

De Nederlandsche Bank

Afdeling Internationale zaken

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Ons kenmerk

BK160
Doorkiesnummer

Bijlage(n)

Dear dr Bär,
Onderwerp

Following the conversation Governor Duisenberg had with you during the Apeldoorn weekend, I have pleasure in sending you a draft of the Statutes of the European Monetary Institute. Also attached is a paper in which the background of the proposed provisions is given. You will see that we have tried to base the statutes as much as possible on existing texts.

As discussed with mr Scheller the text is intended to serve as background material only for your work for the Committee of Governors. On the same basis it has been sent to mr Hansen of Danmarks Nationalbank.

With kind regards



Age



Chief International Affairs Department

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DRAFT STATUTES OF THE EUROPEAN MONETARY INSTITUTE

I Constitution, Objectives, Tasks and Independence

Article 1: Constitution

At the start of the second stage, the European Monetary Institute (hereinafter EMI) shall be set up pursuant to Article 109D of the Treaty.

Article 2: Objectives

The objectives of the EMI are:

- to promote the coordination of the monetary policies of [the central banks of] the Member States with the aim of ensuring price stability
- to prepare the third stage of economic and monetary union.

Article 3: Tasks*

1 The EMI shall

- (a) promote the coordination of the monetary policies of [the central banks of] the Member States with the aim of ensuring price stability
- (b) see to it that the European Monetary System operates smoothly
- (c) - promote settlements between central banks leading to a concerted policy on reserves and be responsible for the multilateralization of positions resulting from interventions by central banks in Community currencies and the multilateralization of intra-Community settlements
 - be responsible for the administration of the very short-term financing provided for by the Agreement between the central banks of the Community of 13 March 1979 and of the short-term monetary support provided for in the Agreement between the central banks of the Community of 9 February 1970 as amended
- (d) strengthen the cooperation between the central banks of the Member States
- (e) prepare the implementation in Stage Three of single monetary policy instruments of the ESCB which are in conformity with a market-oriented approach
- (f) promote the development of the ecu, in particular by encouraging its role and extending its use
- (g) coordinate the central banks' policies, and to undertake functions, with respect to ecu clearing in the private markets
- (h) promote the efficiency of cross-border payments within the internal market and of payment networks within the Member States while encouraging linkages between these networks

* Formulations different from those used in existing or proposed legal texts have been underlined.

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(I) hold consultations with a view to coordinate issues falling within the competence of the central banks and affecting the stability of credit institutions and financial markets**

(J) take part in the harmonisation of monetary and financial statistics.

2 The EMI may formulate opinions on the overall orientation of monetary policy and exchange rate policy as well as the respective measures introduced in each Member State and may express opinions to governments and the Council on policies which might affect the internal and external monetary situation in the Community and, in particular, the functioning of the European Monetary System.

3 The EMI shall be consulted by the Council on each proposal for a Community act which could affect the monetary situation. It shall also be consulted by the authorities of the Member States on any draft legislative provision relating to such matters.

4 The Council, acting unanimously on a proposal from the Commission and following consultation with the EMI and [in cooperation] with the European Parliament, may confer upon the EMI other coordinating tasks for preparation of the third stage.'

Article 4: Independence

In exercising the powers and performing the tasks and duties conferred upon them by the Treaty and this Statute, neither the EMI nor any member of the Board of Governors may seek or take any instructions from Community institutions, governments of Member States or any other body.

II Organization

Article 5: Board of Governors

The EMI shall be directed and managed by a Board of Governors. The members of the Board of Governors shall be of the Governors of the central banks of the Member States of European Economic Community and the Director General of the Luxembourg Monetary Institute.

If unable to attend they may be represented by an alternate being a member of the governing body of their institution.

A Member of the Commission may take part in the proceedings of the Board of Governors, but without a vote.

** In order to restrict this power to the proper area of competence of central banks the term 'credit institution' replaces the term 'financial institution' currently used in Decision 64/300/EEC, as amended by Decision 90/142/EEC.

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Article 6: President and Vice President

The Board of Governors shall appoint a President and Vice President from among its Members for a period of three years. Should the President or Vice President not complete his term, the Board of Governors shall choose a new President or Vice President, as the case may be, for the remainder of the term. The President, or, in his absence the Vice President, shall chair the Board of Governors. Without prejudice to Article 17, the President or his nominee shall present the positions of the EMI externally.

Article 7: Voting

[See background]

Article 8: Staff

The Board of Governors shall lay down the conditions of employment of the staff of the EMI.

Article 9: Administration

The Board of Governors shall determine the organization and administration necessary for the tasks and operations of the EMI, as well as the procedures for auditing the accounts.

