

19th October 1990

To the Committee of Alternates

Please find attached the draft Statute as revised by the Secretariat in the light of the Alternates' discussions held on 15th and 16th October 1990. As agreed, any comments and proposals for amendment should be telefaxed to the Secretariat not later than the afternoon of Tuesday, 23rd October 1990. This would enable the Secretariat to finalise the text for transmission to the Committee of Governors before the end of next week. When presenting your proposals for amendment would you kindly take into consideration that greatest efforts should be made not to "overburden" the text of the draft Statute so that the Governors can focus their attention on the most essential questions. With this consideration in mind would you please:

- confine your proposals for amendment to those instances where the proposed text might not adequately reflect the comments and observations you made at the meeting mentioned above;
- provide specific drafting amendments.

May I also draw your attention to three Articles where the Secretariat proposes additions:

- instead of introducing in Article 9.6 a provision governing the terms and conditions of employment of the members of the Executive Board, it seems more logical to put this into Article 11.5; a draft proposal for such a provision can be found under comment b) to Article 11;
- during the last meeting Article 26.1 was changed to state "The ECB and the national central banks shall record their financial operations in their balance sheets". The Secretariat proposes mentioning this in the comment and has instead introduced into

Article 26 some provisions relating to the annual accounts of the ECB.

- a new Article 40 has been added.

Finally, at the last meeting of the Group of Legal Experts it had been agreed that the Experts would review the Chapter on financial provisions (Chapter VI) as soon as a draft is finalised. Would you therefore kindly pass on to your central bank's member of the Group Chapter VI and, in order to expedite the preparation of the draft Statute for the Committee of Governors, include your Legal Expert's remarks in your own comments. Again, consideration should be given not to "overburden" the text and only the most essential legal points should be introduced into the draft Statute which will be sent to the Governors. The Legal Experts have been informed of this procedure by telefax.

With kind regards,

A handwritten signature in cursive script, appearing to read 'Gunter D. Baer'.

Gunter D. Baer

Committee of Governors of the
Central Banks of the Member States
of the European Economic Community

DRAFT STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

AND OF

THE EUROPEAN CENTRAL BANK

19TH OCTOBER 1990

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DRAFT STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS
AND OF
THE EUROPEAN CENTRAL BANK

Articles and Comments

CHAPTER I - CONSTITUTION OF THE SYSTEM

Article 1 - The System

Pursuant to Article ... of the Treaty, a system, consisting of a central institution to be known as "The European Central Bank" (hereinafter "the ECB") and of the participating central banks of the Member States of the Community (hereinafter "national central banks"), is hereby established and shall be known as the "European System of Central Banks" (hereinafter the "System").

* * *

Comments

- a) Participation: The definition of a participating central bank will have to be made more precise.

For most Alternates, a participating central bank should be one whose Member State has become a member of the Union or has fully accepted the objectives of economic and monetary union and has pledged to become a member as soon as economic conditions permit it to do so. The rights and obligations of a central bank in the second group will be restricted until its Member State joins the

Union. In this respect the necessary provisions will have to be drafted in the articles dealing with transitory requirements.

In the view of one Alternate, a participating central bank should be one which has accepted the obligations of membership of the System (as it may have evolved in Stage Two). After Economic and Monetary Union is achieved, participating central banks will be those of the Member States that have become members of the Union or have fully accepted the objectives of Economic and Monetary Union and have pledged to become a member as soon as economic conditions permit it to do so.

It should be considered whether the transitional arrangements could provide for a situation where not all national central banks participate in the System. If this were accepted, the reference to participation in this Article could be omitted.

- b) In accordance with the recommendations of the Legal Experts it has been decided to adopt the following legal structure:
- the ECB is given legal personality while the national central banks retain their separate legal personality;
 - the System as such has no legal personality and should be regarded only as a term describing the co-existence of the ECB and the national central banks, which are governed by a common set of rules and which jointly pursue the objectives of the System and perform the tasks entrusted to it;
 - the decision-making bodies are placed inside the ECB, thereby giving them the benefit of this institution's legal personality, i.e. that the ECB would be liable for acts and decisions taken by the decision-making bodies;
 - the ECB is not to be classified as a Community institution under Article 4, §1 of the EEC Treaty, instead a reference to the ECB should be inserted in a new §2 of that Article.

One Alternate considered that the amendments proposed by the Legal Experts altered the balance of the text arrived at by the Governors in their earlier discussions. Although the subsequent suggestions of the Alternates went some way towards restoring this balance, he was not convinced the the revisions to the Legal Experts' text went far enough in this direction. Specifically, he

questioned the decision to locate in the ECB the powers the Governors had wished to confer on the "System", as well as the general downgrading of the System as a concept.

While recognising the legal arguments for locating the Council inside the ECB (legal simplicity and clarity of responsibility in case of litigation), he noted that the Legal Experts had nevertheless concluded that it was feasible to position the Council outside and above both the ECB and the national central banks. He felt that this latter approach had some important presentational advantages. In any event, he felt that the powers to make decisions and issue instructions for the System as a whole should be vested explicitly in the Council, rather than the ECB.

CHAPTER II - OBJECTIVES AND TASKS OF THE SYSTEM

Article 2 - Objectives

2.1. The primary objective of the System shall be to maintain price stability.

2.2. Without prejudice to the objective of price stability, the System shall support the general economic policy of the Community.

2.3. The System shall act consistently with free and competitive markets.

* * *

Article 3 - Tasks

The basic tasks to be carried out through the System shall be:

- to formulate and implement the monetary policy of the Community;
- to conduct foreign exchange operations in accordance with the prevailing exchange rate regime of the Community as referred to in Article 4.3.;
- to hold and manage [the] official foreign reserves [of the Community];
- to ensure the smooth operation of the payment systems;
- [- to support the stability of the financial system];
- to participate as necessary in the formulation and execution of policies relating to prudential supervision.

