

Appendix

The Transition to a Single European Currency: The Institutional Steps Envisaged

CRISTIANA MAZIO

In the realm of European unification, the problem of monetary union was first taken into consideration in the "Treaty on the European Union", signed in Maastricht on February 7, 1992, and in force since November 1, 1993 (referred to as the "Maastricht Treaty").

In fact, the Treaty which originally established the European Common Market – signed in Rome on March 25, 1957, and in force since January 1, 1958 (referred to as the "Treaty of Rome") – had not dealt with the issue of monetary order, although it considered the economic union to be realized through the single market. Monetary stability was not a problem in the Fifties. At the time of the Treaty the system of fixed exchange rates decided upon in 1944 at Bretton Woods was still in force. Based on the United States dollar, it constituted a well-functioning international monetary system in which the European Common Market could easily be included.

Since 1973, floating exchange rates prevailed and completely changed the characteristics of the international monetary system, also creating difficulties to the realization of the single market. As a result, the European Economic Community was forced to set up a system of semi-fixed exchange rates.

An early attempt had been made following the December 1971 Smithsonian Agreements in Washington which limited within a "tunnel" the fluctuations of currencies with respect to the dollar. The EEC Basle agreement of April 1972 further reduced the fluctuation margins between European currencies and created the so called "snake in the tunnel". It was soon modified by the withdrawal of some countries (the United Kingdom, Ireland, Italy). In March 1973,

□ Banca Nazionale del Lavoro, Studi e Relazioni Esterne, Rome (Italy).

the European countries decided to abandon the liaison to the dollar. The "snake" however survived until March 1979, even though it mainly included currencies from the German mark area in the last years of its existence.

The *European Monetary System* (EMS) is the second and most important attempt at stabilizing exchange rates. It was established in March 1979 and is still in place. The new scheme aimed at larger coordination between national monetary policies in order to obtain an area of monetary stability in Europe. The EMS is actually similar to the "snake", but it implies closer cooperation between central banks, the introduction of a basket currency, the "ecu", formed by the sum of fixed amounts of each member currency, and a bilateral parity grid, that is to say, each currency can fluctuate only by a limited amount with respect to a fixed central parity when compared to the currency of every other country in the system. In addition, the European Monetary System includes divergence indicators which measure the fluctuation of currencies with respect to the central parity to the ecu. These indicators allow to single out deviating countries, which have to take corrective actions.

Very Short-Term Financing facilities (VSTF) are available for interventions in foreign exchange markets for currencies which reach the limits of the fluctuation bands. In addition, the EMS is endowed with two other credit mechanisms: the Short-Term Monetary Support (STMS) for temporary economic difficulties, and the Medium Term Financial Assistance (MTFA) to help countries implementing internal and external long term economic adjustment measures that have been approved by the Council.

In September 1987, the Basle-Nyborg agreement modified the policy coordination and the intervention financing mechanisms in order to reduce the size and the frequency of realignments. In particular, the usage of the Very Short-Term Financing facility was extended to intramarginal interventions, that is to say, to interventions which are made before fluctuation limits are reached. As such the flexibility of the system was enhanced.

As a whole, the EMS has undergone a series of transformations and in recent years has become much less binding.

During the first eight years of its existence, the EMS experienced frequent realignments (eleven in all). From 1987 on, however, the EMS has changed in practice from a system of fixed but adjustable exchange rates into a true system of fixed exchange rates.

In fact, from January 1987 to September 1992 no realignment has taken place, even though the insufficient convergence among many European economies would have required it, since misalignments in "real" exchange rates caused distortions in price competitiveness. In September 1992, the system underwent a serious crisis which forced the United Kingdom and Italy to drop out. In August 1993, the fluctuation limits were enlarged to $\pm 15\%$ for all currencies, with the exception of the German mark and the florin which maintained the $\pm 2.25\%$ narrow band. The EMS mechanism had become too rigid to withstand the financial instability caused by German re-unification. Further tensions had developed because of the abolition of controls on international capital movements in Europe. It became difficult to reconcile fixed exchange rates with free trade of goods and services and with the conduct of independent monetary policies. It is therefore in this new context that the need for an economic and monetary union is felt again.

By amending the Treaty of Rome, the *Maastricht Treaty* has defined the various stages necessary to obtain a single European currency, a single monetary policy and a European central bank. The European Monetary Union (EMU) will as such be able to strengthen European integration and consolidate the single market of goods, labour and capital envisaged by the Single European Act of 1986, and to a large extent realized by 1993.

The Maastricht Treaty is setting in detail how the process of economic and monetary union is to begin, with fixed conversion rates between the currencies of participating countries, and how it should come to a conclusion, with the introduction of a single currency. The Treaty is not, however, as explicit with regards to the time and nature of the transition. It limits itself to specifying that the period of transition should be as short as possible.

