorize the issue of bank notes within the Community. The ECB and the national central banks may issue such notes. The bank notes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Community.

The ECB shall respect as far as possible existing practices regarding the issue and design of bank notes.

CHAPTER IV

MONETARY FUNCTIONS AND OPERATIONS OF THE ESCB

*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 ESCB and to carry out its tasks, the ECB and the national central banks may:

- operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in Community or in non-Community currencies, as well as precious metals;
- 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 for the announcement of conditions under which they stand ready to enter into such transactions.

*Article 19*

**Minimum reserves**

19.1. Subject to Article 2, the ECB may require credit institutions established in Member States to hold minimum reserves on accounts with the ECB and national central banks in pursuance of monetary policy objectives. Regulations concerning the calculation and determination of the required minimum reserves may be established by the Governing Council. In cases of non-compliance the ECB shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

19.2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 42, define the basis for minimum reserves and the maximum permissible ratios

between those reserves and their basis, as well as the appropriate sanctions in cases of non-compliance.

#### *Article 20*

##### **Other instruments of monetary control**

The Governing Council may, by a majority of two thirds of the votes cast, decide upon the use of such other operational methods of monetary control as it sees fit, respecting Article 2.

The Council shall, in accordance with the procedure laid down in Article 42, define the scope of such methods if they impose obligations on third parties.

#### *Article 21*

##### **Operations with public entities**

21.1. In accordance with Article 104 of this Treaty, overdrafts or any other type of credit facility with the ECB or with the national central banks in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

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 provisions of this Article shall not apply to publicly-owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

#### *Article 22*

##### **Clearing and payment systems**

The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Community and with other countries.

#### *Article 23*

##### **External operations**

The ECB and national central banks may:

- establish relations with central banks and financial institutions in other countries and, where appropriate, with international organizations;
- 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 the currency of any country or units of account and in whatever form held;
- hold and manage the assets referred to in this Article;
- conduct all types of banking transactions in relations with third countries and international organizations, including borrowing and lending operations.

*Article 24*

**Other operations**

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

CHAPTER V

PRUDENTIAL SUPERVISION

*Article 25*

**Prudential supervision**

- 25.1. The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Community legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.
- 25.2. In accordance with any decision of the Council under Article 105(6) of this Treaty, the ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

CHAPTER VI

FINANCIAL PROVISIONS OF THE ESCB

*Article 26*

**Financial accounts**

- 26.1. The financial year of the ECB and 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 Governing Council. The accounts shall be approved by the Governing Council and shall thereafter be published.
- 26.3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the ESCB, comprising those assets and liabilities of the national central banks that fall within the ESCB.
- 26.4. For the application of this Article, the Governing Council shall establish the necessary rules for standardizing the accounting and reporting of operations undertaken by the national central banks.

*Article 27*

**Auditing**

- 27.1. The accounts of the ECB and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council. The auditors



shall have full power to examine all books and accounts of the ECB and national central banks and obtain full information about their transactions.

- 27.2. The provisions of Article 188c of this Treaty shall only apply to an examination of the operational efficiency of the management of the ECB.

#### *Article 28*

##### **Capital of the ECB**

- 28.1. The capital of the ECB, which shall become operational upon its establishment, shall be ECU 5 000 million. The capital may be increased by such amounts as may be decided by the Governing Council acting by the qualified majority provided for in Article 10.3, within the limits and under the conditions set by the Council under the procedure laid down in Article 42.
- 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 in accordance with Article 29.
- 28.3. The Governing Council, acting by the qualified majority provided for in Article 10.3, shall determine the extent to which and the form in which the capital shall be paid up.
- 28.4. 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.
- 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 Governing Council shall determine the terms and conditions of such transfers.

#### *Article 29*

##### **Key for capital subscription**

- 29.1. When in accordance with the procedure referred to in Article 109l(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 equal to the sum of:
- 50% of the share of its respective Member State in the population of the Community in the penultimate year preceding the establishment of the ESCB;
  - 50% of the share of its respective Member State in the gross domestic product at market prices of the Community as recorded in the last five years preceding the penultimate year before the establishment of the ESCB;

The percentages shall be rounded up to the nearest multiple of 0.05 percentage points.

- 29.2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules adopted by the Council under the procedure provided for in Article 42.
- 29.3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the ESCB by analogy with 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 Governing Council 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 Article 28, the ECB shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, 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 following its establishment 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.
- 30.2. The contributions of each national central bank shall be fixed in proportion to 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 Governing Council shall determine the denomination and remuneration of such claims.
- 30.4. Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB, in accordance with Article 30.2, within the limits and under the conditions set by the Council in accordance with the procedure laid down in Article 42.
- 30.5. The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets.
- 30.6. The Governing Council shall take all other measures necessary 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 their obligations towards international organizations 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, and Member States' transactions with their foreign exchange working balances shall, above a certain limit to be established within the framework of Article 31.3, 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 Governing Council 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 ESCB's monetary policy function (hereinafter referred to as 'monetary income') shall be allocated at the end of each financial year in accordance with the provisions of this Article.
- 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 to credit institutions. These assets shall be earmarked by national central banks in accordance with guidelines to be established by the Governing Council.

- 32.3. If, after the start of the third stage, the balance sheet structures of the national central banks do not, in the judgment of the Governing Council, permit the application of Article 32.2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from Article 32.2, 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 to credit institutions in accordance with Article 19.

The Governing Council may decide that national central banks shall be indemnified against costs incurred in connection with the issue of bank notes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the ESCB. Indemnification shall be in a form deemed appropriate in the judgment of the Governing Council; 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 paid-up shares in the capital of the ECB, subject to any decision taken by the Governing Council 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 guidelines established by the Governing Council.
- 32.7. The Governing Council shall take all other measures necessary 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 Governing Council, which may not exceed 20% of the net profit, shall be transferred to the general reserve fund subject to a limit equal to 100% of the capital;
  - (b) the remaining net profit shall be distributed to the shareholders of the ECB in proportion to their paid-up shares.
- 33.2. In the event of a loss incurred by the ECB, the shortfall may be offset against the general reserve fund of the ECB and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32.5.

### **CHAPTER VII**

#### **GENERAL PROVISIONS**

#### *Article 34*

#### **Legal acts**

34.1. In accordance with Article 108a of this Treaty, the ECB shall:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 or 25.2 and in cases which shall be laid down in the acts of the Council referred to in Article 42;
- take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and this Statute;
- make recommendations and deliver opinions.

34.2. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

Recommendations and opinions shall have no binding force.

A decision shall be binding in its entirety upon those to whom it is addressed.

Articles 190 to 192 of this Treaty shall apply to regulations and decisions adopted by the ECB.

The ECB may decide to publish its decisions, recommendations and opinions.

34.3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 42, the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

#### *Article 35*

#### **Judicial control and related matters**

35.1. The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice in the cases and under the conditions laid down in this Treaty. The ECB may institute proceedings in the cases and under the conditions laid down in this Treaty.

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 upon the Court of Justice.

35.3. The ECB shall be subject to the liability regime provided for in Article 215 of this Treaty. The national central banks shall be liable according to their respective national laws.

35.4. The Court of Justice shall have jurisdiction to give judgment 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.

35.5. A decision of the ECB to bring an action before the Court of Justice shall be taken by the Governing Council.

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 shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the ECB, the latter may bring the matter before the Court of Justice.

*Article 36*

**Staff**

- 36.1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.
- 36.2. The Court of Justice shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.

*Article 37*

**Seat**

Before the end of 1992, the decision as to where the seat of the ECB will be established shall be taken by common accord of the governments of the Member States at the level of Heads of State or of Government.

*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 Community legislation imposing an obligation of secrecy shall be subject to such legislation.

*Article 39*

**Signatories**

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

*Article 40*

**Privileges and immunities**

The ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities.

**CHAPTER VIII**

**AMENDMENT OF THE STATUTE AND COMPLEMENTARY LEGISLATION**

*Article 41*

**Simplified amendment procedure**

- 41.1. In accordance with Article 106(5) 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, 33.1(a) and 36 of this Statute may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission, or unanimously on a proposal from the Commission and after consulting the ECB. In either case the assent of the European Parliament shall be required.
- 41.2. A recommendation made by the ECB under this Article shall require a unanimous decision by the Governing Council.

*Article 42*

**Complementary legislation**

In accordance with Article 106(6) of this Treaty, immediately after the decision on the date for the beginning of the third stage, the Council, acting by a qualified majority either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this Statute.

CHAPTER IX

TRANSITIONAL AND OTHER PROVISIONS FOR THE ESCB

*Article 43*

**General provisions**

- 43.1. A derogation as referred to in Article 109k(1) of this Treaty shall entail that the following Articles of this Statute shall not confer any rights or impose any obligations on the Member State concerned: 3, 6, 9.2, 12.1, 14.3, 16, 18, 19, 20, 22, 23, 26.2, 27, 30, 31, 32, 33, 34, 50 and 52.
- 43.2. The central banks of Member States with a derogation as specified in Article 109k(1) of this Treaty shall retain their powers in the field of monetary policy according to national law.
- 43.3. In accordance with Article 109k(4) of this Treaty, 'Member States' shall be read as 'Member States without a derogation' in the following Articles of this Statute: 3, 11.2, 19, 34.2 and 50.
- 43.4. 'National central banks' shall be read as 'central banks of Member States without a derogation' in the following Articles of this Statute: 9.2, 10.1, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and 52.
- 43.5. 'Shareholders' shall be read as 'central banks of Member States without a derogation' in Articles 10.3 and 33.1.
- 43.6. 'Subscribed capital of the ECB' shall be read as 'capital of the ECB subscribed by the central banks of Member States without a derogation' in Articles 10.3 and 30.2.

*Article 44*

**Transitional tasks of the ECB**

The ECB shall take over those tasks of the EMI which, because of the derogations of one or more Member States, still have to be performed in the third stage.