* * *

Comments

- a) All except one of the Alternates agreed on the need for all official foreign reserves to be brought into the System at the start of Stage Three at the latest. A Treaty provision should stipulate that all official foreign reserves held by non-central bank bodies should be transferred to the national central banks of the countries concerned. (See also the comments on Article 30.)
- b) If new tasks were to be conferred on the System, the procedure of Article ... in Chapter IX should be applied.

Article 4 - Advisory functions

4.1. The ECB shall be consulted regarding any draft Community legislation and any envisaged international agreements in the monetary, prudential, banking or financial field. In accordance with Community legislation, the ECB shall be consulted by national authorities regarding any draft legislation within its field of competence.

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

4.3. The ECB shall be consulted with a view to reaching consensus prior to any decision relating to the exchange rate regime of the Community, [including, in particular, the adoption, abandonment or change in central rates or exchange rate policies] vis-à-vis third currencies.

4.4. The ECB may publish its opinions.

* * *

Comments

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

Wherever reference is made in the draft Statute to Community legislation, it means that the procedure for complementary legislation to be specified in Chapter IX should be applied.

- b) Article 4.3.: Some Alternates wished to delete the section between square brackets. This would leave open the question of ultimate responsibility for exchange rate policies.

Article 5 - Collection of statistical information

5.1. In order to undertake the tasks of the System, the ECB, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes, it shall co-operate with the competent authorities of the Community, the Member States or third countries and with international organisations.

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

5.3. The ECB shall promote the harmonisation, where necessary, of the conditions governing the collection, compilation and distribution of statistics in the areas within its field of competence. The relevant enabling Community legislation shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

* * *

Article 6 - International co-operation

6.1. In the field of international co-operation involving the tasks entrusted to the System, the System shall be represented by the ECB or the national central banks. The ECB shall decide the methods of this representation.

6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

* * *

Comments

- a) Article 6.1. includes the possibility of concluding agreements with the central banks of third countries.
- b) Article 6.2 enables the ECB and the national central banks to participate in international monetary institutions, thus allowing, for instance, Community national central banks to remain members of the Bank for International Settlements.
- c) If the ECB is to represent the Community in international monetary institutions and is to be enabled to conclude agreements on behalf of the Community, the Treaty should contain the necessary provision.

CHAPTER III - ORGANISATION OF THE SYSTEM

Article 7 - Independence

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

* * *

Article 8 - General Principle

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

* * *

Article 9 - The European Central Bank

9.1. The ECB is hereby established and shall have legal personality.

9.2. In each of the Member States the ECB shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.3. The property of the ECB shall be exempt from all forms of requisition or expropriation.

Disputes between the ECB, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by [the competent national courts, save where jurisdiction has been conferred on the Court of Justice].

9.4. The function of the ECB shall be to ensure that the tasks conferred upon the System under Article 3 shall be implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Article 14.

9.5. The decision-making bodies of the ECB shall be the Council and the Executive Board.

* * *

Comments

- a) Article 9.3.: One Alternate considered that all litigation should be brought before the Court of Justice.
- b) As regards the conditions of employment of the members of the Executive Board, see Article 11.5.

Article 10 - The Council

10.1. The Council shall comprise the President, the Vice President, the other members of the Executive Board and the Governors of the national central banks.

10.2. Subject to Article 10.3, only members of the Council present in person shall have the right to vote. Each member has one vote. Save as otherwise provided for in the Statute, the Council shall act by a simple majority. In the event of a tie, the President shall have the casting vote. In order for the Council to vote, there shall be a quorum of two-thirds of the members.

10.3. Weighted voting shall apply in accordance with the provisions of Article 26. If a Governor is unable to be present, he may nominate an Alternate to cast his weighted vote.

10.4. The proceedings of the meetings shall be confidential. The Council may decide to make the outcome of its deliberations public.

10.5. The Council shall meet at least ten times a year.

* * *

Comments

- a) Article 10.2.: There was unanimous agreement to apply the principle of "one person, one vote" for all decisions, except those relating to capital assets and profits (see Article 10.3).

Moreover, it is understood that in the case of the absence of a Governor, the deputy may attend but would not be permitted to vote. The requirement of "present in person" could also mean a Teleconference. Procedures governing these issues should be addressed in the Rules of Procedure.

Some Alternates considered that the Statute should make appropriate provisions for necessary decisions to be taken in timely fashion in cases where a quorum could not be established.

- b) Article 10.3.: There was agreement to apply the principle of weighted voting to decisions concerning capital assets and profit, and to weight the votes of the Governors according to the

key attached to the Statute (see Article 26). No weights would be given to the members of the Executive Board.

Since proxy voting is suggested under this Article, it would not seem necessary to establish a particular quorum.

Article 11 - The Executive Board

11.1. The Executive Board shall comprise the President, the Vice-President, and 4 other members.

The members of the Executive Board shall be selected among persons of recognised standing and professional experience in monetary or banking matters.

The members shall perform their duties on a full-time basis. No member shall, without approval of the Council, receive a salary or other form of compensation from any source other than the ECB or occupy any other office or employment, whether remunerated or not, except as a nominee of the ECB.

11.2. The President shall be appointed for a period of 8 years by the European Council, after the Council has given its opinion, and after consultation with the European Parliament.

11.3. The Vice-President and the other members of the Executive Board shall be appointed, for a period of 8 years, by the European Council after consultation with the Council.

11.4. With the exception of the President, no member of the Executive Board shall hold office beyond the age of 65.

11.5. The terms of employment of the members of the Executive Board (see Comment b).

11.6. If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Executive Board, compulsorily retire him.

11.7. All members of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided in the Statute, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements will be specified in the Rules of Procedure.