On 15 and 16 December 1995, the *European Council in Madrid* presented a timetable for the introduction of the single currency, in accordance with the Maastricht Treaty. Some questions which have been left open even on this occasion – in particular, questions dealing with the definition of the conversion rates and the monetary relations between countries participating to the single currency and other members of the European Union – will be considered along with the revision of the Maastricht Treaty during the Inter-Governmental Conference which will begin in March 1996.

* * *

On the whole, the realisation of the economic and monetary union involves three stages. The first one, already envisaged in the Treaty of Rome, has not required modifications. The *Treaty of Maastricht* defines the contents of the second and third stages.

Stage one started in July 1990, ended in December 1993 and mainly involved the *liberalization of capital movements* among the countries of the European Union.

Stage two, which has begun on January 1, 1994, saw the *establishment of the European Monetary Institute* (EMI), for coordinating economic and monetary policies with particular attention paid to the setting-up of the conditions which allow the European Central Bank (ECB) and the European System of Central Banks (ESCB) to become fully active from the very beginning of the third stage (cf. the Protocol on the Statute of the European Monetary Institute, attached to the Treaty of Maastricht). Therefore, the EMI is engaged in a vast preparatory work regarding monetary and exchange rate policies, payments systems, statistics and the issuing of European banknotes and coins.

During this second stage, it is required that European member countries start making their *central banks independent*. Before the third stage has begun, the statutes of the central banks of member states have to be brought into conformity with the Statute for the European System of Central Banks, especially with regard to the provisions concerning independence and the primary aim of price stability. Governments will avoid excessive public deficits, and either the Community or governments are prohibited from turning to monetary financing (cf. Maastricht Treaty Articles 108, 104c).

Stage three will start at the latest on January 1, 1999 (article 109j). On that date, the ECB and the ESCB are expected to be fully operational and the irreversible step to monetary union will be realized. By then single monetary policy will be decided upon and implemented by the ESCB, which will comprise the ECB and national central banks of EMU member countries. The ECB will decide in full autonomy, without taking instructions from national governments or European Union institutions (Article 107). The main goal of monetary policy will be to ensure price stability and, in second instance, to support European Union economic policies (Article 105). The ESCB will conduct foreign exchange operations and manage foreign exchange reserves of member states. Exchange rate policies with regard to non-European Union currencies will be decided upon

by the Council of Ministers in accordance with the ESCB (Article 109). Furthermore, the ESCB will promote the smooth operation of payments systems and supervision of credit institutions by national authorities (Article 105 and Protocol on the Statute of the ESCB and ECB). Both the ECB and national central banks will not be allowed to grant credit facilities either to the Community or to governments (Articles 104, 104a, 104b).

The transition to the third stage of monetary union requires that the convergence criteria, set out by the Maastricht Treaty in order to assess countries qualifying for EMU, should be met. At the latest on July 1, 1998, the European Council will select which member states will participate, taking into account reports presented by the Commission and by the EMI (Article 109j). Such reports will evaluate whether or not member countries have attained a high degree of convergence based on the following criteria contained in the Treaty (Article 104c, 109j), and Protocol on the excessive deficit procedure and Protocol on the convergence criteria):

a) *High degree of price stability*. The average rate of inflation over the preceding twelve months prior to examination should not exceed by more than 1.5 percentage points the average of the three lowest inflation rates recorded among European Union countries.

b) *Sustainable government financial position*. The ratio of government deficit to gross domestic product must not exceed 3%, unless the ratio has been substantially and continuously diminishing and has come close to the reference value; or the excess over the reference value is only temporary and the ratio remains close to it. The ratio between public debt and gross domestic product must not exceed 60%, unless the ratio is trending towards the reference value at a satisfactory pace.

c) *Stability of exchange rates* within the normal fluctuation margins envisaged by the European Monetary System for at least two years, without any devaluation.

d) *Convergence of long term interest rates*. Countries' long term interest rates over the last twelve months prior to examination should not exceed by more than 2 percentage points the average interest rates of the three member countries registering the lowest inflation rates.

The reports of the Commission and of the European Monetary Institute will also take into consideration other important factors (Article 109j), among which are included: the integration of markets, deficits and surpluses in the current account of the balance of payments, changes in unit labour costs and other price indicators. The reports will also assess whether independence of national central banks has been achieved.

Regarding the United Kingdom and Denmark, which have an opt-out clause from entry into EMU, adherence to the third stage will call for a separate national decision which will be taken before the meeting of the European Council.

At the start of the third stage, the Council will irrevocably fix the conversion rates at which participating countries' currencies may be exchanged and for substitution with the single currency (Article 109l). The ecu will cease being a basket currency and will become a currency in its own right, while its external value will remain unchanged (Article 109l).