The ECB shall give advice in the preparations for the abrogation of the derogations specified in Article 109k of this Treaty.

*Article 45*

**The General Council of the ECB**

- 45.1. Without prejudice to Article 106(3) of this Treaty, the General Council shall be constituted as a third decision-making body of the ECB.
- 45.2. The General Council shall comprise the President and Vice-President of the ECB and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.
- 45.3. The responsibilities of the General Council are listed in full in Article 47 of this Statute.

*Article 46*

**Rules of procedure of the General Council**

- 46.1. The President or, in his absence, the Vice-President of the ECB shall chair the General Council of the ECB.
- 46.2. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the General Council.
- 46.3. The President shall prepare the meetings of the General Council.
- 46.4. By way of derogation from Article 12.3, the General Council shall adopt its Rules of Procedure.
- 46.5. The Secretariat of the General Council shall be provided by the ECB.

*Article 47*

**Responsibilities of the General Council**

- 47.1. The General Council shall:
  - perform the tasks referred to in Article 44;
  - contribute to the advisory functions referred to in Articles 4 and 25.1.
- 47.2. The General Council shall contribute to:
  - the collection of statistical information as referred to in Article 5;
  - the reporting activities of the ECB as referred to in Article 15;
  - the establishment of the necessary rules for the application of Article 26 as referred to in Article 26.4;
  - the taking of all other measures necessary for the application of Article 29 as referred to in Article 29.4;
  - the laying down of the conditions of employment of the staff of the ECB as referred to in Article 36.

- 47.3. The General Council shall contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the currencies, or the single currency, of the Member States without a derogation, as referred to in Article 109(5) of this Treaty.
- 47.4. The General Council shall be informed by the President of the ECB of decisions of the Governing Council.

*Article 48*

**Transitional provisions for the capital of the ECB**

In accordance with Article 29.1 each national central bank shall be assigned a weighting in the key for subscription of the ECB's capital. By way of derogation from Article 28.3, central banks of Member States with a derogation shall not pay up their subscribed capital unless the General Council, acting by a majority representing at least two thirds of the subscribed capital of the ECB and at least half of the shareholders, decides that a minimal percentage has to be paid up as a contribution to the operational costs of the ECB.

*Article 49*

**Deferred payment of capital, reserves and provisions of the ECB**

- 49.1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the ECB to the same extent as the central banks of other Member States without a derogation, and shall transfer to the ECB foreign reserve assets in accordance with Article 30.1. The sum to be transferred shall be determined by multiplying the ECU value at current exchange rates of the foreign reserve assets which have already been transferred to the ECB in accordance with Article 30.1, by the ratio between the number of shares subscribed by the national central bank concerned and the number of shares already paid up by the other national central banks.
- 49.2. In addition to the payment to be made in accordance with Article 49.1, the central bank concerned shall contribute to the reserves of the ECB, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December of the year prior to the abrogation of the derogation. The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the ECB, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already paid up by the other central banks.

*Article 50*

**Initial appointment of the members of the Executive Board**

When the Executive Board of the ECB is being established, the President, the Vice-President and the other members of the Executive Board shall be appointed by common accord of the governments of the Member States at the level of Heads of State or of Government, on a recommendation from the Council and after consulting the European Parliament and the Council of the EMI. The President of the Executive Board shall be appointed for 8 years. By way of derogation from Article 11.2, the Vice-President shall be appointed for 4 years and the other members of the Executive Board for terms of office of between 5 and 8 years. No term of office shall be renewable. The number of members of the Executive Board may be smaller than provided for in Article 11.1, but in no circumstance shall it be less than four.



*Article 51*

**Derogation from Article 32**

- 51.1. If, after the start of the third stage, the Governing Council decides that the application of Article 32 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% in the first financial year after the start of the third stage and which shall decrease by at least 12 percentage points in each subsequent financial year.
- 51.2. Article 51.1 shall be applicable for not more than five financial years after the start of the third stage.

*Article 52*

**Exchange of bank notes in Community currencies**

Following the irrevocable fixing of exchange rates, the Governing Council shall take the necessary measures to ensure that bank notes denominated in currencies with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

*Article 53*

**Applicability of the transitional provisions**

If and as long as there are Member States with a derogation Articles 43 to 48 shall be applicable.

**PROTOCOL (N° 4)**

**on the Statute of the European Monetary Institute**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European Monetary Institute,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

*Article 1*

**Constitution and name**

- 1.1. The European Monetary Institute (EMI) shall be established in accordance with Article 109f of this Treaty; it shall perform its functions and carry out its activities in accordance with the provisions of this Treaty and of this Statute.
- 1.2. The members of the EMI shall be the central banks of the Member States ('national central banks'). For the purposes of this Statute, the Institut monétaire luxembourgeois shall be regarded as the central bank of Luxembourg.
- 1.3. Pursuant to Article 109f of this Treaty, both the Committee of Governors and the European Monetary Cooperation Fund (EMCF) shall be dissolved. All assets and liabilities of the EMCF shall pass automatically to the EMI.

*Article 2*

**Objectives**

The EMI shall contribute to the realization of the conditions necessary for the transition to the third stage of Economic and Monetary Union, in particular by:

- strengthening the coordination of monetary policies with a view to ensuring price stability;
- making the preparations required for the establishment of the European System of Central Banks (ESCB), and for the conduct of a single monetary policy and the creation of a single currency in the third stage;
- overseeing the development of the ECU.

*Article 3*

**General principles**

- 3.1. The EMI shall carry out the tasks and functions conferred upon it by this Treaty and this Statute without prejudice to the responsibility of the competent authorities for the conduct of the monetary policy within the respective Member States.
- 3.2. The EMI shall act in accordance with the objectives and principles stated in Article 2 of the Statute of the ESCB.

## *Article 4*

### **Primary tasks**

4.1. In accordance with Article 109f(2) of this Treaty, the EMI shall:

- strengthen cooperation between the national central banks;
- strengthen the coordination of the monetary policies of the Member States with the aim of ensuring price stability;
- monitor the functioning of the European Monetary System (EMS);
- hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;
- take over the tasks of the EMCF; in particular it shall perform the functions referred to in Articles 6.1, 6.2 and 6.3;
- facilitate the use of the ECU and oversee its development, including the smooth functioning of the ECU clearing system.

The EMI shall also:

- hold regular consultations concerning the course of monetary policies and the use of monetary policy instruments;
- normally be consulted by the national monetary authorities before they take decisions on the course of monetary policy in the context of the common framework for ex ante coordination.

4.2. At the latest by 31 December 1996, the EMI shall specify the regulatory, organizational and logistical framework necessary for the ESCB to perform its tasks in the third stage, in accordance with the principle of an open market economy with free competition. This framework shall be submitted by the Council of the EMI for decision to the ECB at the date of its establishment.

In accordance with Article 109f(3) of this Treaty, the EMI shall in particular:

- prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage;
- promote the harmonization, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence;
- prepare the rules for operations to be undertaken by the national central banks in the framework of the ESCB;
- promote the efficiency of cross-border payments;
- supervise the technical preparation of ECU bank notes.

## *Article 5*

### **Advisory functions**

- 5.1. In accordance with Article 109f(4) of this Treaty, the Council of the EMI may formulate opinions or recommendations on the overall orientation of monetary policy and exchange rate policy as well as on related measures introduced in each Member State. The EMI may submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the EMS.
- 5.2. The Council of the EMI may also make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.
- 5.3. In accordance with Article 109f(6) of this Treaty, the EMI shall be consulted by the Council regarding any proposed Community act within its field of competence. Within the limits and under the conditions set out by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall be consulted by the authorities of the Member States on any draft legislative provision within its field of competence, in particular with regard to Article 4.2.
- 5.4. In accordance with Article 109f(5) of this Treaty, the EMI may decide to publish its opinions and its recommendations.

## *Article 6*

### **Operational and technical functions**

- 6.1. The EMI shall:
  - provide for the multilateralization of positions resulting from interventions by the national central banks in Community currencies and the multilateralization of intra-Community settlements;
  - administer the very short-term financing mechanism provided for by the Agreement of 13 March 1979 between the central banks of the Member States of the European Economic Community laying down the operating procedures for the European Monetary System (hereinafter referred to as 'EMS Agreement') and the short-term monetary support mechanism provided for in the Agreement between the central banks of the Member States of the European Economic Community of 9 February 1970, as amended;
  - perform the functions referred to in Article 11 of Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments.
- 6.2. The EMI may receive monetary reserves from the national central banks and issue ECUs against such assets for the purpose of implementing the EMS Agreement. These ECUs may be used by the EMI and the national central banks as a means of settlement and for transactions between them and the EMI. The EMI shall take the necessary administrative measures for the implementation of this paragraph.
- 6.3. The EMI may grant to the monetary authorities of third countries and to international monetary institutions the status of 'Other Holders' of ECUs and fix the terms and conditions under which such ECUs may be acquired, held or used by Other Holders.
- 6.4. The EMI shall be entitled to hold and manage foreign exchange reserves as an agent for and at the request of national central banks. Profits and losses regarding these reserves shall be for the account of the national central bank depositing the reserves. The EMI shall perform this

function on the basis of bilateral contracts in accordance with rules laid down in a decision of the EMI. These rules shall ensure that transactions with these reserves shall not interfere with the monetary policy and exchange rate policy of the competent monetary authority of any Member State and shall be consistent with the objectives of the EMI and the proper functioning of the Exchange Rate Mechanism of the EMS.

#### *Article 7*

##### **Other tasks**

- 7.1. Once a year the EMI shall address a report to the Council on the state of the preparations for the third stage. These reports shall include an assessment of the progress towards convergence in the Community, and cover in particular the adaptation of monetary policy instruments and the preparation of the procedures necessary for carrying out a single monetary policy in the third stage, as well as the statutory requirements to be fulfilled for national central banks to become an integral part of the ESCB.
- 7.2. In accordance with the Council decisions referred to in Article 109f(7) of this Treaty, the EMI may perform other tasks for the preparation of the third stage.