11.8. The Executive Board shall administer the ECB.

Comments

- a) Start-up procedures should be dealt with in Articles concerning questions of transitional arrangement, see Chapter VIII.
- b) Article 11.5.: The question of who will set the terms and conditions of employment for the members of the Executive Board will have to be addressed. The Alternates considered three options:
- a committee of "wise men" (comprising persons external to the System) which might also perform functions of a supervisory board along the lines stated in paragraph 32 of the Delors Report;
 - a committee composed of all national central bank governors. One Alternate considered that this approach might create a rift between the Executive Board Members and Governors in the Council;
 - a committee comprising a number of senior governors.

If one of the latter two options were adopted, consideration could be given to the following draft proposal, prepared by the Secretariat:

"The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be laid down in contracts with the ECB and shall be fixed by a Committee on administrative matters. The said Committee shall comprise [the x most senior governors] [all governors] of national central banks in accordance with provisions laid down in the Rules of Procedure, referred to in Article 12.4."

The question of whether such power can be vested in a body which has no defined status within the System still needs to be examined.

Article 12 - Responsibilities of the governing bodies

12.1. The Council shall take the decisions necessary to ensure the performance of tasks entrusted to the System under the present Statute. The 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 System, and shall establish the necessary guidelines for their implementation.

[The Council shall delegate to the Executive Board the necessary operational powers for implementing the monetary policy decisions and guidelines. The Council may delegate other powers as it may specify to the Executive Board.]

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

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

12.3. The advisory functions referred to in Article 4 shall normally be exercised by the Council.

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

* * *

Comments

- a) Article 12.1. reserves to the Council the strategic monetary policy decisions, whereas the implementation of these decisions would fall under the responsibility of the Executive Board. The role of the Board in the implementation of monetary policy is reflected by the provision that the Council shall delegate to the Executive Board the necessary operational powers to carry out its task. The Council may revoke such powers but would then have to re-delegate them on different terms.

Consideration should be given as to whether these powers which have been delegated to the Executive Board by the Council should

be made public for the purpose of legal certainty in situations where the Executive Board deals directly with third parties.

One Alternate preferred to replace the first sentence of the second paragraph, with the following text: "The Executive Board shall implement monetary policy in accordance with the decisions and guidelines laid down by the Council."

- b) Article 12.4.: The Rules of Procedure should govern only the internal management of the System. However, where the rules govern important aspects of internal management, it was suggested that they should be included in the Statute. Provisions aimed at binding a person or an institution outside the internal system would fall under the exercise of regulatory powers and should be included in the Statute.

Article 13 - The President

13.1. The President, or, in his absence, the Vice President shall chair the Council and the Executive Board of the ECB.

13.2. The President or his nominee shall represent the ECB externally.

* * *

Article 14 - National central banks

14.1. The Member States shall ensure that the statutes of the national central banks are compatible with this Statute and the Treaty.

14.2. The statutes of the national central banks shall in particular provide that the Governor of a national central bank is appointed by the national authorities of the Member State after consultation with the Council. The term of office shall be no less than 5 years. The Governor may be relieved from office only for serious cause resting in his person. A decision to this effect [may be referred to the Court of Justice] [shall be submitted for approval to the European Council].

14.3. Subject to Article 14.5., the national central banks are an integral part of the System and shall act in accordance with the guidelines and instructions of the ECB.

The Council 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. The Executive Board shall, to the extent possible and appropriate, make use of the national central banks in the execution of the operations arising out of the System's tasks.]

14.5. National central banks may continue to perform on their responsibility and liability functions other than those described in this Statute unless the Council finds, by a qualified majority, that these interfere with the objectives and tasks of the System. Such functions shall not be regarded as being part of the System. The national central banks may assume new functions subject to the prior approval of the Council, acting by qualified majority.

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

* * *

Comments

- a) Article 14.1.: The necessary amendments to the statutes of the national central banks would be undertaken according to normal national legislative procedures. However, to ensure

compatibility, the Alternates suggested establishing a working party which should make recommendations on the necessary provisions to be made compatible.

- b) Article 14.2.: One Alternate suggested that the Governor of a national central bank shall be appointed by the European Council upon proposal of the respective Member State and following consultation with the Council.

No agreement was reached about the question of whether a decision to dismiss a Governor should be subject to approval by the European Council (as was supported by some Alternates), or alternatively, whether security of tenure should be ensured by the right of a governor to appeal to the Court of Justice (an approach favoured by the majority of Alternates).

- c) Article 14.4.: One Alternate considered that the wording of this Article did not adequately reflect the implementation of the principle of subsidiarity and therefore proposed the following wording:

"To the extent possible, the national central banks shall execute the operations arising out of the System's task."

Article 15 - Inter-institutional co-operation and reporting commitments

15.1. The President of the Council of the European Communities (ECOFIN) and a Member of the Commission may attend meetings of the Council. They may take part in the Council's deliberations but not in the voting.

15.2. The President of the ECB shall be invited to participate in meetings of the European Council and Council of the European Communities when matters relating to the System's objectives and tasks are discussed.

15.3. The ECB shall draw up an annual report on the activities of the System and on the monetary policy of both the previous and current year. The President may present the annual report to the European Council, the Council of the European Communities and the European Parliament. The President and members of the Executive Board may attend meetings of the European Parliament's specialised committees, if circumstances justify.

15.4. The ECB shall draw up reports on the activities of the System at regular intervals. These reports and statements are to be published and to be made available to interested parties free of charge.

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

* * *

CHAPTER IV - MONETARY FUNCTIONS AND OPERATIONS OF THE SYSTEM

General comments

- a) The Alternates are aware that there might be a need to amend the following list of operations. This requirement could be achieved using the procedure described in Chapter IX, Article ...
- b) The distribution of operations between the ECB and the national central banks will be decided by the decision-making bodies.
- c) Although the Articles describe operations that may be undertaken by the ECB and the national central banks, it is fully acknowledged that certain functions are of course already being carried out by national central banks at the present time. The reason for the reference to national central banks is not to prejudge the distribution of operations between the ECB and the national central banks. Furthermore, the mentioning of the national central banks in the operational Articles would also indicate the areas for the harmonisation of operations procedures.
- d) Some Alternates were firmly of the opinion that virtually all operations should be executed by national central banks. The operating procedures would be harmonised to the extent necessary; full harmonisation being neither necessary nor appropriate.