At first, some European Union countries may not participate to the EMU. Their future relations with EMU countries will be settled before the third stage is entered. As provided by the Treaty (Article 109k), at least once every two years or at the request of a non-participating European Union member state, adequacy to the convergence criteria shall be examined in order to decide which countries fulfil the conditions for joining EMU.

On the whole, many questions which were left unanswered by the Maastricht Treaty have been defined by the *European Council in Madrid* (15-16 December 1995). On this occasion, a timetable for the introduction of the single currency has been presented, which includes specific measures to be implemented. Such reference scenario was settled upon in accordance with the Commission and the EMI, and also taking into account the "Green Paper on the Practical Arrangements for the Introduction of the Single Currency", a document published by the European Commission in Brussels in May 1995, as well as the EMI's report on *The Changeover to the Single Currency*, published in Frankfurt in November 1995. The timetable is, according to the Council, compatible with the EMI's report.

The Council confirmed that the third stage of EMU will begin on January 1, 1999, as scheduled by the Maastricht Treaty. The name of the single currency is "euro", to be used in place of the generic

denomination "ecu", used by the Treaty to indicate the European currency.

The timetable for the changeover to the single currency, as formulated by the Council (a description of the time sequence of events is enclosed hereafter), is made of *three periods*. The *first period* or so called interim period will last one year at most, and will end on January 1, 1999, the date at which the third stage of EMU is scheduled to start. The first period will begin with the selection of qualifying countries, a decision to be made as soon as possible in early 1998 (probably in February or March), relying on 1997 actual data with regard to the convergence criteria. In this period, the ECB will be created, in order to be fully operational on January 1, 1999. At the same time as the selection of participating countries, the date for the introduction of European banknotes and coins will be decided.

The *second period* will begin on January 1, 1999, with the start of the third stage of EMU. It will begin with the irrevocable fixing of conversion rates between the currencies of participating countries and *vis-à-vis* the euro. From this date onwards, the European monetary policy and the foreign exchange policy will be carried out in euro. Operations in foreign exchange markets will be executed in euro and new tradeable public debt will be issued by EMU countries in euro. Private economic operators will be free to use the single currency. Therefore, from the beginning a "critical mass" of activities in euro will be created, while the full adoption of euro in all economic sectors will occur gradually.

The payments system infrastructure should be in place in order to ensure the functioning of a European money market based on the euro. National central banks might provide conversion facilities for financial institutions experiencing difficulties.

The *third period* - which will begin on January 1, 2002 at the latest, with the introduction of fiduciary money in euro, and end on July 1, 2002 at the latest - will complete the changeover. Euro banknotes and coins will circulate alongside national currencies. At most six months later (July 1, 2002), national currencies will cease to be legal tender and will be completely substituted by the euro in participating countries. The period of parallel circulation should be reduced to a minimum. With regard to public administrations, generalization of the euro for public sector operations will be delayed until the complete introduction of fiduciary money in euro. No later than

July 1, 2002, public debt denominated in national currencies will be redeemable only in euro.

In addition, the European Council of Madrid specifies that a Council Regulation will come into force on January 1, 1999 and will constitute the legal framework for the use of the euro. Beginning with that date, the euro will be a currency in its own right and the ecu basket will cease to exist. Such Regulation will define the legally enforceable equivalence between the euro and national currencies as well as between the euro and the ecu. The replacement of the national currencies and of the ecu with the euro will not change the legal continuity of contracts. With regard to contracts written with reference to the official ecu basket currency, the substitution of the ecu with the euro will take place at the rate of one to one, as provided by the Maastricht Treaty. The Regulation will assure that, before the end of the changeover, private economic operators may opt for the use of the euro, without, however, being obliged to do so. National currencies will continue to be legal tender within the respective national borders until the complete introduction of the single currency (at the latest on July 1, 2002).

* * *

Among the issues which have been left unresolved by the European Council of Madrid we may reckon mainly the method for fixing the conversion rates, the definition of the ecu (official ecu or market ecu) which will have to be used for the change at par with the euro, and the question of how the Treaty is to be interpreted regarding the criteria of exchange rates stability. In addition, there is the problem of economic and monetary relations between participating countries and European member countries which are not yet ready to enter, as well as the question on the means which can guarantee budgetary discipline even after the move to the final stage of EMU.

With regard to the question of sustainable economic convergence, the European Commission is preparing a report on the necessary means to guarantee budgetary restraint and fiscal coordination within the monetary union. As far as the relations between insiders and outsiders are concerned, the European Council has asked that the Council of Economic and Financial Ministers (Ecofin) examine, in collaboration with the Commission and the EMI, all the questions concerned especially in relation to price stability.