#### *Article 8*

##### **Independence**

The members of the Council of the EMI who are the representatives of their institutions shall, with respect to their activities, act according to their own responsibilities. In exercising the powers and performing the tasks and duties conferred upon them by this Treaty and this Statute, the Council of the EMI may not seek or take any instructions from Community institutions or bodies or governments of Member States. The Community institutions and bodies as well as the governments of the Member States undertake to respect this principle and not to seek to influence the Council of the EMI in the performance of its tasks.

#### *Article 9*

##### **Administration**

- 9.1. In accordance with Article 109f(1) of this Treaty, the EMI shall be directed and managed by the Council of the EMI.
- 9.2. The Council of the EMI shall consist of a President and the Governors of the national central banks, one of whom shall be Vice-President. If a Governor is prevented from attending a meeting, he may nominate another representative of his institution.
- 9.3. The President shall be appointed by common accord of the governments of the Member States at the level of Heads of State or of Government, on a recommendation from, as the case may be, the Committee of Governors or the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognized standing and professional experience in monetary or banking matters. Only nationals of Member States may be President of the EMI. The Council of the EMI shall appoint the Vice-President. The President and Vice-President shall be appointed for a period of three years.
- 9.4. The President shall perform his duties on a full-time basis. He shall not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council of the EMI.
- 9.5. The President shall:
  - prepare and chair the meetings of the Council of the EMI;

- without prejudice to Article 22, present the views of the EMI externally;
- be responsible for the day-to-day management of the EMI.

In the absence of the President, his duties shall be performed by the Vice-President.

- 9.6. The terms and conditions of employment of the President, in particular his salary, pension and other social security benefits, shall be the subject of a contract with the EMI and shall be fixed by the Council of the EMI on a proposal from a Committee comprising three members appointed by the Committee of Governors or the Council of the EMI, as the case may be, and three members appointed by the Council. The President shall not have the right to vote on matters referred to in this paragraph.
- 9.7. If the President 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 EMI, compulsorily retire him.
- 9.8. The Rules of Procedure of the EMI shall be adopted by the Council of the EMI.

#### *Article 10*

##### **Meetings of the Council of the EMI and voting procedures**

- 10.1. The Council of the EMI shall meet at least ten times a year. The proceedings of Council meetings shall be confidential. The Council of the EMI may, acting unanimously, decide to make the outcome of its deliberations public.
- 10.2. Each member of the Council of the EMI or his nominee shall have one vote.
- 10.3. Save as otherwise provided for in this Statute, the Council of the EMI shall act by a simple majority of its members.
- 10.4. Decisions to be taken in the context of Articles 4.2, 5.4, 6.2 and 6.3 shall require unanimity of the members of the Council of the EMI.

The adoption of opinions and recommendations under Articles 5.1 and 5.2, the adoption of decisions under Articles 6.4, 16 and 23.6 and the adoption of guidelines under Article 15.3 shall require a qualified majority of two thirds of the members of the Council of the EMI.

#### *Article 11*

##### **Interinstitutional cooperation and reporting requirements**

- 11.1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Council of the EMI.
- 11.2. The President of the EMI shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the EMI.
- 11.3. At a date to be established in the Rules of Procedure, the EMI shall prepare an annual report on its activities and on monetary and financial conditions in the Community. The annual report, together with the annual accounts of the EMI, shall be addressed to the European Parliament, the Council and the Commission and also to the European Council.

The President of the EMI may, at the request of the European Parliament or on his own initiative, be heard by the competent Committees of the European Parliament.

11.4. Reports published by the EMI shall be made available to interested parties free of charge.

*Article 12*

**Currency denomination**

The operations of the EMI shall be expressed in ECUs.

*Article 13*

**Seat**

Before the end of 1992, the decision as to where the seat of the EMI will be established shall be taken by common accord of the governments of the Member States at the level of Heads of State or of Government.

*Article 14*

**Legal capacity**

The EMI, which in accordance with Article 109f(1) of this Treaty shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under their law; it may, in particular, acquire or dispose of movable or immovable property and may be a party to legal proceedings.

*Article 15*

**Legal acts**

- 15.1. In the performance of its tasks, and under the conditions laid down in this Statute, the EMI shall:
- deliver opinions;
  - make recommendations;
  - adopt guidelines, and take decisions, which shall be addressed to the national central banks.
- 15.2. Opinions and recommendations of the EMI shall have no binding force.
- 15.3. The Council of the EMI may adopt guidelines laying down the methods for the implementation of the conditions necessary for the ESCB to perform its functions in the third stage. EMI guidelines shall have no binding force; they shall be submitted for decision to the ECB.
- 15.4. Without prejudice to Article 3.1, a decision of the EMI shall be binding in its entirety upon those to whom it is addressed. Articles 190 and 191 of this Treaty shall apply to these decisions.

*Article 16*

**Financial resources**

- 16.1. The EMI shall be endowed with its own resources. The size of the resources of the EMI shall be determined by the Council of the EMI with a view to ensuring the income deemed necessary to cover the administrative expenditure incurred in the performance of the tasks and functions of the EMI.

- 16.2. The resources of the EMI determined in accordance with Article 16.1 shall be provided out of contributions by the national central banks in accordance with the key referred to in Article 29.1 of the Statute of the ESCB and be paid up at the establishment of the EMI. For this purpose, the statistical data to be used for the determination of the key shall be provided by the Commission, in accordance with the rules adopted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Committee of Governors and the Committee referred to in Article 109c of this Treaty.
- 16.3. The Council of the EMI shall determine the form in which contributions shall be paid up.

#### *Article 17*

##### **Annual accounts and auditing**

- 17.1. The financial year of the EMI shall begin on the first day of January and end on the last day of December.
- 17.2. The Council of the EMI shall adopt an annual budget before the beginning of each financial year.
- 17.3. The annual accounts shall be drawn up in accordance with the principles established by the Council of the EMI. The annual accounts shall be approved by the Council of the EMI and shall thereafter be published.
- 17.4. The annual accounts shall be audited by independent external auditors approved by the Council of the EMI. The auditors shall have full power to examine all books and accounts of the EMI and to obtain full information about its transactions.

The provisions of Article 188c of this Treaty shall only apply to an examination of the operational efficiency of the management of the EMI.

- 17.5. Any surplus of the EMI shall be transferred in the following order:
- (a) an amount to be determined by the Council of the EMI shall be transferred to the general reserve fund of the EMI;
  - (b) any remaining surplus shall be distributed to the national central banks in accordance with the key referred to in Article 16.2.
- 17.6. In the event of a loss incurred by the EMI, the shortfall shall be offset against the general reserve fund of the EMI. Any remaining shortfall shall be made good by contributions from the national central banks, in accordance with the key as referred to in Article 16.2.

#### *Article 18*

##### **Staff**

- 18.1. The Council of the EMI shall lay down the conditions of employment of the staff of the EMI.
- 18.2. The Court of Justice shall have jurisdiction in any dispute between the EMI and its servants within the limits and under the conditions laid down in the conditions of employment.



## *Article 19*

### **Judicial control and related matters**

- 19.1. The acts or omissions of the EMI shall be open to review or interpretation by the Court of Justice in the cases and under the conditions laid down in this Treaty. The EMI may institute proceedings in the cases and under the conditions laid down in this Treaty.
- 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.
- 19.3. The EMI shall be subject to the liability regime provided for in Article 215 of this Treaty.
- 19.4. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the EMI, whether that contract be governed by public or private law.
- 19.5. A decision of the EMI to bring an action before the Court of Justice shall be taken by the Council of the EMI.

## *Article 20*

### **Professional secrecy**

- 20.1. Members of the Council of the EMI and the staff of the EMI shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.
- 20.2. Persons having access to data covered by Community legislation imposing an obligation of secrecy shall be subject to such legislation.

## *Article 21*

### **Privileges and immunities**

The EMI shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities.

## *Article 22*

### **Signatories**

The EMI shall be legally committed to third parties by the President or the Vice-President or by the signatures of two members of the staff of the EMI who have been duly authorized by the President to sign on behalf of the EMI.

## *Article 23*

### **Liquidation of the EMI**

- 23.1. In accordance with Article 109l of this Treaty, the EMI shall go into liquidation on the establishment of the ECB. All assets and liabilities of the EMI shall then pass automatically to the ECB. The latter shall liquidate the EMI according to the provisions of this Article. The liquidation shall be completed by the beginning of the third stage.

- 23.2. The mechanism for the creation of ECUs against gold and US dollars as provided for by Article 17 of the EMS Agreement shall be unwound by the first day of the third stage in accordance with Article 20 of the said Agreement.
- 23.3. All claims and liabilities arising from the very short-term financing mechanism and the short-term monetary support mechanism, under the Agreements referred to in Article 6.1, shall be settled by the first day of the third stage.
- 23.4. All remaining assets of the EMI shall be disposed of and all remaining liabilities of the EMI shall be settled.
- 23.5. The proceeds of the liquidation described in Article 23.4 shall be distributed to the national central banks in accordance with the key referred to in Article 16.2.
- 23.6. The Council of the EMI may take the measures necessary for the application of Articles 23.4 and 23.5.
- 23.7. Upon the establishment of the ECB, the President of the EMI shall relinquish his office.

## OTHER PROTOCOLS

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### **PROTOCOL (N° 5)**

#### **on the excessive deficit procedure**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the excessive deficit procedure referred to in Article 104c of the Treaty establishing the European Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

#### *Article 1*

The reference values referred to in Article 104c(2) of this Treaty are:

- 3% for the ratio of the planned or actual government deficit to gross domestic product at market prices;
- 60% for the ratio of government debt to gross domestic product at market prices.