Article 10: Expenses

Expenditure incurred for the functioning of the EMI shall be shared among the central banks represented in the Board of Governors of the EMI proportionately to their quotas in the short-term monetary support or in a manner which the Board of Governors may decide from time to time.

Article 11: Annual Report

The EMI shall prepare an annual report on its activities and on the monetary and financial conditions in the Community at a date to be established in the Rules of Procedure. The annual report, together with the annual accounts of the EMI, shall be transmitted to the European Council, the Council, the European Parliament and the Commission. The President of the Committee may be invited to appear before the European Parliament on this occasion and also before the competent Committees of the European Parliament where the circumstances so justify.

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III ECU

Article 12: Composition and creation of ecus

- 1 The operations of the EMI shall be expressed in ecu.
- 2 The ecu is defined as the sum of the following amounts of the currencies of the Member States:

German mark	0,6242
French franc	1,332
Pound sterling	0,08784
Italian lira	151,8
Netherlands guilder	0,2198
Belgian franc	3,301
Luxembourg franc	0,130
Spanish peseta	6,865
Danish krone	0,1976
Irish punt	0,008552
Greek drachme	1,440
Portuguese escudo	1,303

[3 The Council, acting unanimously on a proposal from the Commission after consulting the European Monetary Institute and the Monetary Committee, shall determine the conditions under which the composition of the ecu may be changed, provided that its composition shall be altered with every change in the central rates of currencies participating in the exchange rate mechanism of the European Monetary System such that its value shall not diminish in terms of the strongest currency.]

- 4 The EMI is empowered to receive monetary assets from the monetary authorities from the Member States and to issue ecus against such assets.
- 5 The EMI and the monetary authorities of the Member States are empowered to use ecus as means of settlement and for transactions between those authorities and the EMI.

The EMI is also empowered to grant to the monetary authorities of third countries and to international monetary institutions the status of 'Other Holders' of ecus and to fix the terms and conditions under which such ecus may be acquired, held and used.

- 6 The Board of Governors of the EMI shall take the administrative measures necessary for the implementation of paragraphs 4 and 5.

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V Transitional provisions

Article 21: Abolition of EMCF

Background:

No background available.

Article 22: Transition from EMI to ECB

Background:

No background available.

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IV General Provisions

Article 13: Legal capacity

In each of the Member States the EMI shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular acquire or dispose of movable or immovable property, open accounts and conclude agreements with the central banks of the Member States of the Community and with other monetary authorities, receive and grant credit, invest the funds for whose management it is responsible, recruit personnel and may be a party to legal proceedings.

Article 14: Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the EMI, the Board of Governors and the staff of the EMI.

Article 15: Professional secrecy

The obligation of professional secrecy contained in Article 214 of the Treaty shall apply to the members of the Board of Governors, their alternates, the Member of the Commission, the staff and to any other person engaged in the activities of the EMI.

Article 16: Liability

In the case of non-contactual liability, the provisions of Article 215 of the Treaty shall apply to damage or loss caused by the EMI or by its staff in the performance of their duties.

Article 17: Signatories

The President may bind the EMI vis-à-vis third parties.

Article 18: Seat

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

Article 19: Disputes

1 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 on the Court of Justice.

2 Disputes between the EMI and its staff may be brought before the Court of First Instance provided for in Article 168 A of the Treaty which shall have jurisdiction.

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Article 20: Rules of Procedure

The Board of Governors shall adopt Rules of Procedure which determine the internal organization of the EMI.

V Transitional Provisions**Article 21: Abolition of EMCF**

1 At the start of the second stage the European Monetary Cooperation Fund shall be abolished.

2 All assets and liabilities of the European Monetary Cooperation Fund shall pass automatically and without any restraint onto the EMI.

Article 22: Transition from EMI to ECB

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DRAFT STATUTES OF THE EUROPEAN MONETARY INSTITUTE

(background to proposed provisions)

I Constitution, Objectives, Tasks and Independence

Article 1: Constitution

Background:

1 The first sentence of Article 109D of the draft Treaty texts of the Dutch Chairman of the Personal Representatives concerning the transitional provisions (16 Augustus 1991) reads:

'At the start of the second stage, the European Monetary Institute (EMI) shall be set up'.

Article 2: Objectives

Background:

The draft Treaty texts of the Dutch Chairman of the Personal Representatives concerning the transitional provisions contain no objectives of the EMI.