TREATY ON EUROPEAN UNION *

Title VI - Economic and Monetary Policy

Chapter I - Economic policy

Article 102a.

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

Article 103.

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of Article 102a.

2. The Council shall, acting by a qualified majority on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Community, and shall report its findings to the European Council.

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

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

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Community as

* Excerpt from the second part of the Treaty concerning economic and monetary policy.

well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

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

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

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

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

Article 103a.

1. Without prejudice to any other procedures provided for in this Treaty, the Council may, acting unanimously on a proposal from the Commission, decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products.

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by exceptional occurrences beyond its control, the Council may, acting unanimously on a proposal from the Commission, grant, under certain conditions, Community financial assistance to the Member State concerned. Where the severe difficulties are caused by natural disasters, the Council shall act by qualified majority. The President of the Council shall inform the European Parliament of the decision taken.

Article 104.

1. Overdraft facilities or any other type of credit facility with the ECB or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

Article 104a.

1. Any measure, not based on prudential considerations, establishing privileged access by Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions shall be prohibited.

2. The Council, acting in accordance with the procedure referred to in Article 189c, shall, before 1 January 1994, specify definitions for the application of the prohibition referred to in paragraph 1.

Article 104b.

1. The Community shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

2. If necessary, the Council, acting in accordance with the procedure referred to in Article 189c, may specify definitions for the application of the prohibitions referred to in Article 104 and in this Article.

Article 104c.

1. Member States shall avoid excessive government deficits.

2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:

(a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless

- either the ratio has declined substantially and continuously and reached a level that comes close to the reference value;

- or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;

(b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

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

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Committee provided for in Article 109c shall formulate an opinion on the report of the Commission.

5. If the Commission considers that an excessive deficit in a Member State exists or may occur, the Commission shall address an opinion to the Council.

6. The Council shall, acting by a qualified majority on a recommendation from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.

7. Where the existence of an excessive deficit is decided according to paragraph 6, the Council shall make recommendations to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to the provisions of paragraph 8, these recommendations shall not be made public.

8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time-limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

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

10. The rights to bring actions provided for in Articles 169 and 170 may not be exercised within the framework of paragraphs 1 to 9 of this Article.

11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

- to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities;

- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned;

- to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Community until the excessive deficit has, in the view of the Council, been corrected;

- to impose fines of an appropriate size.

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

12. The Council shall abrogate some or all of its decisions referred to in paragraphs 6 to 9 and 11 to the extent that the excessive deficit in the Member State concerned has, in the view of the Council, been corrected. If the Council has previously made public recommendations, it shall, as soon as the decision under paragraph 8 has been abrogated, make a public statement that an excessive deficit in the Member State concerned no longer exists.

13. When taking the decisions referred to in paragraphs 7 to 9, 11 and 12, the Council shall act on a recommendation from the Commission by a majority of two-thirds of the votes of its members weighted in accordance with Article 148(2), excluding the votes of the representative of the Member State concerned.

14. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure annexed to this Treaty.

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

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

Chapter 2 - Monetary policy

Article 105.

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

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

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

5. The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions of the stability of the financial system.

6. The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Article 105a.

1. The ECB shall have the exclusive right to authorize the issue of banknotes within the Community. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Community.

2. Member States may issue coins subject to approval by the ECB of the volume of the issue. The Council may, acting in accordance with the procedure referred to in Article 189c and after consulting the ECB, adopt measures to harmonize the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Community.

Article 106.

1. The ESCB shall be composed of the ECB and of the national central banks.

2. The ECB shall have legal personality.
3. The ESCB shall be governed by the decision-making bodies of the ECB which shall be the Governing Council and the Executive Board.
4. The Statute of the ESCB is laid down in a Protocol annexed to this Treaty.
5. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission or unanimously on a proposal from the Commission and after consulting the ECB. In either case, the assent of the European Parliament shall be required.
6. The Council, acting by a qualified majority either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB.

Article 107.

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

Article 108.

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

Article 108a.

1. In order to carry out the tasks entrusted to the ESCB, the ECB shall, in accordance with the provisions of this Treaty and under the conditions laid down in the Statute of the ESCB:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and in cases which shall be laid down in the acts of the Council referred to in Article 106(6);

- take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and the Statute of the ESCB;
- make recommendations and deliver opinions.

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

Recommendations and opinions shall have no binding force.

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

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

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

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

Article 109.

1. By way of derogation from Article 228, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange-rate system for the ecu in relation to non-Community currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the ecu within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the ecu central rates.

2. In the absence of an exchange-rate system in relation to one or more non-Community currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on a recommendation from the Commission and after consulting the ECB or on a recommendation from the ECB, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

3. By way of derogation from Article 228, where agreements concerning monetary or foreign-exchange regime matters need to be negotiated by the Community with one or more States or international organizations, the Council, acting by a qualified majority on a recommendation from the Commission and

after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.