#### *Article 2*

In Article 104c of this Treaty and in this Protocol:

- government means general government, that is central government, regional or local government and social security funds, to the exclusion of commercial operations, as defined in the European System of Integrated Economic Accounts;
- deficit means net borrowing as defined in the European System of Integrated Economic Accounts;
- investment means gross fixed capital formation as defined in the European System of Integrated Economic Accounts;
- debt means total gross debt at nominal value outstanding at the end of the year and consolidated between and within the sectors of general government as defined in the first indent.

#### *Article 3*

In order to ensure the effectiveness of the excessive deficit procedure, the governments of the Member States shall be responsible under this procedure for the deficits of general government as defined in the first indent of Article 2. The Member States shall ensure that national procedures in the budgetary area enable them to meet their obligations in this area deriving from this Treaty. The Member States shall report their planned and actual deficits and the levels of their debt promptly and regularly to the Commission.

#### *Article 4*

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

## **PROTOCOL (N° 6)**

### **on the convergence criteria referred to in Article 109j of the Treaty establishing the European Community**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the convergence criteria which shall guide the Community in taking decisions on the passage to the third stage of economic and monetary union, referred to in Article 109j(1) of this Treaty,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

#### *Article 1*

The criterion on price stability referred to in the first indent of Article 109j(1) of this Treaty shall mean that a Member State has a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1 percentage points that of, at most, the three best performing Member States in terms of price stability. Inflation shall be measured by means of the consumer price index on a comparable basis, taking into account differences in national definitions.

#### *Article 2*

The criterion on the government budgetary position referred to in the second indent of Article 109j(1) of this Treaty shall mean that at the time of the examination the Member State is not the subject of a Council decision under Article 104c(6) of this Treaty that an excessive deficit exists.

#### *Article 3*

The criterion on participation in the Exchange Rate Mechanism of the European Monetary System referred to in the third indent of Article 109j(1) of this Treaty shall mean that a Member State has respected the normal fluctuation margins provided for by the Exchange Rate Mechanism of the European Monetary System without severe tensions for at least the last two years before the examination. In particular, the Member State shall not have devalued its currency's bilateral central rate against any other Member State's currency on its own initiative for the same period.

#### *Article 4*

The criterion on the convergence of interest rates referred to in the fourth indent of Article 109j(1) of this Treaty shall mean that, observed over a period of one year before the examination, a Member State has had an average nominal long-term interest rate that does not exceed by more than 2 percentage points that of, at most, the three best performing Member States in terms of price stability. Interest rates shall be measured on the basis of long term government bonds or comparable securities, taking into account differences in national definitions.

#### *Article 5*

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

#### *Article 6*

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the EMI or the ECB as the case may be, and the Committee referred to in Article 109c, adopt appropriate provisions to lay down the details of the convergence criteria referred to in Article 109j of this Treaty, which shall then replace this Protocol.

**PROTOCOL (N° 7)**  
**amending the Protocol**  
**on the Privileges and Immunities**  
**of the European Communities**

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 40 of the Statute of the European System of Central Banks and of the European Central Bank and Article 21 of the Statute of the European Monetary Institute, the European Central Bank and the European Monetary Institute shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

*Sole Article*

The Protocol on the Privileges and Immunities of the European Communities, annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities, shall be supplemented by the following provisions:

'Article 23

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

The above provisions shall also apply to the European Monetary Institute. Its dissolution or liquidation shall not give rise to any imposition.'

**PROTOCOL (N° 8)**  
**on Denmark**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Denmark,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

The provisions of Article 14 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank shall not affect the right of the National Bank of Denmark to carry out its existing tasks concerning those parts of the Kingdom of Denmark which are not part of the Community.

## **PROTOCOL (N° 9)**

### **on Portugal**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Portugal,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

1. Portugal is hereby authorized to maintain the facility afforded to the Autonomous Regions of Azores and Madeira to benefit from an interest-free credit facility with the Banco de Portugal under the terms established by existing Portuguese law.
2. Portugal commits itself to pursue its best endeavours in order to put an end to the abovementioned facility as soon as possible.

## **PROTOCOL (N° 10)**

### **on the transition to the third stage of Economic and Monetary Union**

THE HIGH CONTRACTING PARTIES,

Declare the irreversible character of the Community's movement to the third stage of Economic and Monetary Union by signing the new Treaty provisions on Economic and Monetary Union.

Therefore all Member States shall, whether they fulfil the necessary conditions for the adoption of a single currency or not, respect the will for the Community to enter swiftly into the third stage, and therefore no Member State shall prevent the entering into the third stage.

If by the end of 1997 the date of the beginning of the third stage has not been set, the Member States concerned, the Community institutions and other bodies involved shall expedite all preparatory work during 1998, in order to enable the Community to enter the third stage irrevocably on 1 January 1999 and to enable the ECB and the ESCB to start their full functioning from this date.

This Protocol shall be annexed to the Treaty establishing the European Community.

## **PROTOCOL (N° 11)**

### **on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland**

THE HIGH CONTRACTING PARTIES,

RECOGNIZING that the United Kingdom shall not be obliged or committed to move to the third stage of Economic and Monetary Union without a separate decision to do so by its government and Parliament,

NOTING the practice of the government of the United Kingdom to fund its borrowing requirement by the sale of debt to the private sector,

HAVE AGREED the following provisions, which shall be annexed to the Treaty establishing the European Community:

1. The United Kingdom shall notify the Council whether it intends to move to the third stage before the Council makes its assessment under Article 109j(2) of this Treaty.

Unless the United Kingdom notifies the Council that it intends to move to the third stage, it shall be under no obligation to do so.

If no date is set for the beginning of the third stage under Article 109j(3) of this Treaty, the United Kingdom may notify its intention to move to the third stage before 1 January 1998.

2. Paragraphs 3 to 9 shall have effect if the United Kingdom notifies the Council that it does not intend to move to the third stage.
3. The United Kingdom shall not be included among the majority of Member States which fulfil the necessary conditions referred to in the second indent of Article 109j(2) and the first indent of Article 109j(3) of this Treaty.
4. The United Kingdom shall retain its powers in the field of monetary policy according to national law.
5. Articles 3a(2), 104c(1), (9) and (11), 105(1) to (5), 105a, 107, 108, 108a, 109, 109a(1) and (2)(b) and 109l(4) and (5) of this Treaty shall not apply to the United Kingdom. In these provisions references to the Community or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.
6. Articles 109e(4) and 109h and i of this Treaty shall continue to apply to the United Kingdom. Articles 109c(4) and 109m shall apply to the United Kingdom as if it had a derogation.
7. The voting rights of the United Kingdom shall be suspended in respect of acts of the Council referred to in the Articles listed in paragraph 5. For this purpose the weighted votes of the United Kingdom shall be excluded from any calculation of a qualified majority under Article 109k(5) of this Treaty.

The United Kingdom shall also have no right to participate in the appointment of the President, the Vice-President and the other members of the Executive Board of the ECB under Articles 109a(2)(b) and 109l(1) of this Treaty.

8. Articles 3, 4, 6, 7, 9.2, 10.1, 10.3, 11.2, 12.1, 14, 16, 18 to 20, 22, 23, 26, 27, 30 to 34, 50 and 52 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank ('the Statute') shall not apply to the United Kingdom.

In those Articles, references to the Community or the Member States shall not include the United Kingdom and references to national central banks or shareholders shall not include the Bank of England.

References in Articles 10.3 and 30.2 of the Statute to 'subscribed capital of the ECB' shall not include capital subscribed by the Bank of England.

9. Article 109l(3) of this Treaty and Articles 44 to 48 of the Statute shall have effect, whether or not there is any Member State with a derogation, subject to the following amendments:
  - (a) References in Article 44 to the tasks of the ECB and the EMI shall include those tasks that still need to be performed in the third stage owing to any decision of the United Kingdom not to move to that stage.

- (b) In addition to the tasks referred to in Article 47 the ECB shall also give advice in relation to and contribute to the preparation of any decision of the Council with regard to the United Kingdom taken in accordance with paragraphs 10(a) and 10(c).
  - (c) The Bank of England shall pay up its subscription to the capital of the ECB as a contribution to its operational costs on the same basis as national central banks of Member States with a derogation.
10. If the United Kingdom does not move to the third stage, it may change its notification at any time after the beginning of that stage. In that event:
- (a) The United Kingdom shall have the right to move to the third stage provided only that it satisfies the necessary conditions. The Council, acting at the request of the United Kingdom and under the conditions and in accordance with the procedure laid down in Article 109k(2) of this Treaty, shall decide whether it fulfils the necessary conditions.
  - (b) The Bank of England shall pay up its subscribed capital, transfer to the ECB foreign reserve assets and contribute to its reserves on the same basis as the national central bank of a Member State whose derogation has been abrogated.
  - (c) The Council, acting under the conditions and in accordance with the procedure laid down in Article 109l(5) of this Treaty, shall take all other necessary decisions to enable the United Kingdom to move to the third stage.

If the United Kingdom moves to the third stage pursuant to the provisions of this protocol, paragraphs 3 to 9 shall cease to have effect.

11. Notwithstanding Articles 104 and 109e(3) of this Treaty and Article 21.1 of the Statute, the government of the United Kingdom may maintain its Ways and Means facility with the Bank of England if and so long as the United Kingdom does not move to the third stage.

## **PROTOCOL (N° 12)**

### **on certain provisions relating to Denmark**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle, in accordance with the general objectives of the Treaty establishing the European Community, certain particular problems existing at the present time,

TAKING INTO ACCOUNT that the Danish Constitution contains provisions which may imply a referendum in Denmark prior to Danish participation in the third stage of Economic and Monetary Union,

HAVE AGREED on the following provisions, which shall be annexed to the Treaty establishing the European Community:

1. The Danish Government shall notify the Council of its position concerning participation in the third stage before the Council makes its assessment under Article 109j(2) of this Treaty.
2. In the event of a notification that Denmark will not participate in the third stage, Denmark shall have an exemption. The effect of the exemption shall be that all Articles and provisions of this Treaty and the Statute of the ESCB referring to a derogation shall be applicable to Denmark.
3. In such case, Denmark shall not be included among the majority of Member States which fulfil the necessary conditions referred to in the second indent of Article 109j(2) and the first indent of Article 109j(3) of this Treaty.