Article 3: Tasks

Background:

1. Article 109D, paragraph 2 of the draft Treaty texts of the Dutch chairman of the Personal Representatives concerning the transitional provisions sums up the following tasks:

'The EMI, which shall enjoy the autonomy necessary for the fulfilment of its tasks, shall

- strengthen the co-operation between the central banks of the Member States;
- promote the coordination of the monetary policies of the Member States with the aim of ensuring price stability;
- see to it that the European Monetary System operates smoothly;
- promote the development of the ECU, in particular by encouraging its role and extending its uses;
- prepare the instruments which are in conformity with the mechanism of the market and the procedures necessary for carrying out the single monetary policy in stage three;
- take part in the harmonisation of monetary and financial statistics;
- hold consultations concerning issues falling within the competence of the central banks and affecting the stability of financial institutions and markets;

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- take over the tasks of the European Monetary Cooperation Fund which shall be abolished; the modalities are dealt with in the Statute of the EMI;
- undertake functions for the coordination of the EC central bank policies with respect of the ECU clearing in the private markets;
- promote the efficiency of EC cross-border payments and national payment networks and encourage the communication between such networks.

The EMI may formulate opinions on the overall orientation of monetary policy and exchange rate policy as well as the respective measures introduced in each Member State and may express opinions to governments and the Council on policies which might affect the internal and external monetary situation in the Community and, in particular, the functioning of the European Monetary System.

The EMI shall be consulted by the Council on each proposal for a Community act which could affect the monetary situation. It shall also be consulted by the authorities of the Member States on any draft legislative provision relating to such matters.

The Council, acting unanimously on a proposal from the Commission and following consultation with the EMI and the European Parliament, may confer upon the EMI other tasks for preparation of the third stage.'

2. See also Article 2 (iii) and Article 3 (ii) en (iii) of Council Regulation no 907/73 of 3 april 1973.

Article 4: Independence

Background:

Article 7 of the Statutes of the ESCB (Luxembourg Presidency's non-paper, 12 June 1991) reads:

'In exercising the powers and performing the tasks and duties conferred upon them by the Treaty and this Statute, neither the ECB nor a national central bank nor any member of their decision-making bodies may seek or take any instructions from Community institutions, governments of Member States or any other body'.

II Organization

Article 5: Board of Governors

Background:

Article 1 of the Statutes of the European Monetary Cooperation Fund (EMCF) reads:

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'The Fund shall be directed and managed by a Board of Governors. The members of the Board of Governors shall be the members of the Committee of Governors of the Central Banks of the Member States of the European Economic Community established by the Council Decision of 8 May 1964 on collaboration between the central banks of the Member States of the European Economic Community. If unable to attend they may be represented by another member of the governing body of their central bank.

A member of the Luxembourg currency authorities shall sit on the Board of Governors. He shall take part in decisions whenever the rights and obligations of the Grand Duchy of Luxembourg are not exercised by the National Bank of Belgium on behalf of the two Member States of the Belgo-Luxembourg Economic Union.

A member of the Committee shall take part in the proceedings of the Board of Governors. He may appoint an alternate.'

Article 1 of Decision 64/300/EEC on the Committee of Governors, as amended by Decision 90/142/EEC, reads:

'The Committee of Governors shall be composed of the Governors of the central banks of the Member States of the European Economic Community and the Director General of the Luxembourg Monetary Institute. If they are unable to attend, they may nominate another representative of their institution.

The Commission shall, as a general rule, be invited to send one of its members as a representative to the meetings of the Committee. The Committee may, furthermore, if it considers it necessary, invite qualified persons to attend and in particular the chairman of the monetary committee.'

Article 6: President and Vice President

Background:

Article 4 of the Rules of Procedure of the Committee of Governors reads:

'1 The Committee of Governors shall appoint a Chairman from among its Members for a period of three years. Should the Chairman not complete his term, the Committee of Governors shall choose a new chairman for the remainder of the term. Should the Chairman be unable to officiate, his duties shall be carried out by the longest serving Member of the Committee of Governors.

2 The duties of the Chairman are in particular:
- to preside over the meetings of the Committee of Governors;

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- to represent the Committee of Governors in other fora, especially in meetings of the Council of the European Communities, as well as in public;
- to direct and supervise the work of the Secretariat and the Economic Unit in accordance with the decisions of the Committee and subject to Article 9 hereafter.'

Article 7: Voting

Background:

For (special) decisions the voting procedure could be based on Article 3 of the Rules of Procedure of the Committee of Governors. This article reads:

'1 Each Member of the Committee of Governors shall have one vote. Where a Member is unable to attend, his right to vote shall automatically be delegated to his Alternate, referred to in Article 2 paragraph 1 above, or, in the absence of the Alternate, another designated representative nominated by the Governor.

2 All decisions will be taken by the Committee of Governors voting by simple majority unless the present rules of procedure state otherwise.