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

4. Subject to paragraph 1, the Council shall, on a proposal from the Commission and after consulting the ECB, acting by a qualified majority decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and, acting unanimously, decide its representation in compliance with the allocation of powers laid down in Articles 103 and 105.

5. Without prejudice to Community competence and Community agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

Chapter 3 - Institutional provisions

Article 109a.

1. The Governing Council of the ECB shall comprise the members of the Executive Board of the ECB and the Governors of the national central banks.

2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.

(b) The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognized standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB.

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

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

Article 109b.

1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the ECB.

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

2. The President of the ECB shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

3. The ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the ECB shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

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

Article 109c.

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

It shall have the following tasks:

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

The Member States and the Commission shall each appoint two members of the Monetary Committee.

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

The Economic and Financial Committee shall have the following tasks:

- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;
- to keep under review the economic and financial situation of the Member States and of the Community and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions;

- without prejudice to Article 151, to contribute to the preparation of the work of the Council referred to in Articles 73f, 73g, 103(2), (3), (4) and (5), 103a, 104a, 104b, 104c, 105(6), 105a(2), 106(5) and (6), 109, 109h, 109i(2) and (3), 109k(2), 109l(4) and (5), and to carry out other advisory and preparatory tasks assigned to it by the Council;

- to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

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

3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the ECB and the Committee referred to in this Article, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.

4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Articles 109k and 109l, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

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

Chapter 4 - Transitional provisions

Article 109e.

1. The second stage for achieving economic and monetary union shall begin on 1 January 1994.

2. Before that date

(a) each Member State shall:

- adopt, where necessary, appropriate measures to comply with the prohibitions laid down in Article 73b, without prejudice to Article 73e, and in Articles 104 and 104a(1);

- adopt, if necessary with a view to permitting the assessment provided for in subparagraph (b), multiannual programmes intended to ensure the lasting convergence necessary for the achievement of economic and monetary union, in particular with regard to price stability and sound public finances;

(b) the Council shall, on the basis of a report from the Commission, assess the progress made with regard to economic and monetary convergence, in particular with regard to price stability and sound public finances, and the progress made with the implementation of Community law concerning the internal market.

3. The provisions of Articles 104, 104a(1), 104b(1), and 104c with the exception of paragraphs 1, 9, 11 and 14 shall apply from the beginning of the second stage.

The provisions of Articles 103a(2), 104c(1), (9) and (11), 105, 105a, 107, 109, 109a, 109b and 109c(2) and (4) shall apply from the beginning of the third stage.

4. In the second stage, Member States shall endeavour to avoid excessive government deficits.

5. During the second stage, each Member State shall, as appropriate, start the process leading to the independence of its central bank, in accordance with Article 108.

Article 109f.

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

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

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

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

2. The EMI shall:

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

- take over the tasks of the European Monetary Cooperation Fund, which shall be dissolved; the modalities of dissolution are laid down in the Statute of the EMI;

- facilitate the use of the ecu and oversee its development, including the smooth functioning of the ecu clearing system.

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

- prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage;

- promote the harmonization, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence;

- prepare the rules for operations to be undertaken by the national central banks within the framework of the ESCB;

- promote the efficiency of cross-border payments;

- supervise the technical preparation of ecu banknotes.

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

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

- formulate opinions or recommendations on the overall orientation of monetary policy and exchange-rate policy as well as on related measures introduced in each Member State;

- submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the European Monetary System;

- make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.

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

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

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

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

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

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

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

Article 109g.

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

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

Article 109h.

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

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

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

2. The Council, acting by a qualified majority, shall grant such mutual assistance; it shall adopt directives or decisions laying down the conditions and details of such assistance, which may take such forms as:

(a) a concerted approach to or within any other international organizations to which Member States may have recourse;

(b) measures needed to avoid deflection of trade where the State which is in difficulties maintains or reintroduces quantitative restrictions against third countries;

(c) the granting of limited credits by other Member States, subject to their agreement.

3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures

taken are insufficient, the Commission shall authorize the State which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

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

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

Article 109i.

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 109h(2) is not immediately taken, the Member State concerned may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the common market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under Article 109h.

3. After the Commission has delivered an opinion and the Committee referred to in Article 109c has been consulted, the Council may, acting by a qualified majority, decide that the State concerned shall amend, suspend or abolish the protective measures referred to above.

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

Article 109j.

1. The Commission and the EMI shall report to the Council on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each Member State's national legislation, including the statutes of its national central bank, and Articles 107 and 108 of this Treaty and the Statute of the ESCB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:

- the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability;

- the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 104c(6);

- the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the currency of any other Member State;

– the durability of convergence achieved by the Member State and of its participation in the exchange-rate mechanism of the European Monetary System being reflected in the long-term interest-rate levels.