4. As for the abrogation of the exemption, the procedure referred to in Article 109k(2) shall only be initiated at the request of Denmark.
5. In the event of abrogation of the exemption status, the provisions of this Protocol shall cease to apply.

### **PROTOCOL (N° 13)**

#### **on France**

THE HIGH CONTRACTING PARTIES,

DESIRING to take into account a particular point relating to France,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

France will keep the privilege of monetary emission in its overseas territories under the terms established by its national laws, and will be solely entitled to determine the parity of the CFP franc.

## **DECLARATIONS**

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### **DECLARATION (N° 3)**

#### **on Part Three, Titles III and VI, of the Treaty establishing the European Community**

The Conference affirms that, for the purposes of applying the provisions set out in Part Three, Title III, Chapter 4 on capital and payments, and Title VI on economic and monetary policy, of this Treaty, the usual practice, according to which the Council meets in the composition of Economic and Finance Ministers, shall be continued, without prejudice to Article 109j(2) to (4) and Article 109k(2).

### **DECLARATION (N° 4)**

#### **on Part Three, Title VI, of the Treaty establishing the European Community**

The Conference affirms that the President of the European Council shall invite the Economic and Finance Ministers to participate in European Council meetings when the European Council is discussing matters relating to Economic and Monetary Union.

### **DECLARATION (N° 5)**

#### **on monetary cooperation with non-Community countries**

The Conference affirms that the Community shall aim to contribute to stable international monetary relations. To this end the Community shall be prepared to cooperate with other European countries and with those non-European countries with which the Community has close economic ties.

### **DECLARATION (N° 6)**

#### **on monetary relations with the Republic of San Marino, the Vatican City and the Principality of Monaco**

The Conference agrees that the existing monetary relations between Italy and San Marino and the Vatican City and between France and Monaco remain unaffected by the Treaty establishing the European Community until the introduction of the ECU as the single currency of the Community.

The Community undertakes to facilitate such renegotiations of existing arrangements as might become necessary as a result of the introduction of the ECU as a single currency.

**DECLARATION (N° 8)**

**on Article 109 of the Treaty  
establishing the European Community**

The Conference emphasizes that use of the term 'formal agreements' in Article 109(1) is not intended to create a new category of international agreement within the meaning of Community law.

**DECLARATION (N° 10)**

**on Articles 109, 130r and 130y  
of the Treaty establishing the European Community**

The Conference considers that the provisions of Article 109(5), Article 130r(4), second subparagraph, and Article 130y do not affect the principles resulting from the judgment handed down by the Court of Justice in the AETR case.

**DECLARATION (N° 33)**

**on disputes between the ECB and the EMI  
and their servants**

The Conference considers it proper that the Court of First Instance should hear this class of action in accordance with Article 168a of the Treaty establishing the European Community. The Conference therefore invites the institutions to adapt the relevant rules accordingly.

## **C. MADRID SCENARIO ON THE CHANGEOVER TO THE EURO**

1. Annex 1 of the presidency conclusions of the Madrid European Council
2. Presidency conclusions of the Madrid European Council relating to the name of the single currency

In order to clarify the question regarding contracts whose wording refers to the official ecu basket, the Commission is publishing Annex I to the conclusions of the European Council held at Madrid on 15 and 16 December 1995.

#### THE SCENARIO FOR THE CHANGEOVER TO THE SINGLE CURRENCY

1. At its meeting in Cannes on 27 June 1995, the European Council requested the Ecofin Council to define, in consultation with the Commission and the European Monetary Institute (EMI), a reference scenario for the changeover to the single currency and to report back to the European Council at its meeting in December 1995 in Madrid with a view to its adoption.
2. Since the entry into force of the Treaty on European Union ('Maastricht Treaty'), particularly since the start of Stage 2 of the process of moving to an economic and monetary union, the Member States, the European bodies and representatives of many private organizations have been studying the different aspects of the changeover. Preparations have now reached a level which allows the presentation of a reference changeover scenario containing clearly defined measures to be implemented within pre-set dates or deadlines.
3. The preparations under way are guided by the overriding Treaty objective to create a stable single currency. One precondition for this is to achieve a high degree of convergence of economic performance before locking exchange rates irrevocably. A strict application of the convergence criteria in assessing which Member States fulfil the necessary conditions for the adoption of a single currency will establish confidence in the new currency and convince the public at large as well as markets that it will be strong and stable. After moving to Stage 3 of economic and monetary union, convergence will have to be maintained. In particular public finances must be kept on a sound track in line with Treaty obligations. Therefore work has to be done on ways to secure budgetary discipline among participants in the euro area in accordance with the procedures and the principles of the Treaty. In addition, the future relationship between the Member States participating in the euro area and the others will need to be defined prior to the above move to Stage 3 with a view, *inter alia*, to safeguarding monetary stability within the single market.
4. The removal of uncertainties requires careful technical preparations of the move to Stage 3. This preparation will also contribute to public acceptability of the new currency. The changeover scenario presented below has been defined in consultation with the Commission and the EMI and has benefited from the Commission's Green Paper and the EMI report on the changeover to the single currency. It is in line with the timetable, procedures and criteria laid down in the Treaty. It provides for transparency, strengthens credibility and underlines the irreversibility of the process. It is technically feasible and aims to provide for the necessary legal certainty, to minimize adjustment costs and to avoid competitive distortions. The changeover scenario, by announcing concrete measures to be taken within a clear timetable, offers the users of money the information necessary for them to adapt to the introduction of the single currency. The scenario is compatible with the EMI report on the changeover.
5. This changeover scenario is based on 1 January 1999 as the starting date for the third stage. The steps to be taken during the different stages of the changeover process are presented below and summarized in the annexed tables which set out the timing and the various dates and deadlines for the participating Member States.
6. The Council in the composition of Head of State or Government will confirm which Member States fulfil the necessary conditions for the adoption of the single currency. The date of this decision marks the beginning of an interim period prior to the entry into Stage 3, during which decisions are to be taken to complete the preparations. On the one hand, the magnitude period lasts for about one year; but, on the other, the Head of State or Government should base their decision on participating Member States on the most recent and reliable actual data for 1997. Thus, special efforts will be made so that the Heads of State or Government make their decision as soon as possible in 1998. Advance preparation will help to ensure that all the necessary measures will be

in place for the start of Stage 3 of economic and monetary union. Several of these measures fall within the competence of the European Central Bank (ECB).

7. The ECB will have to be created early enough so as to allow preparations to be completed and full operation to start on 1 January 1999. Therefore, as early as possible in this interim period, the Council and the participating Member States will have to adopt a number of legal provisions and to appoint the executive board of the European Central Bank (ECB). As soon as the executive board of the ECB is appointed, the ECB and the European system of central banks (ESCB) will be established. The decision-making bodies of the ECB will decide on, implement and test the framework needed for the ESCB/ECB to perform its task in Stage 3.
8. Stage 3 of economic and monetary union will start on 1 January 1999, with the irrevocable fixing of the conversion rates among currencies of participating countries and against the euro and with the single monetary policy which will be defined and implemented by the ESCB in euro. The ESCB will encourage the use of the euro in the foreign exchange markets; its operations in these markets will be effected and settled in euro. The payment system's infrastructure needs to be in place so as to ensure the smooth functioning of an area-wide money market based on the euro. National central banks could provide conversion facilities for those financial institutions which have not been able to equip themselves with such facilities to translate amounts from euro into national monetary units and vice versa.
9. A Council Regulation entering into force on 1 January 1999 will provide the legal framework for the use of the euro. From that date, the euro will be 'a currency in its own right' and the official ecu basket will cease to exist. This Regulation will have the effect that the national currencies and the euro will become different expressions of what is economically the same currency. As long as different national monetary units still exist, the Council Regulation will establish a legally enforceable equivalence between the euro and the national currency units ('legally enforceable equivalence' means that each monetary amount is assigned, in a legally enforceable way, an unchangeable countervalue in terms of the euro unit at the official conversion rate and vice versa). For the period before the deadline set for the completion of the changeover, the Regulation will ensure that private economic agents will be free to use the euro; at the same time they should not be obliged to do so. As far as possible, they should be allowed to develop their own mechanisms of adjustment to the changeover; however, the implementation of these principles should take into account market practices in term of standardization. The Regulation will also provide that national banknotes will continue to remain legal tender within the boundaries of the respective national territories until the completion of the changeover to the single currency. The technical preparatory work for this Regulation shall be completed at the latest by the end of 1996.
10. The substitution of the euro for national currencies should not of itself alter the continuity of contracts; amounts expressed in national currency will be converted into euro at the rate of conversion laid down by the Council. In the case of fixed interest rate securities and loans, this substitution will not of itself alter the nominal interest rate payable by the debtor unless otherwise provided in the contract. In these case of contracts denominated by reference to the official ecu basket of the European Community, in accordance with the Treaty, substitution by the euro will be at the 1:1 rate, subject to the particular terms of individual contracts.
11. New tradable public debt will be issued in euro by the participating Member States as from 1 January 1999. By 1 July 2002 at the latest, public debt denominated in the former national currencies will be redeemable only in the single currency.
12. The generalization of the use of the euro for public sector operations will occur in all participating Member States at the latest when the euro banknotes and coins are fully introduced. The time-frame will be laid down in Community legislation and might leave some freedom to individual Member States.
13. The public authorities are invited to set in hand the arrangements for planning the adaptation of their administration to the euro.

14. By 1 January 2002 at the latest, euro banknotes and coins will start to circulate alongside national notes and coins. Euro notes and coins will have legal tender status. In line with the increasing circulation of euro notes and coins, national notes and coins will be withdrawn. Member States should endeavour to keep this period of dual circulation of national and euro notes and coins to the minimum. In any event, national notes and coins will cease to be legal tender at the latest six months after the introduction of euro notes and coins. By that deadline, the changeover will be complete. Thereafter, national banknotes and coins may still be exchange free of charge at the national central banks.