Article 16 - Notes and coins

16.1. The Council shall have the exclusive right to authorise the issue of notes within the Community which shall be the only legal tender.

16.2. Provisions concerning the legal tender status of Community currencies shall be regulated according to the Community legislation. The Council shall make the necessary arrangements for the exchange of notes denominated in Community currencies by the national central banks at par value.

16.3. The volume and denomination of coins issued within the Community shall be subject to approval of the Council. The coins [shall] [may] be put into circulation by the System.

* * *

Comments

- a) The provisions of Article 16 should also be stated in the Treaty. Article 16.1. is understood to cover also the issuance of bank notes by the national central banks as long as there is no single currency.

The Bank of England Alternate wished to retain the right of some commercial banks in the United Kingdom to continue to issue bank notes. These notes have no legal tender status and are largely backed by holdings of legal tender.

- b) Article 16.2.: Most Alternates considered that it would be sufficient that national central banks stand ready to exchange notes denominated in Community currencies at par value (i.e. without any costs). Commercial banks would be free to charge the costs of the transactions but competition would reduce these to a level which would not be significantly higher than for transactions in a single currency.

- c) Article 16.3.: The brackets around "shall" and "may" refer to the fact that in some countries (the United Kingdom and the Netherlands) coins are currently put into circulation by the Treasury and not by the central bank. It is also understood that coin-holdings by central banks should be kept to a minimum in order to avoid any significant funding by the System of the issuers of such coins.

Article 17 - Accounts with the ECB and the national central banks

In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets including book-entry securities as collateral.

* * *

Article 18 - Open market and credit operations

18.1. In order to achieve the objectives of the System and to carry out its tasks, the ECB and the national central banks shall be entitled:

- to operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement claims and marketable instruments, whether in Community or in foreign currencies, as well as precious metals;
- to conduct credit operations with credit institutions and other market participants [on the basis of adequate collateral].

18.2. The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks including the announcement of conditions under which they stand ready to enter into such transactions.

* * *

Comments

- a) The nature of a credit institution and other market participants will have to be circumscribed. A suitable definition for a credit institution can presently be found in Article 1 of the First Council Directive on the co-ordination of laws and regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC, OJ L322/30).
- b) Some Alternates considered that lending by the ECB and the national central banks should always be backed by adequate collateral.

Article 19 - Minimum reserves

The ECB shall be entitled to require credit institutions to hold minimum reserves on accounts with the ECB and national central banks. Regulations concerning the calculation and determination of the required minimum reserves shall be established by the Council. In cases of non-compliance the ECB shall be entitled to levy penalty interest and, in severe cases, to take steps to pursue the matter in the supervisory sphere.

* * *

Comments

The drafting of the text seeks to avoid the necessity to resort to Community legislation to implement the requirements of this Article. Nevertheless, if such a requirement was necessary the Monetary Policy Sub-Committee should be asked to suggest suitable provisions.

Article 20 - Other instruments

The Council may decide [unanimously] [by qualified majority] upon the use of such other operational methods of monetary control as it sees fit.

* * *

Comments

This provision enables the System to adopt methods of monetary control other than those currently in use. However, any measures taken by virtue of Article 20 must be compatible with Article 2.3; this Article would thus not allow the System to resort to methods of direct control, even if this might be warranted in certain extreme circumstances.

Article 21 - Operations with public entities

21.1. The ECB and national central banks shall not grant overdrafts or any other type of credit facility to Community institutions, governments or other public entities of Member States or purchase debt instruments directly from them.

21.2. The ECB and national central banks may act as fiscal agents for Community institutions, governments or other public entities of Member States.

21.3. The function of fiscal agent shall comprise all banking transactions except those referred to in paragraph 1 of this Article.

21.4. Community institutions, governments and other public entities of Member States for which the ECB and national central banks act as fiscal agents shall issue debt instruments either through the System or in consultation with it.

21.5. The provisions under this Article shall not apply to publicly-owned credit institutions.

* * *

Comments

- a) Article 21.1.: Most Alternates were of the opinion that neither the ECB nor the national central banks should be allowed to purchase public debt instruments on the primary market, since such operations would also imply a direct monetary financing of State deficits. One Alternate considered, however, that as fiscal agent the ECB or a national central bank might find it useful to undertake such operations, but it should not be obliged to do so. This provision implies that existing credit facilities to smooth seasonal payment flows will have to be abolished.
- b) Article 21.4. does not imply lending by the ECB or the national central banks to public entities, see Article 21.1.
- c) Article 21.5.: Without the addition of this provision, publicly-owned credit institutions could not be given credit by the ECB or the national central banks.

Article 22 - Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may issue regulations to ensure efficient and sound clearing and payment systems inside the Community and with third countries.

* * *

Article 23 - External Operations

The ECB and the national central banks shall be entitled:

- to establish relations with central banks and financial institutions in third countries and, where appropriate, with international and supranational organisations;
- to acquire and sell spot and forward all types of foreign exchange assets and precious metals. The term "foreign exchange asset" shall include securities and all other assets in currency of any country or units of account and in whatever form held;
- to hold and manage the assets defined above;
- to conduct all types of banking transactions in relation to third countries and international and supranational organisations, including borrowing and lending operations.

* * *

Article 24 - Other operations

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

* * *

CHAPTER V - PRUDENTIAL SUPERVISION

Article 25 - Supervisory Tasks

25.1. The ECB shall be entitled to offer advice and to be consulted on the interpretation and implementation of Community legislation relating to the prudential supervision of credit and other financial institutions and financial markets.