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

2. On the basis of these reports, the Council, acting by a qualified majority on a recommendation from the Commission, shall assess:

- for each Member State, whether it fulfils the necessary conditions for the adoption of a single currency;
- whether a majority of the Member States fulfil the necessary conditions for the adoption of a single currency;

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

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

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

and if so

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

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

Article 109k.

1. If the decision has been taken to set the date in accordance with Article 109j(3), the Council shall, on the basis of its recommendations referred to in

Article 109j(2), acting by a qualified majority on a recommendation from the Commission, decide whether any, and if so which, Member States shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as “Member States with a derogation”.

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

2. At least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB shall report to the Council in accordance with the procedure laid down in Article 109j(1). After consulting the European Parliament and after discussion in the Council, meeting in the composition of the Heads of State or Government, the Council shall, acting by a qualified majority on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in Article 109j(1), and abrogate the derogations of the Member States concerned.

3. A derogation referred to in paragraph 1 shall entail that the following Articles do not apply to the Member State concerned: Articles 104c(9) and (11), 105(1), (2), (3) and (5), 105a, 108a, 109, and 109a(2)(b). The exclusion of such a Member State and its national central bank from rights and obligations within the ESCB is laid down in Chapter IX of the Statute of the ESCB.

4. In Articles 105(1), (2) and (3), 105a, 108a, 109 and 109a(2)(b), “Member States” shall be read as “Member States without a derogation”.

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

6. Articles 109h and 109i shall continue to apply to a Member State with a derogation.

Article 109l.

1. Immediately after the decision on the date for the beginning of the third stage has been taken in accordance with Article 109j(3), or, as the case may be, immediately after 1 July 1998:

- the Council shall adopt the provisions referred to in Article 106(6);
- the governments of the Member States without a derogation shall appoint, in accordance with the procedure set out in Article 50 of the Statute of

the ESCB, the President, the Vice-President and the other members of the Executive Board of the ECB. If there are Member States with a derogation, the number of members of the Executive Board may be smaller than provided for in Article 11.1 of the Statute of the ESCB, but in no circumstances shall it be less than four.

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

2. As soon as the ECB is established, it shall, if necessary, take over tasks of the EMI. The EMI shall go into liquidation upon the establishment of the ECB; the modalities of liquidation are laid down in the Statute of the EMI.

3. If and as long as there are Member States with a derogation, and without prejudice to Article 106(3) of this Treaty, the General Council of the ECB referred to in Article 45 of the Statute of the ESCB shall be constituted as a third decision-making body of the ECB.

4. At the starting date of the third stage, the Council shall, acting with the unanimity of the Member States without a derogation, on a proposal from the Commission and after consulting the ECB, adopt the conversion rates at which their currencies shall be irrevocably fixed and at which irrevocably fixed rate the ecu shall be substituted for these currencies, and the ecu will become a currency in its own right. This measure shall by itself not modify the external value of the ecu. The Council shall, acting according to the same procedure, also take the other measures necessary for the rapid introduction of the ecu as the single currency of those Member States.

5. If it is decided, according to the procedure set out in Article 109k(2), to abrogate a derogation, the Council shall, acting with the unanimity of the Member States without a derogation and the Member State concerned, on a proposal from the Commission and after consulting the ECB, adopt the rate at which the ecu shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the ecu as the single currency in the Member State concerned.

Article 109m

1. Until the beginning of the third stage, each Member State shall treat its exchange-rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ecu, and shall respect existing powers in this field.

2. From the beginning of the third stage and for as long as a Member State has a derogation, paragraph 1 shall apply by analogy to the exchange-rate policy of that Member State.

PROTOCOL ON THE STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND OF THE EUROPEAN CENTRAL BANK

THE HIGH CONTRACTING PARTIES,

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

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

Chapter I - Constitution of the ESCB

Article 1. - *The European System of Central Banks*

1.1. The European System of Central Banks (ESCB) and the European Central Bank (ECB) shall be established in accordance with Article 4a of this Treaty; they shall perform their tasks and carry on their activities in accordance with the provisions of this Treaty and of this Statute.

1.2. In accordance with Article 106(1) of this Treaty, the ESCB shall be composed of the ECB and of the central banks of the Member States ('national central banks'). The Institut monétaire luxembourgeois will be the central bank of Luxembourg.

Chapter II - Objectives and tasks of the ESCB

Article 2. - *Objectives*

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

Article 3. – *Tasks*

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

- to define and implement the monetary policy of the Community;
- to conduct foreign-exchange operations consistent with the provisions of Article 109 of this Treaty;
- to hold and manage the official foreign reserves of the Member States;
- to promote the smooth operation of payment systems.