## ANNEX

**THE CHANGEOVER TO THE SINGLE CURRENCY  
CHRONOLOGICAL SEQUENCE OF EVENTS**

<b>DECEMBER 1995 UP TO THE DECISION ON PARTICIPATING MEMBER STATES</b>		
<b>TIMING</b>	<b>ACTIONS TO BE TAKEN</b>	<b>RESPONSIBILITY</b>
December 1995	Adoption of the changeover scenario, including announcement of the deadline for the completion of the changeover (1 July 2002) and the name for the new currency.	European Council
31 December 1996	Specification of the regulatory, organizational and logistical framework for the ECB/ESCB to perform its tasks in Stage 3  Preparation of legislation related to the ECB/ESCB and to the introduction of the single currency	EMI  Commission, EMI, Council
Before the decision on participating Member States	Conformity of national legislation <sup>(1)</sup>	Member States

<sup>(1)</sup> The Commission and EMI reports under Article 109j (1) shall include an examination of the compatibility between each Member State's national legislation, including the statutes of each national central bank, and Article 107 and 108 of the Treaty and the Statute of the ESCB (Article 108 provides that national legislations must be compatible with the Treaty and the Statute of the ESCB at the latest at the date of the establishment of the ESCB).

**FROM THE DECISION ON PARTICIPATING MEMBER STATES TO 1 JANUARY 1999**

<b>TIMING</b>	<b>ACTIONS TO BE TAKEN</b>	<b>RESPONSIBILITY</b>
As soon as possible in 1998	Decision on participating Member States	Council <sup>(1)</sup>
As soon as possible after the decision on participating Member States	(i) Appointment of executive board of the ECB  (ii) Set the day for the introduction of euro banknotes and coins (iii) Start production of euro banknotes (iv) Start production of euro coins	Member States <sup>(2)</sup>  ECB; Council <sup>(3)</sup> ESCB Council and Member States <sup>(3)</sup>
Up to 1 January 1999	Final preparation of the ECB/ESCB  (i) Adoption of secondary legislation, including: - key for capital subscription; - collection of statistical information; - minimum reserves; - consultation of ECB; - fines and penalties on undertakings;  (ii) Rendering the ECB/ESCB operational (setting up the ECB; adoption of regulatory framework; testing monetary policy framework, etc.)	Council  ECB/ESCB

<sup>(1)</sup> In the composition of Heads of State or Government (Article 109j (4)).

<sup>(2)</sup> Governments of participating Member States at the level of Heads of State or Government by common accord (Article 109l (1)).

<sup>(3)</sup> Participating Member States (Article 105a (2) and 109k (4)).



**1 JANUARY 1999 TO 1 JANUARY 2002 AT THE LATEST**  
**from start of Stage 3 to introduction of euro banknotes and coins**

TIMING	ACTIONS TO BE TAKEN	RESPONSIBILITY
1 January 1999	Irrevocable fixing of conversion rates and entry into force of legislation related to the introduction of the euro (legal status, continuity of contracts, rounding, etc.)	Council <sup>(1)</sup>
From 1 January 1999	(i) Definition and execution of the single monetary policy in euro	ESCB
	(ii) Conduct of foreign exchange operations in the euro	ESCB
	(iii) Operation of Target payment system	ESCB
	(iv) Issue new public debt in euro	Member States
1 January 1999 to 1 January 2002 at the latest	(i) Exchange at par value of currencies with irrevocably fixed conversion rates	ESCB
	(ii) Monitor changeover developments in the banking and finance industry	ESCB and public authorities in Member States and the Community
	(iii) Assist the whole of the economy in an orderly changeover	ESCB and public authorities in Member States and the Community

<sup>(1)</sup> The Council shall act with the unanimity of the participating Member States.

**1 JANUARY 2002 TO 1 JULY 2002 AT THE LATEST**  
**completion of the changeover**

TIMING	ACTIONS TO BE TAKEN	RESPONSIBILITY
1 January 2002 at the latest	(i) Start circulation of euro banknotes and withdrawal of national banknotes	ESCB
	(ii) Start circulation of euro coins and withdrawal of national coins	Member States <sup>(1)</sup>
1 July 2002 at the latest	(i) Complete changeover in the public administration	Council; Member States <sup>(1)</sup> ; ESCB
	(ii) Cancel the legal tender status of national banknotes and coins	

<sup>(1)</sup> Participating Member States.

**EXTRACT FROM THE PRESIDENCY CONCLUSIONS OF THE  
MADRID EUROPEAN COUNCIL  
RELATING TO THE NAME OF THE SINGLE CURRENCY**

I. ECONOMIC REVITALIZATION OF EUROPE IN A SOCIALLY INTEGRATED FRAMEWORK

A. ECONOMIC AND MONETARY UNION

I. The scenario for the changeover to the single currency

1. ...

2. The name of the new currency is an important element in the preparation of the transition to the single currency, since it partly determines the public acceptability of Economic and Monetary Union. The European Union considers that the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets; it must be simple and symbolize Europe.

The European Council therefore decides that, as of the start of Stage 3, the name given to the European currency shall be Euro. This name is meant as a full name, not as a prefix to be attached to the national currency names.

The specific name Euro will be used instead of the generic term "ECU" used by the Treaty to refer to the European currency unit.

The governments of the fifteen Member States have achieved the common agreement that this decision is the agreed and definitive interpretation of the relevant Treaty provisions.

3. ...

## **D. LEGAL FRAMEWORK FOR THE USE OF THE EURO**

1. Regulation 1103/97 on certain provisions relating to the introduction of the euro
2. Draft Regulation .../97 on the introduction of the euro

COUNCIL REGULATION (EC) No 1103/97

of 17 June 1997

**on certain provisions relating to the introduction of the euro**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal of the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the European Monetary Institute <sup>(3)</sup>,

- (1) Whereas, at its meeting held in Madrid on 15 and 16 December 1995, the European Council confirmed that the third stage of Economic and Monetary Union will start on 1 January 1999 as laid down in Article 109j (4) of the Treaty; whereas the Member States which will adopt the euro as the single currency in accordance with the Treaty will be defined for the purposes of this Regulation as the 'participating Member States';
- (2) Whereas, at the meeting of the European Council in Madrid, the decision was taken that the term 'ECU' used by the Treaty to refer to the European currency unit is a generic term; whereas the Governments of the fifteen Member States have achieved the common agreement that this decision is the agreed and definitive interpretation of the relevant Treaty provisions; whereas the name given to the European currency shall be the 'euro'; whereas the euro as the currency of the participating Member States will be divided into one hundred sub-units with the name 'cent'; whereas the European Council furthermore considered that the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets;
- (3) Whereas a Regulation on the introduction of the euro will be adopted by the Council on the basis of the third sentence of Article 109l (4) of the Treaty as soon as the participating Member States are known in order to define the legal framework of the euro; whereas the Council, when acting at the starting date of the third stage in accordance with the first sentence of Article 109l (4) of the Treaty, shall adopt the irrevocably fixed conversion rates;
- (4) Whereas it is necessary, in the course of the operation of the common market and for the changeover to the single currency, to provide legal certainty for citizens and firms in all Member States on certain provisions relating to the introduction of the euro well before the entry into the third stage; whereas this legal certainty at an early stage will allow preparations by citizens and firms to proceed under good conditions;
- (5) Whereas the third sentence of Article 109l (4) of the Treaty, which allows the Council, acting with the unanimity of participating Member States, to take other measures necessary for the rapid introduction of the single currency is available as a legal basis only when it has been confirmed, in accordance with Article 109j (4) of the Treaty, which Member States fulfil the necessary conditions for the adoption of a single currency; whereas it is therefore necessary to have recourse to Article 235 of the Treaty as a legal basis for those provisions where there is an urgent need for legal certainty; whereas therefore this Regulation and the aforesaid Regulation on the

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(1) OJ No C 369, 7. 12. 1996, p. 8.

(2) OJ No C 380, 16. 12. 1996, p. 49.

(3) Opinion delivered on 29 November 1996.

introduction of the euro will together provide the legal framework for the euro, the principles of which legal framework were agreed by the European Council in Madrid; whereas the introduction of the euro concerns day-to-day operations of the whole population in participating Member States; whereas measures other than those in this Regulation and in the Regulation which will be adopted under the third sentence of Article 109l (4) of the Treaty should be examined to ensure a balanced changeover, in particular for consumers;