25.2. [The ECB may formulate, interpret and implement policies relating to the prudential supervision of credit and other financial institutions for which it is designated as competent supervisory authority.]

25.3. [The System shall be entitled to offer advice to Community bodies and national authorities on measures which it considers desirable for the purpose of maintaining the stability of the banking and financial systems.]

25.4. [The ECB may itself determine policies and take measures within its competence necessary for the purpose of maintaining the stability of the banking and financial systems.]

* * *

General Comments of the Banking Supervisory Sub-Committee

- a) It is understood by the Banking Supervisory Sub-Committee that the provisions of the Treaty should provide for the possibility of a transfer of competence and responsibility to the ECB to the extent provided for in these draft Articles.
- b) It is understood by the Banking Supervisory Sub-Committee that the effect of Article 14 taken in conjunction with these Articles does not affect the ability of national central banks and other national bodies so empowered to exercise supervisory functions or to adopt measures for which these national authorities have responsibility, having regard to the other objectives of the System.
- c) Articles 25.3. and 25.4. have been formulated taking into account the (bracketed) reference in Article 3 to supporting the stability of the financial system. Should this be removed, the

Sub-Committee may need to address the formulation of this Article again with a view to strengthening it.

Observations of the Alternates

Some Alternates regarded the provisions of this Article as controversial. They felt that the question of supporting the financial system should not specifically be alluded to in the Statute. Moreover, the proposed Articles duplicated certain provisions contained elsewhere in the draft Statute in a number of respects. The Alternates considered, in particular, that the terms of Article 25.3 were sufficiently covered by Article 4 and that Article 25.4 was adequately dealt with by Article 3, sixth indent, and should not be repeated.

Other Alternates felt that the language of this Article was sufficiently general and should be supported. Furthermore, it was pointed out that Article 25.2 was an enabling clause for the adoption of supervisory competences, if and when the need arises.

CHAPTER VI - FINANCIAL PROVISIONS OF THE SYSTEM

Article 26 - Financial Accounts

26.1. The financial year of the ECB and the national central banks shall begin on the first day of January and end on the last day of December.

26.2. The annual accounts of the ECB shall be drawn up by the Executive Board in accordance with the principles established by the Council. The accounts shall be approved by the 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 System, comprising those assets and liabilities of the ECB and the national central banks that fall within the System.

26.4. For the application of this Article, the Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

* * *

Comments

- a) Article 26.2.: As the System as such has no legal personality, assets and liabilities of the System are held by its constituent institutions and financial operations will be recorded in their respective balance sheets. Article 26.2 deals with the procedure to be followed in establishing the balance sheet of the ECB; for the national central banks those procedures are laid down in their own statutes.
- b) Article 26.3. provides for consolidation within a single balance sheet structure in order to reflect the existence of a single monetary policy and to provide a basis for income distribution according to Article 32. The consolidated balance sheet will not comprise assets and liabilities held by the national central banks which are not related to the System's tasks (see Article 14.5).
- c) Article 26.4.: The establishment of a consolidated balance sheet of the System calls for comparable data. The provision does not preclude national central banks from presenting their own balance

sheets in a manner consistent with existing national accounting practices for purposes other than those described in this Article.

Article 27 - Auditing

The accounts of the ECB and the national central banks shall be audited by independent external auditors recommended by the Council and approved by the Council of the European Communities. The auditors shall have full power to examine all books and accounts of the ECB and national central banks, and to require full information about their transactions.

* * *

Comments

Article 27 does not require that the same auditors audit the accounts of the ECB and the national central banks.

Article 28 - Voting on financial matters

28.1. For any decisions to be taken under Articles 29 to 32, the votes in the Council shall be weighted according to the key attached to the Statute. A decision by a qualified majority shall be deemed to be approved if it carries [...] votes on the total of [...].

28.2. The key referred to in paragraph 1 shall be reviewed every [5] [10] years and may be modified in accordance with the procedure laid down in Chapter IX. The review shall take into consideration changes in the criteria on which the key was established.

* * *

Comments

- a) Article 28.1.: The key referred to in this Article is the same as is used for the provision of capital and the transfer of foreign reserves to the ECB, the distribution of its profits and the allocation of the System's income amongst the national central banks. It should be determined on the basis of objective criteria which could be based on GNP and/or population.
- b) Article 28.2.: The key should be adjusted from time to time in line with the development of the objective criteria mentioned above. The amendment should be made according to the procedure established in Chapter IX.

Article 29 - Capital of the ECB

29.1. The capital of the ECB shall, upon its establishment, be ecu [x] million. The capital may be increased from time to time by such amounts as may be decided by the Council acting by qualified majority.

29.2. The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The distribution of capital shall be according to the key attached to this Statute.

29.3. The Council, acting by qualified majority, shall determine [the extent to which and] the form in which capital shall be paid-up.

29.4. The shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached other than in accordance with a decision taken by the Council.

29.5. If the key attached to this Statute is modified in accordance with Article 28.2, 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 revised key. The Council shall determine the terms and conditions of such transfers.

* * *

Comments

- a) Article 29.1. assumes that national central banks are the sole holders of the capital of the ECB (see Article 29.2.).
- b) Article 29.2.: Since national central banks maintain their legal personality, no change in their shareholder structure is required. Seen on a consolidated basis, the shareholders of national central banks are therefore "shareholders" of the System. The key for apportionments (see comments on Article 28) would be the same for both the initial capital and increases in capital.
- c) Article 29.3.: There is unanimity among the Alternates that the capital should be paid up out of the assets of the national central banks, i.e. without entailing an increase in national central banks' liabilities, but the question needs further

examination. Some Alternates felt that part of the capital of the ECB could be subscribed in gold.