3.2. In accordance with Article 105(3) of this Treaty, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3.3. In accordance with Article 105(5) of this Treaty, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

Article 4. – *Advisory functions*

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

(a) the ECB shall be consulted:

- on any proposed Community act in its fields of competence;
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 42;

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

Article 5. – *Collection of statistical information*

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

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

5.3. The ECB shall contribute to the harmonization, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence.

5.4. The Council, in accordance with the procedure laid down in Article 42, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6. – *International cooperation*

6.1. In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented.

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

6.3. Articles 6.1 and 6.2 shall be without prejudice to Article 109(4) of this Treaty.

Chapter III - *Organization of the ESCB*

Article 7. – *Independence*

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

Article 8. – *General principle*

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

Article 9. – *The European Central Bank*

9.1. The ECB which, in accordance with Article 106(2) of this Treaty, shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.2. The ECB shall ensure that the tasks conferred upon the ESCB under Article 105(2), (3) and (5) of this Treaty are implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Articles 12.1 and 14.

9.3. In accordance with Article 106(3) of this Treaty, the decision-making bodies of the ECB shall be the Governing Council and the Executive Board.

Article 10. – *The Governing Council*

10.1. In accordance with Article 109a(1) of this Treaty, the Governing Council shall comprise the members of the Executive Board of the ECB and the Governors of the national central banks.

10.2. Subject to Article 10.3, only members of the Governing Council present in person shall have the right to vote. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules shall also provide that a member of the Governing Council who is prevented from voting for a prolonged period may appoint an alternate as a member of the Governing Council.

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

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

10.3. For any decisions to be taken under Articles 28, 29, 30, 32, 33 and 51, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. The weights of the votes of the members of the Executive Board shall be zero. A decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two-thirds of the subscribed capital of the ECB and represent at least half of the shareholders. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

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

10.5. The Governing Council shall meet at least 10 times a year.

Article 11. – *The Executive Board*

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

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

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

recommendation from the Council after it has consulted the European Parliament and the Governing Council.

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

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

11.3. The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be the subject of contracts with the ECB and shall be fixed by the Governing Council on a proposal from a Committee comprising three members appointed by the Governing Council and three members appointed by the Council. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.

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

11.5. Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements shall be specified in the Rules of Procedure referred to in Article 12.3.

11.6. The Executive Board shall be responsible for the current business of the ECB.

11.7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with Article 11.2.

Article 12. – *Responsibilities of the decision-making bodies*

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

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

To the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the ECB shall have recourse to the national

central banks to carry out operations which form part of the tasks of the ESCB.

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

12.3. The Governing Council shall adopt Rules of Procedure which determine the internal organization of the ECB and its decision-making bodies.

12.4. The Governing Council shall exercise the advisory functions referred to in Article 4.

12.5. The Governing Council shall take the decisions referred to in Article 6.

Article 13. – *The President*

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

13.2. Without prejudice to Article 39, the President or his nominee shall represent the ECB externally.

Article 14. – *National central banks*

14.1. In accordance with Article 108 of this Treaty, each Member State shall ensure, at the latest at the date of the establishment of the ESCB, that its national legislation, including the statutes of its national central bank, is compatible with this Treaty and this Statute.

14.2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than five years.

A Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council on grounds of infringement of this Treaty or of any rule of law relating to its application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

14.3. The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4. National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of

national central banks and shall not be regarded as being part of the functions of the ESCB.

Article 15. – *Reporting commitments*

15.1. The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.

15.2. A consolidated financial statement of the ESCB shall be published each week.

15.3. In accordance with Article 109b(3) of this Treaty, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.

15.4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

Article 16. – *Banknotes*

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

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

Chapter IV - Monetary functions and operations of the ESCB

Article 17. – *Accounts with the ECB and the national central banks*

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

Article 18. – *Open market and credit operations*

18.1. In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the national central banks may:

- operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in Community or in non-Community currencies, as well as precious metals;
- conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

18.2. The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks, including for

the announcement of conditions under which they stand ready to enter into such transactions.

Article 19. – *Minimum reserves*

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

19.2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 42, define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of non-compliance.

Article 20. – *Other instruments of monetary control*

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

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

Article 21. – *Operations with public entities*

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

21.2. The ECB and national central banks may act as fiscal agents for the entities referred to in Article 21.1.

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

Article 22. – *Clearing and payment systems*

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

Article 23. – *External operations*

The ECB and national central banks may:

- establish relations with central banks and financial institutions in other countries and, where appropriate, with international organizations;

- acquire and sell spot and forward all types of foreign exchange assets and precious metals; the term 'foreign exchange asset' shall include securities and all other assets in the currency of any country or units of account and in whatever form held;

- hold and manage the assets referred to in this Article;

- conduct all types of banking transactions in relations with third countries and international organizations, including borrowing and lending operations.