- (6) Whereas the ECU as referred to in Article 109g of the Treaty and as defined in Council Regulation (EC) No 3320/94 of 22 December 1994 on the consolidation of the existing Community legislation on the definition of the ECU following the entry into force of the Treaty on European Union <sup>(4)</sup> will cease to be defined as a basket of component currencies on 1 January 1999 and the euro will become a currency in its own right; whereas the decision of the Council regarding the adoption of the conversion rates shall not in itself modify the external value of the ECU; whereas this means that one ECU in its composition as a basket of component currencies will become one euro; whereas Regulation (EC) No 3320/94 therefore becomes obsolete and should be repealed; whereas for references in legal instruments to the ECU, parties shall be presumed to have agreed to refer to the ECU as referred to in Article 109g of the Treaty and as defined in the aforesaid Regulation; whereas such presumption should be rebuttable taking into account the intentions of the parties;
- (7) Whereas it is a generally accepted principle of law that the continuity of contracts and other legal instruments is not affected by the introduction of a new currency; whereas the principle of freedom of contract has to be respected; whereas the principle of continuity should be compatible with anything which parties might have agreed with reference to the introduction of the euro; whereas, in order to reinforce legal certainty and clarity, it is appropriate explicitly to confirm that the principle of continuity of contracts and other legal instruments shall apply between the former national currencies and the euro and between the ECU as referred to in Article 109g of the Treaty and as defined in Regulation (EC) No 3320/94 and the euro; whereas this implies, in particular, that in the case of fixed interest rate instruments the introduction of the euro does not alter the nominal interest rate payable by the debtor; whereas the provisions on continuity can fulfil their objective to provide legal certainty and transparency to economic agents, in particular for consumers, only if they enter into force as soon as possible;
- (8) Whereas the introduction of the euro constitutes a change in the monetary law of each participating Member State; whereas the recognition of the monetary law of a State is a universally accepted principle; whereas the explicit confirmation of the principle of continuity should lead to the recognition of continuity of contracts and other legal instruments in the jurisdictions of third countries;
- (9) Whereas the term 'contract' used for the definition of legal instruments is meant to include all types of contracts, irrespective of the way in which they are concluded;
- (10) Whereas the Council, when acting in accordance with the first sentence of Article 109l (4) of the Treaty, shall define the conversion rates of the euro in terms of each of the national currencies of the participating Member States; whereas these conversion rates should be used for any conversion between the euro and the national currency units or between the national currency units; whereas for any conversion between national currency units, a fixed algorithm should define the result; whereas the use of inverse rates for conversion would imply rounding of rates and could result in significant inaccuracies, notably if large amounts are involved;
- (11) Whereas the introduction of the euro requires the rounding of monetary amounts; whereas an early indication of rules for rounding is necessary in the course of the operation of the common market and to allow a timely preparation and a smooth transition to Economic and Monetary Union; whereas these rules do not affect any rounding practice, convention or national provisions providing a higher degree of accuracy for intermediate computations;

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<sup>(4)</sup> OJ No L 350, 31. 12. 1994, p. 27.

(12) Whereas, in order to achieve a high degree of accuracy in conversion operations, the conversion rates should be defined with six significant figures; whereas a rate with six significant figures means a rate which, counted from the left and starting by the first non-zero figure, has six figures,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the purpose of this Regulation:

- 'legal instruments' shall mean legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect,
- 'participating Member States' shall mean those Member States which adopt the single currency in accordance with the Treaty,
- 'conversion rates' shall mean the irrevocably fixed conversion rates which the Council adopts in accordance with the first sentence of Article 109l (4) of the Treaty,
- 'national currency units' shall mean the units of the currencies of participating Member States, as those units are defined on the day before the start of the third stage of Economic and Monetary Union,
- 'euro unit' shall mean the unit of the single currency as defined in the Regulation on the introduction of the euro which will enter into force at the starting date of the third stage of Economic and Monetary Union.

*Article 2*

1. Every reference in a legal instrument to the ECU, as referred to in Article 109g of the Treaty and as defined in Regulation (EC) No 3320/94, shall be replaced by a reference to the euro at a rate of one euro to one ECU. References in a legal instrument to the ECU without such a definition shall be presumed, such presumption being rebuttable taking into account the intentions of the parties, to be references to the ECU as referred to in Article 109g of the Treaty and as defined in Regulation (EC) No 3320/94.
2. Regulation (EC) No 3320/94 is hereby repealed.
3. This Article shall apply as from 1 January 1999 in accordance with the decision pursuant to Article 109j (4) of the Treaty.

*Article 3*

The introduction of the euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter or terminate such an instrument. This provision is subject to anything which parties may have agreed.

*Article 4*

1. The conversion rates shall be adopted as one euro expressed in terms of each of the national currencies of the participating Member States. They shall be adopted with six significant figures.
2. The conversion rates shall not be rounded or truncated when making conversions.
3. The conversion rates shall be used for conversions either way between the euro unit and the national currency units. Inverse rates derived from the conversion rates shall not be used.

4. Monetary amounts to be converted from one national currency unit into another shall first be converted into a monetary amount expressed in the euro unit, which amount may be rounded to not less than three decimals and shall then be converted into the other national currency unit. No alternative method of calculation may be used unless it produces the same results.

*Article 5*

Monetary amounts to be paid or accounted for when a rounding takes place after a conversion into the euro unit pursuant to Article 4 shall be rounded up or down to the nearest cent. Monetary amounts to be paid or accounted for which are converted into a national currency unit shall be rounded up or down to the nearest sub-unit or in the absence of a sub-unit to the nearest unit, or according to national law or practice to a multiple or fraction of the sub-unit or unit of the national currency unit. If the application of the conversion rate gives a result which is exactly half-way, the sum shall be rounded up.

*Article 6*

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 17 June 1997.

*For the Council*  
*The President*  
A. JORRITSMA-LEBBINK

RESOLUTION OF THE EUROPEAN COUNCIL

of 7 July 1997

**on the legal framework for the introduction of the euro**

(97/C 236/04)

THE COUNCIL,

Whereas the Council adopted on 17 June 1997 Regulation (EC) No 1103/97 on certain provisions relating to the introduction of the euro (OJ No L 162, 19. 6. 1997) on the basis of Article 235 of the Treaty and in the interest of legal certainty in order to regulate the urgent aspects of the legal framework for the introduction of the euro;

Whereas the Council agreed on 7 July 1997 a draft regulation on the introduction of the euro set out in the Annex which will regulate the other relevant aspects necessary for the introduction of the euro; whereas this regulation will be adopted on the basis of Article 109 L (4) of the Treaty immediately after the decision on Member States adopting the euro has been taken as early as possible in 1998 and will then become legally binding;

Whereas the above texts will together establish the legal framework for the introduction of the euro; whereas the European Council in Amsterdam agreed on 17 June 1997 to publish this complete legal framework in the interest of transparency,

**AGREES TO PUBLISH THIS RESOLUTION AND ITS ANNEX FOR INFORMATION IN THE OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES.**



on the introduction of the euro

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 109I (4), third sentence thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Central Bank <sup>(2)</sup>,

Having regard to the opinion of the European Parliament <sup>(3)</sup>,

1. Whereas this Regulation defines monetary law provisions of the Member States which have adopted the euro; whereas provisions on continuity of contracts, the replacement of references to the ecu in legal instruments by references to the euro and rounding have already been laid down in Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro <sup>(4)</sup>; whereas the introduction of the euro concerns day-to-day operations of the whole population in participating Member States; whereas measures other than those in this Regulation and in Regulation (EC) No 1103/97 should be examined to ensure a balanced changeover, in particular for consumers;
2. Whereas, at the meeting of the European Council in Madrid on 15 and 16 December 1995, the decision was taken that the term 'ecu' used by the Treaty to refer to the European currency unit is a generic term; whereas the Governments of the fifteen Member States have reached the common agreement that this decision is the agreed and definitive interpretation of the relevant Treaty provisions; whereas the name given to the European currency shall be the 'euro'; whereas the euro as the currency of the participating Member States shall be divided into one hundred sub-units with the name 'cent'; whereas the definition of the name 'cent' does not prevent the use of variants of this term in common usage in the Member States; whereas the European Council furthermore considered that the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets;
3. Whereas the Council when acting in accordance with the third sentence of Article 109I (4) of the Treaty shall take the measures necessary for the rapid introduction of the euro other than the adoption of the conversion rates;
4. Whereas whenever under Article 109k (2) of the Treaty a Member State becomes a participating Member State, the Council shall according to Article 109I (5) of the Treaty take the other measures necessary for the rapid introduction of the euro as the single currency of this Member State;
5. Whereas according to the first sentence of Article 109I (4) of the Treaty the Council shall at the starting date of the third stage adopt the conversion rates at which the currencies of the participating Member States shall be irrevocably fixed and at which irrevocably fixed rate the euro shall be substituted for these currencies;
6. Whereas given the absence of exchange rate risk either between the euro unit and the national currency units or between these national currency units, legislative provisions should be interpreted accordingly;

<sup>(1)</sup> OJ No C 369, 7. 12. 1996, p. 10.

<sup>(2)</sup> Opinion delivered on ... (not yet published in the Official Journal).

<sup>(3)</sup> Opinion delivered on ... (not yet published in the Official Journal).

<sup>(4)</sup> OJ No L 162, 19. 6. 1997, p. 1.

7. Whereas the term 'contract' used for the definition of legal instruments is meant to include all types of contracts, irrespective of the way in which they are concluded;
8. Whereas in order to prepare a smooth changeover to the euro a transitional period is needed between the substitution of the euro for the currencies of the participating Member States and the introduction of euro banknotes and coins; whereas during this period the national currency units will be defined as sub-divisions of the euro; whereas thereby a legal equivalence is established between the euro unit and the national currency units;
9. Whereas in accordance with Article 109g of the Treaty and with Regulation (EC) No 1103/97, the euro will replace the ecu as from 1 January 1999 as the unit of account of the institutions of the European Communities; whereas the euro should also be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States; whereas, in line with the Madrid conclusions, monetary policy operations will be carried out in the euro unit by the European System of Central Banks (ESCB); whereas this does not prevent national central banks from keeping accounts in their national currency unit during the transitional period, in particular for their staff and for public administrations;
10. Whereas each participating Member State may allow the full use of the euro unit in its territory during the transitional period;
11. Whereas during the transitional period contracts, national laws and other legal instruments can be drawn up validly in the euro unit or in the national currency unit; whereas during this period, nothing in this Regulation should affect the validity of any reference to a national currency unit in any legal instrument;
12. Whereas, unless agreed otherwise, economic agents have to respect the denomination of a legal instrument in the performance of all acts to be carried out under that instrument;
13. Whereas the euro unit and the national currency units are units of the same currency; whereas it should be ensured that payments inside a participating Member State by crediting an account can be made either in the euro unit or the respective national currency unit; whereas the provisions on payments by crediting an account should also apply to those cross-border payments, which are denominated in the euro unit or the national currency unit of the account of the creditor; whereas it is necessary to ensure the smooth functioning of payment systems by laying down provisions dealing with the crediting of accounts by payment instruments credited through those systems; whereas the provisions on payments by crediting an account should not imply that financial intermediaries are obliged to make available either other payment facilities or products denominated in any particular unit of the euro; whereas the provisions on payments by crediting an account do not prohibit financial intermediaries from coordinating the introduction of payment facilities denominated in the euro unit which rely on a common technical infrastructure during the transitional period;
14. Whereas in accordance with the conclusions reached by the European Council at its meeting held in Madrid, new tradeable public debt will be issued in the euro unit by the participating Member States as from 1 January 1999; whereas it is desirable to allow issuers of debt to redenominate outstanding debt in the euro unit; whereas the provisions on redenomination should be such that they can also be applied in the jurisdictions of third countries; whereas issuers should be enabled to redenominate outstanding debt if the debt is denominated in a national currency unit of a Member State which has redenominated part or all of the outstanding debt of its general government; whereas these provisions do not address the introduction of additional measures to amend the terms of outstanding debt to alter, among other things, the nominal amount of outstanding debt, these being matters subject to relevant national law; whereas it is desirable to allow Member States to take appropriate measures for changing the unit of account of the operating procedures of organized markets;