Some Alternates were not in favour of a provision according to which the capital could be paid up only in part because this might undermine the credibility of the System. If, at the start of the System, the limited functions of the ECB warranted paying up only part of the capital, this should be dealt with in a transitory provision.

- d) Article 29.5.: Following a change in the key, there would be a reallocation of share capital in accordance with the revised key and the methods established by the Council.

Article 30 - Transfer of foreign assets to the ECB

30.1. Without prejudice to the provisions of Article 29, the ECB shall be endowed by the national central banks with foreign convertible currencies other than Community currencies and ecus up to an amount equivalent to ecu (x). The Council shall decide about the proportion to be called up by the ECB at the entry into force of this Statute and the amounts called up at later dates.

30.2. The contributions of each national central bank shall be fixed in accordance with the key attached to this Statute.

30.3. Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Council shall determine the denomination and remuneration of such claims.

30.4. Further calls of reserve assets beyond the limit set in Article 30.1 may be effected by the ECB in accordance with the procedure laid down in Chapter IX.

30.5. The ECB shall be authorised to accept the pooling of IMF reserve positions and SDRs.

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

* * *

Comments

- a) For the application of Articles 30 and 31, all but one of the Alternates considered it essential that all foreign reserves should be brought into the System. A Treaty provision should stipulate that those Community countries, in which official foreign reserve assets are held by official bodies other than the national central bank, would have to take the necessary provisions for the transfer of these assets to the respective national central banks.
- b) Article 30.1.: One Alternate did not see any necessity to transfer the ownership of reserves to the ECB. Instead, he considered it sufficient that each central bank would set aside part of its reserves for the disposal of the ECB.

The Alternates did not express a view on the total amount since it was difficult to predict the necessary transfer of foreign assets in present circumstances. At the same time, there was general agreement that the amount should be sufficiently high in order to ensure the credibility of the System's exchange rate policy in the eyes of the market. However, only part of this total amount would need to be transferred to the ECB at the outset and the Council should be entitled to fix this amount in accordance with prevailing conditions. The residual amount could be called up in several steps and one of the possible criteria for calling in further reserves would be a fall in the ECB's foreign currency holdings.

A mandatory transfer of foreign reserves would not necessarily include gold, which could instead be used for capital subscription, see comments on Article 29.

- c) Article 30.2.: Contributions would be made using the same key as for capital contributions.
- d) Article 30.4. makes it possible to call in all residual reserves. Such calls of reserves would necessitate Community legislation according to the procedure described in Chapter IX.
- e) Article 30.5.: It would not be necessary to pool claims on the IMF from the beginning of Stage Three but, if and when pooling of such claims was decided, it should comprise all claims on the IMF. Accordingly, these claims would not be pooled against the key attached to the Statute and would not be included in the endowment referred to in Article 30.1. Furthermore, accompanying decisions by member governments appointing the ECB as their Agent at the IMF would be required; they could be reflected in the Treaty or, if the pooling were envisaged for a later stage, in secondary Community legislation.
- f) Article 30.6.: Some Alternates considered that this provision was insufficient to deal with the problem that reserves are unevenly distributed and thus some national central banks could experience difficulties meeting the obligation. It was recognised that the necessary redistribution of reserves should preferably be effected through voluntary transactions; however, to ensure that

the redistribution was always achieved, these Alternates considered it necessary to establish in the Statute a mechanism which would provide for the mandatory exchange of third currencies against assets denominated in Community currencies and ecus between national central banks. Furthermore, without such assurance there could be a risk that the rules for pooling reserves would induce the national central banks to alter the composition of their reserves which could have disturbing effects on the foreign exchange markets.

All Alternates agreed that it would be desirable to monitor closely the use of reserves and changes in their composition prior to the entry into force of the Statute.

Article 31 - Foreign reserves held by national central banks

31.1. The national central banks shall be allowed to perform transactions in fulfilment of the obligations towards international organisations in accordance with Article 23.1.

31.2. All other operations in foreign reserves remaining with the national central banks after the transfers referred to in Article 30 shall be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the System.

31.3. The Council shall issue guidelines with a view to facilitating such operations.

* * *

Article 32 - Distribution of income of the System and allocation of net profits and losses of the ECB

32.1. The Council shall establish uniform rules and procedures for determining income of national central banks and the ECB resulting from their operations under this Statute. Such income shall be pooled to form the consolidated income account of the System. Income shall be defined as net interest income plus capital gains minus capital losses plus non-interest income.

32.2. [The following items are excluded from the consolidated income account of the System:

- income deriving from the use of gold;
- income deriving from the holding and management of exchange reserves, as long as they are not pooled in accordance with Article 30;
- other income as defined by the Council.]

32.3. The share of the ECB in the System's total income as defined in Article 32.2. shall be fixed by the Council taking into account the need for the ECB to cover its operating expenditure and to build up a general reserve.

32.4. The income of the System, excluding the share allocated to the ECB in accordance with Article 32.3., shall be distributed to the national central banks according to the key attached to the Statute.

32.5. Following transfers to the general reserve the remaining net profits of the ECB shall be distributed to its shareholders.

32.6. In the event of a loss incurred by the ECB, the shortfall may be offset against the own funds of the ECB and, if necessary, following a decision by the Council, against contributions from national central banks, according to the key attached to the Statute.

* * *

Comments

- a) Article 32.1.: This Article ensures that whether the execution and/or the accounting of the System's operations is decentralised or not is indifferent for the allocation of income. The distribution of domestic operations between national central banks would also be without consequences for financial results.

However, in order to ensure that the contribution of national central banks to aggregate income derived from the operations under the System are not affected by the existing regimes of national taxation, the income to be pooled in accordance with Article 32.1 would have to be calculated gross of direct or indirect taxes levied on such operations (see comment for Article 41).

One Alternate felt that no precise provisions regarding income distribution needed to be laid down in the Statute; instead the necessary decisions should be taken by the Council. Two Alternates did not preclude a priori a different approach whereby only the income of the ECB would be redistributed. Such an alternative is shown at the end of the comments to this Article.