3 The opinions and the Annual Report referred to in Article 3 of the Decision shall be adopted by a simple majority vote, minorities being entitled to express their views in an annexed document. In respect of any other deliberation or memorandum, the Committee of Governors may express either majority or differing points of view or the unanimous views of its Members.'

Article 8: Staff

Background:

Article 36.1 of the draft Statutes of the ESCB (Luxembourg Presidency's non-paper of 12 June 1991) reads:

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

Article 9: Administration

Background:

Article 9 of the Provisional Rules of Procedure of the European Monetary Cooperation Fund reads:

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'The Board of Governors shall determine the organization and administration necessary for the Fund's operations and developments, as well as the procedures for auditing the accounts.'

Article 10: Expenses

Background:

Article 10 paragraph 1 of the Rules of Procedure of the Committee of Governors reads:

'Expenditure incurred for the functioning of the Committee of Governors shall be shared among the central banks represented on this Committee proportionately to their quotas in the short-term monetary support or in a manner which the Committee of Governors may decide from time to time.'

Article 11: Annual Report

Background:

The penultimate paragraph of Article 3 of Decision No 64/300/EEC, as amended by Decision No 90/142/EEC, reads:

'The Committee shall prepare an annual report on its activities and on the monetary and financial conditions in the Community, which will be transmitted to the European Parliament, the Council of Ministers, and the European Council. The President of the Committee may be invited to appear before the European Parliament on this occasion and also before the competent committee of the European Parliament where the circumstances so justify.'

III ECU

Article 12: Composition and creation of ecus

Background:

Regulation 3180/78 regulates the unit of account used by the EMCF and, amended in 1984 and 1989, determines the current composition of the official ecu. (See Regulation 1971/89 and the Commission's publication in Official Journal No. C 241/1 of 21 September 1989.)

It would seem an anomaly to have the EMI issue ecus and denominate its activities in ecus which are expressed in terms of rules pertaining to the EMCF which rules are to be abolished. Hence, it is proposed to lay down the composition of the ecu in the Statutes of the EMI and either provide for amendment by secondary legislation subject to a rule of non-devaluation ('hard ecu') or not provide at all for any changes in the composition ('frozen ecu').

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Furthermore, the language of Regulation 3181/78 relating to the EMS, as amended, should be included in the Statutes, thereby empowering the EMI to create ecus.

IV General Provisions

Article 13: Legal capacity

Background:

Article 6 of the Statutes of the European Monetary Cooperation Fund reads:

'In each of the Member States the Fund shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular acquire or dispose of movable or immovable property, open accounts and conclude agreements with the central banks of the Member States of the Community, receive and grant credit, invest the funds for whose management it is responsible, recruit personnel and may be a party to legal proceedings.'

Article 14: Privileges and immunities

Background:

Article 7 of the Statutes of the European Monetary Cooperation Fund reads:

'The Protocol on the Privileges and Immunities of the European Communities shall apply to the Fund, the Board of Governors and the personnel of the Fund.'

Article 15: Professional secrecy

Background:

Article 8 of the Statutes of the European Monetary Cooperation Fund reads:

'The obligation of professional secrecy contained in Article 214 of the Treaty shall apply to the members of the Board of Governors, the member of the Commission sitting on the Board and his alternate, and to any other person engaged in the activities of the Fund.'

Article 16: Liability

Background:

Article 9 of the Statutes of the European Monetary Cooperation Fund reads:

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'In the case of non-contractual liability the provisions of Article 215 of the Treaty shall apply to damage or loss caused by the Fund or by its servants in the performance of their duties.'

Article 17: Signatories

Background:

Article 12 of the Provisional Rules of Procedure of the European Monetary Cooperation Fund reads:

'The Chairman of the Board of Governors may bind the Fund vis-à-vis third parties within the limits fixed by the Board of Governors.'

Article 18: Seat

Background:

Article 37 of the draft Statutes of the ESCB (Luxembourg Presidency's non-paper of 12 June 1991) reads:

'The seat of the ESCB shall be established at (...).'

Article 19: Disputes

Background:

Article 9.2 and 36.2 of the draft Statutes of the ESCB (Luxembourg Presidency's non-paper of 12 June 1991) read:

'(9.2) Disputes between the ESCB, 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 on the Court of Justice.'

'(36.2) Disputes between the ESCB and its staff may be brought before the Court of First Instance provided for in Article 168 A of the Treaty which shall have jurisdiction.'

Article 20: Rules of Procedure

Background:

Article 12.3 of the Draft Statutes of the ESCB (Luxembourg Presidency's non-paper of 12 June 1991) reads:

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