15. Whereas further action at the Community level may also be necessary to clarify the effect of the introduction of the euro on the application of existing provisions of Community law, in particular concerning netting, set-off and techniques of similar effect;
16. Whereas any obligation to use the euro unit can only be imposed on the basis of Community legislation; whereas in transactions with the public sector participating Member States may allow the use of the euro unit; whereas in accordance with the reference scenario decided by the European Council at its meeting held in Madrid, the Community legislation laying down the time frame for the generalization of the use of the euro unit might leave some freedom to individual Member States;
17. Whereas in accordance with Article 105a of the Treaty the Council may adopt measures to harmonize the denominations and technical specifications of all coins;
18. Whereas banknotes and coins need adequate protection against counterfeiting;
19. Whereas banknotes and coins denominated in the national currency units lose their status of legal tender at the latest six months after the end of the transitional period; whereas imitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available;
20. Whereas as from the end of the transitional period references in legal instruments existing at the end of the transitional period will have to be read as references to the euro unit according to the respective conversion rates; whereas a physical redenomination of existing legal instruments is therefore not necessary to achieve this result; whereas the rounding rules defined in Regulation (EC) No 1103/97 shall also apply to the conversions to be made at the end of the transitional period or after the transitional period; whereas for reasons of clarity it may be desirable that the physical redenomination will take place as soon as appropriate;
21. Whereas paragraph 2 of Protocol No 11 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland stipulates that, inter alia, paragraph 5 of that Protocol shall have effect if the United Kingdom notifies the Council that it does not intend to move to the third stage; whereas the United Kingdom gave notice to the Council on 16 October 1996 that it does not intend to move to the third stage; whereas paragraph 5 stipulates that, inter alia, Article 109l (4) of the Treaty shall not apply to the United Kingdom;
22. Whereas Denmark, referring to paragraph 1 of Protocol No 12 on certain provisions relating to Denmark has notified, in the context of the Edinburgh decision of 12 December 1992, that it will not participate in the third stage; whereas, therefore, in accordance with paragraph 2 of the said Protocol, all articles and provisions of the Treaty and the Statute of the ESCB referring to a derogation shall be applicable to Denmark;
23. Whereas, in accordance with Article 109l (4) of the Treaty, the single currency will be introduced only in the Member States without a derogation;
24. Whereas this Regulation, therefore, shall be applicable pursuant to Article 189 of the Treaty, subject to Protocols No 11 and No 12 and Article 109k (1),

HAS ADOPTED THIS REGULATION:

## PART I

### DEFINITIONS

#### *Article 1*

For the purpose of this Regulation:

- 'participating Member States' shall mean (Countries A, B ..),
- 'legal instruments' shall mean legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than bank-notes and coins, and other instruments with legal effect,
- 'conversion rate' shall mean the irrevocably fixed conversion rate adopted for the currency of each participating Member State by the Council according to the first sentence of Article 109I (4) of the Treaty,
- 'euro unit' shall mean the currency unit as referred to in the second sentence of Article 2,
- 'national currency units' shall mean the units of the currencies of participating Member States, as those units are defined on the day before the start of the third stage of Economic and Monetary Union,
- 'transitional period' shall mean the period beginning on 1 January 1999 and ending on 31 December 2001,
- 'redenominate' shall mean changing the unit in which the amount of outstanding debt is stated from a national currency unit to the euro unit, as defined in Article 2, but which does not have through the act of redenomination the effect of altering any other term of the debt, this being a matter subject to relevant national law.

## PART II

### SUBSTITUTION OF THE EURO FOR THE CURRENCIES OF THE PARTICIPATING MEMBER STATES

#### *Article 2*

As from 1 January 1999 the currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cents.

#### *Article 3*

The euro shall be substituted for the currency of each participating Member State at the conversion rate.

#### *Article 4*

The euro shall be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States.

### PART III

#### TRANSITIONAL PROVISIONS

##### *Article 5*

Articles 6, 7, 8 and 9 shall apply during the transitional period.

##### *Article 6*

1. The euro shall also be divided into the national currency units according to the conversion rates. Any subdivision thereof shall be maintained. Subject to the provisions of this Regulation the monetary law of the participating Member States shall continue to apply.
2. Where in a legal instrument reference is made to a national currency unit, this reference shall be as valid as if reference were made to the euro unit according to the conversion rates.

##### *Article 7*

The substitution of the euro for the currency of each participating Member State shall not in itself have the effect of altering the denomination of legal instruments in existence on the date of substitution.

##### *Article 8*

1. Acts to be performed under legal instruments stipulating the use of or denominated in a national currency unit shall be performed in that national currency unit. Acts to be performed under legal instruments stipulating the use of or denominated in the euro unit shall be performed in that unit.
2. The provisions of paragraph 1 are subject to anything which parties may have agreed.
3. Notwithstanding the provisions of paragraph 1, any amount denominated either in the euro unit or in the national currency unit of a given participating Member State and payable within that Member State by crediting an account of the creditor, can be paid by the debtor either in the euro unit or in that national currency unit. The amount shall be credited to the account of the creditor in the denomination of his account, with any conversion being effected at the conversion rates.
4. Notwithstanding the provisions of paragraph 1, each participating Member State may take measures which may be necessary in order to:
  - redenominate in the euro unit outstanding debt issued by that Member State's general government, as defined in the European System of Integrated Accounts, denominated in its national currency unit and issued under its own law. If a Member State has taken such a measure, issuers may redenominate in the euro unit debt denominated in that Member State's national currency unit unless redenomination is expressly excluded by the terms of the contract; this provision shall apply to debt issued by the general government of a Member State as well as to bonds and other forms of securitized debt negotiable in the capital markets, and to money market instruments, issued by other debtors,
  - enable the change of the unit of account of their operating procedures from a national currency unit to the euro unit by:
    - (a) markets for the regular exchange, clearing and settlement of any instrument listed in section B of the Annex to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field<sup>(5)</sup> and of commodities; and

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<sup>(5)</sup> OJ No L 141, 11. 6. 1993, p. 27. Directive as amended by Directive 95/26/EC of the European Parliament and of the Council (OJ No L 168, 18. 7. 1995, p. 7).

- (b) systems for the regular exchange, clearing and settlement of payments.
5. Provisions other than those of paragraph 4 imposing the use of the euro unit may only be adopted by the participating Member States in accordance with any time-frame laid down by Community legislation.
  6. National legal provisions of participating Member States which permit or impose netting, set-off or techniques with similar effects shall apply to monetary obligations, irrespective of their currency denomination, if that denomination is in the euro unit or in a national currency unit, with any conversion being effected at the conversion rates.

*Article 9*

Banknotes and coins denominated in a national currency unit shall retain their status as legal tender within their territorial limits as of the day before the entry into force of this Regulation.

PART IV

EURO BANKNOTES AND COINS

*Ad from 1.1.2002*

*Article 10*

On . . . <sup>(6\*)</sup>, the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euros. Without prejudice to Article 15, these banknotes denominated in euros shall be the only banknotes which have the status of legal tender in all these Member States.

*Ad from 1.1.2002*

*Article 11*

On . . . <sup>(6\*)</sup>, the participating Member States shall issue coins denominated in euros or in cents and complying with the denominations and technical specifications which the Council may lay down in accordance with the second sentence of Article 105a (2) of the Treaty. Without prejudice to Article 15, these coins shall be the only coins which have the status of legal tender in all these Member States. Except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State, no party shall be obliged to accept more than fifty coins in any single payment.

*Article 12*

Participating Member States shall ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins.

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<sup>(6\*)</sup> A precise date to be decided, in accordance with the Madrid scenario, when this Regulation is adopted.

<sup>(6\*)</sup>

## PART V

### FINAL PROVISIONS

#### *Article 13*

Articles 14, 15 and 16 shall apply as from the end of the transitional period.

#### *Article 14*

Where in legal instruments existing at the end of the transitional period reference is made to the national currency units, these references shall be read as references to the euro unit according to the respective conversion rates. The rounding rules laid down in Regulation (EC) No 1103/97 shall apply.

#### *Article 15*

1. Banknotes and coins denominated in a national currency unit as referred to in Article 6 (1) shall remain legal tender within their territorial limits until six months after the end of the transitional period at the latest; this period may be shortened by national law.
2. Each participating Member State may, for a period of up to six months after the end of the transitional period, lay down rules for the use of the banknotes and coins denominated in its national currency unit as referred to in Article 6 (1) and take any measures necessary to facilitate their withdrawal.

#### *Article 16*

In accordance with the laws or practices of participating Member States, the respective issuers of banknotes and coins shall continue to accept, against euros at the conversion rate, the banknotes and coins previously issued by them.

## PART VI

### ENTRY INTO FORCE

#### *Article 17*

This Regulation shall enter into force on 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States, in accordance with the Treaty, subject to Protocols No 11 and No 12 and Article 109k (1).

Done at Brussels, . . .

*For the Council*  
*The President*

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