- b) Article 32.2.: Whereas income derived from functions undertaken under Article 14.5. are automatically excluded from the pooling, there remains the question of whether other items should also remain outside the mechanism. In this case, one possibility is to list all specific income items which would be excluded from the pooling under Article 32.2. or to enable the Council to take the necessary decisions in this respect. A case could also be made in favour of a combination of those two approaches.
- c) Article 32.4.: In the long run, the allocation of income of the System should be determined by the key attached to the Statute, which is also used for the provision of capital to the ECB and for the voting rights related to "patrimonial decisions" (see comments on Article 28).

In order to avoid major redistributive income effects in the early years of the System, it would be necessary to provide for a gradual adaptation of a distribution of income based on pre-Stage Three income shares to a distribution based on the key attached to the Statute. Such a schedule could be laid down in a

transitory provision of the Statute. Alternatively a clause might be introduced to enable the Council to devise such a scheme.

Alternative to Article 32 (see comment a) above)

32.1. The ECB shall establish a General Reserve to which shall be transferred in respect of each financial year of the System:

- [?]% of its net profits for the year whenever the balance in the General Reserve is less than the ECB's capital as set forth in Article 26.1.;
- thereafter [?]% of its net profits for the year.

32.2. The remainder of the net profits of the ECB shall be distributed to its shareholders.

32.3. The losses incurred by the ECB shall be offset against the General Reserve of the ECB. The ECB shall be entitled to call upon the general reserves of the national central banks to offset losses in excess of its General Reserve. National central banks shall contribute according to their capital shares.

CHAPTER VII - GENERAL PROVISIONS

General comment

The General Provisions have not yet been fully discussed by the Alternates. There are also a number of technical legal questions which need to be clarified.

Article 33 - Regulatory power

33.1. The Council and the Executive Board shall, in accordance with their respective responsibilities, make regulations and take decisions, necessary for the performance of tasks entrusted to the System under the present Statute.

33.2. To be drafted.

* * *

Comments

The definition of the ECB's regulatory power and the conditions under which it can be exercised will have to be contained in Article 33.2.

Article 34 - Enforcement

[According to the Community legislation, the ECB and national central banks shall be entitled to impose sanctions on market participants and other economic agents which fail to comply with their obligations vis-à-vis (guidelines, instructions) regulations and decisions.]

* * *

Comments

Some Alternates expressed a general reservation concerning the inclusion of such a provision in the Statute and the involvement of the ECB in imposing such sanctions.

Article 35 - Judicial control and related matters

35.1. The acts of the ECB shall be reviewed and interpreted by the Court of Justice under the conditions laid down for the legal control of the acts of Community institutions and in case of failure the ECB may institute proceedings in the same conditions as Community institutions. Articles 173 to 176, 178, 183 and 184 of the EEC Treaty shall be applicable accordingly.

35.2. The ECB shall be subject to the liability regime as provided for in Article 215 of the EEC Treaty.

35.3. The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law.

35.4. The decision of the ECB to bring action before the Court of Justice shall be taken by the Council.

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

* * *

Comments

The intention of this Article is to assure the same level of judicial control as the one which is applicable to the institutions of the Community. There is a question as to whether in Article 35.1, second sentence, the Community institutions need to be specified and whether a reference should be made to the relevant Articles.

It should be noted that, in this context, a modification of the Protocol on the Statute of the Court should also be required in order to permit the submission of observations by the System under Article 20 (preliminary rulings) and interventions under Article 37 of the Statute of the Court.

Article 36 - Staff

36.1. The Council of the ECB, on a proposal from the Executive Board, shall lay down the Staff Regulations of officials and the conditions of employment of other servants of the ECB.

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 Staff Regulations and the Conditions of Employment.

36.2. The regulations shall include the conditions of recruitment and promotion, the salaries, pensions and other social security benefits, the limitation of external activities, the Unions' rights and their relations with the Executive Board, the exchange of staff members from the national central banks.

* * *

Article 37 - Seat

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

* * *

Article 38 - Professional secrecy

38.1. Members of the governing bodies, officials and other servants of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

38.2. Persons having access to data covered by specific secrecy Community legislation shall be subject to such legislation.

* * *

Comments

This Article is in line with Article 214 of the Treaty.

There is a question as to whether this requirement should apply, even when there is a Court Order to declare; if so, it should be stated. The Council could then be allowed to lift the prohibition in such cases, at its discretion.

Article 39 - Budgetary provisions

The provisions of Article 203 of the Treaty shall not apply to the ECB and the national central banks.

* * *

Comments

This Article ensures that the System would not be subjected to Article 203 of the Treaty and would thus safeguard the System's financial independence. This should also be recognised in the Treaty. If this solution was chosen the Statute should state that the Council might establish budgetary provisions. An alternative solution would be to establish explicitly in the Statute the basic rules governing budgetary provisions.

Article 40 - Signatories

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

* * *

Comments

Article 40 is inspired by analogous provisions in central bank statutes and in line with Article 13.2. It provides assurance to third parties in respect of the persons who are able to commit the ECB.

Article 41 - Privileges and immunities

The Protocol on the privileges and immunities shall apply to the ECB [the members of its decision-making bodies, its officials and other servants] to the extent necessary for the performance of the ECB's tasks.

* * *

Comments

Article 41, which is inspired by Article 28 §1 of the Statute of the EIB and Article 28 of the Merger Treaty, would imply that the ECB would be exempt from any form of national taxation. However, in the context of income pooling in accordance with Article 32.1, it might also be necessary to review the implications of national taxation for the income position of the national central banks. Consideration might have to be given to applying national taxes only to redistributed income.

There was a question as to whether the privileges granted to Community staff by Articles 7 and 12 to 15 of the Protocol of the EIB should be applicable to the ECB staff. If so, it should be explicitly stated.

CHAPTER VIII - TRANSITIONAL PROVISIONS FOR THE SYSTEM

Comments

The decisions to be taken concerning the contents of Stage Two and the transition from Stage Two to Stage Three will determine the transitional provisions relating to the establishment of the System and its functions. These transitional provisions may have to accommodate a number of hypotheses:

- Progressive establishment of Economic and Monetary Union

If the transfer of functions entrusted to the System is progressive, the Statute must accommodate this and stipulate that measures will be taken to ensure that the tasks are carried out.

- Participation in the Union

If the Union enters into force on different dates in the different Member States, the implications of these successive accessions should be accommodated by spelling out the restricted rights and obligations of those who join the Union at a later date (see comments on Article 1).

- Gradual adaptation of income distribution

In order to avoid major redistributive income effects, a transitional provision should lay down a procedure for a gradual adaptation of a distribution of income based on pre-Stage Three income shares to a distribution based on the key attached to the Statute. Alternatively, a clause might be introduced to enable the Council to devise such a scheme.

- Start-up procedures

Start-up procedures should define, in particular, the role of the Committee of Governors of the EC Member States of the Community in the appointment of the first President of the System and the first members of the Executive Board. Mandates of unequal length should be considered to ensure successive rather than collective renewals of the membership of the Executive Board in the first period.

CHAPTER IX - AMENDMENT AND COMPLEMENTARY PROVISIONS FOR THE SYSTEM

General Comments

The Legal Experts were of the opinion that the procedure for amending and complementing the provisions of the draft Statute could not be drafted before possible changes in the legislative process of the Community have been adopted following the Intergovernmental Conference on Political Union.

Article 42 - Simplified amendment procedure

To be drafted.

* * *

Comments

- a) The Legal Experts felt that this procedure should fulfil two fundamental requirements; democratic legitimacy and efficiency.

With respect to legitimacy, there was agreement that the System should not be afforded the exclusive right of initiative, but there should be an obligation for the ECB to be consulted, see Article 4. On the other hand, there should be some flexibility regarding majority requirements; for example, a qualified majority in the Council of the European Community and one of the majorities provided for deliberations of the European Parliament.

- b) There is a question as to whether the Statute should contain an exhaustive list of Articles which could be amended according to the simplified procedure (i.e. positive list) or whether it should limit itself to indicating those fundamental Articles which cannot be changed through such a procedure (i.e. negative list). For administrative reasons, most Experts favoured the second option.

Article 43- Complementary legislation

To be drafted.

* * *

Comments

This Article would specify the procedure to be followed where acts of Community legislation are required or are made possible by the draft Statute. The precise procedure cannot be identified until the decisions following the Intergovernmental Conferences have been adopted.

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

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19th October 1990

To the Committee of Alternates

Please find attached the draft Statute as revised by the Secretariat in the light of the Alternates' discussions held on 15th and 16th October 1990. As agreed, any comments and proposals for amendment should be telefaxed to the Secretariat not later than the afternoon of Tuesday, 23rd October 1990. This would enable the Secretariat to finalise the text for transmission to the Committee of Governors before the end of next week. When presenting your proposals for amendment would you kindly take into consideration that greatest efforts should be made not to "overburden" the text of the draft Statute so that the Governors can focus their attention on the most essential questions. With this consideration in mind would you please:

- confine your proposals for amendment to those instances where the proposed text might not adequately reflect the comments and observations you made at the meeting mentioned above;
- provide specific drafting amendments.

May I also draw your attention to three Articles where the Secretariat proposes additions:

- instead of introducing in Article 9.6 a provision governing the terms and conditions of employment of the members of the Executive Board, it seems more logical to put this into Article 11.5; a draft proposal for such a provision can be found under comment b) to Article 11;
- during the last meeting Article 26.1 was changed to state "The ECB and the national central banks shall record their financial operations in their balance sheets". The Secretariat proposes mentioning this in the comment and has instead introduced into

Article 26 some provisions relating to the annual accounts of the ECB.

- a new Article 40 has been added.

Finally, at the last meeting of the Group of Legal Experts it had been agreed that the Experts would review the Chapter on financial provisions (Chapter VI) as soon as a draft is finalised. Would you therefore kindly pass on to your central bank's member of the Group Chapter VI and, in order to expedite the preparation of the draft Statute for the Committee of Governors, include your Legal Expert's remarks in your own comments. Again, consideration should be given not to "overburden" the text and only the most essential legal points should be introduced into the draft Statute which will be sent to the Governors. The Legal Experts have been informed of this procedure by telefax.

With kind regards,



Gunter D. Baer

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

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Number of pages including cover sheet: two

Date: 19th October 1990

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19.10.1990 14:52

19th October 1990

To the members of the Group of Legal Experts

Ref.: Draft Statute: Chapter VI: Financial provisions

You may recall that at our last meeting we agreed on a written procedure for the review of Chapter VI (Financial provisions), which had not been finalised at the time of our meeting (see Chairman's report of 8th October 1990, bottom of page 1). Unfortunately the draft of this Chapter became available only on the eve of the Alternates' meeting and there was therefore no possibility of involving the Legal Experts at an earlier stage.

For this reason I would like to propose to you the following procedure. The draft Statute has now been revised in the light of the Alternates' discussions and has been telefaxed to them today. In my accompanying introductory note I suggested that Chapter VI be passed on to you for review and that your remarks should be included in the comments your Alternate will send to the Secretariat not later than the afternoon of Tuesday, 23rd October 1990. However, I assume that you will be asked anyhow to give your advice on the entire text of the draft Statute. In this regard I would like to emphasise that the draft Statute will be transmitted at the end of next week to the Committee of Governors. It would therefore be important that you confine your remarks only to the most essential points in order not to overburden the text for consideration by Governors.

With many thanks for your co-operation and,

With kind regards,



Gunter D. Baer