Article 24. – *Other operations*

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

Chapter V - Prudential supervision

Article 25. – *Prudential supervision*

25.1. The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Community legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

25.2. In accordance with any decision of the Council under Article 105(6) of this Treaty, the ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Chapter VI - Financial provisions of the ESCB

Article 26. – *Financial accounts*

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

26.2. The annual accounts of the ECB shall be drawn up by the Executive Board, in accordance with the principles established by the Governing Council. The accounts shall be approved by the Governing Council and shall thereafter be published.

26.3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the ESCB, comprising those assets and liabilities of the national central banks that fall within the ESCB.

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

Article 27. – *Auditing*

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

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

Article 28. – *Capital of the ECB*

28.1. The capital of the ECB, which shall become operational upon its establishment, shall be ecu 5 000 million. The capital may be increased by such amounts as may be decided by the Governing Council acting by the qualified majority provided for in Article 10.3, within the limits and under the conditions set by the Council under the procedure laid down in Article 42.

28.2. The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key established in accordance with Article 29.

28.3. The Governing Council, acting by the qualified majority provided for in Article 10.3, shall determine the extent to which and the form in which the capital shall be paid up.

28.4. Subject to Article 28.5, the shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached.

28.5. If the key referred to in Article 29 is adjusted, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the adjusted key. The Governing Council shall determine the terms and conditions of such transfers.

Article 29. – *Key for capital subscription*

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

- 50% of the share of its respective Member State in the population of the Community in the penultimate year preceding the establishment of the ESCB;
- 50% of the share of its respective Member State in the gross domestic product at market prices of the Community as recorded in the last five years preceding the penultimate year before the establishment of the ESCB;

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

29.2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules adopted by the Council under the procedure provided for in Article 42.

29.3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the ESCB by analogy with the provisions laid down in Article 29.1. The adjusted key shall apply with effect from the first day of the following year.

29.4. The Governing Council shall take all other measures necessary for the application of this Article.

Article 30. – *Transfer of foreign reserve assets to the ECB*

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

30.2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the ECB.

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

30.4. Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB, in accordance with Article 30.2, within the limits and under the conditions set by the Council in accordance with the procedure laid down in Article 42.

30.5. The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets.

30.6. The Governing Council shall take all other measures necessary for the application of this Article.

Article 31. – *Foreign reserve assets held by national central banks*

31.1. The national central banks shall be allowed to perform transactions in fulfilment of their obligations towards international organizations in accordance with Article 23.

31.2. All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30, and Member States' transactions with their foreign exchange working balances shall, above a certain limit to be established within the framework of Article 31.3, be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Community.

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

Article 32. – *Allocation of monetary income of national central banks*

32.1. The income accruing to the national central banks in the performance of the ESCB's monetary policy function (hereinafter referred to as 'monetary income') shall be allocated at the end of each financial year in accordance with the provisions of this Article.

32.2. Subject to Article 32.3, the amount of each national central bank's monetary income shall be equal to its annual income derived from its assets held against notes in circulation and deposit liabilities to credit institutions. These assets shall be earmarked by national central banks in accordance with guidelines to be established by the Governing Council.

32.3. If, after the start of the third stage, the balance sheet structures of the national central banks do not, in the judgment of the Governing Council, permit the application of Article 32.2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from Article 32.2, monetary income shall be measured according to an alternative method for a period of not more than five years.

32.4. The amount of each national central bank's monetary income shall be reduced by an amount equivalent to any interest paid by that central bank on its deposit liabilities to credit institutions in accordance with Article 19.

The Governing Council may decide that national central banks shall be indemnified against costs incurred in connection with the issue of banknotes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the ESCB. Indemnification shall be in a form deemed appropriate in the judgment of the Governing Council; these amounts may be offset against the national central banks' monetary income.

32.5. The sum of the national central banks' monetary income shall be allocated to the national central banks in proportion to their paid-up shares in the capital of the ECB, subject to any decision taken by the Governing Council pursuant to Article 33.2.

32.6. The clearing and settlement of the balances arising from the allocation of monetary income shall be carried out by the ECB in accordance with guidelines established by the Governing Council.

32.7. The Governing Council shall take all other measures necessary for the application of this Article.

Article 33. – *Allocation of net profits and losses of the ECB*

33.1. The net profit of the ECB shall be transferred in the following order:

(a) an amount to be determined by the Governing Council, which may not exceed 20% of the net profit, shall be transferred to the general reserve fund subject to a limit equal to 100% of the capital;

(b) the remaining net profit shall be distributed to the shareholders of the ECB in proportion to their paid-up shares.

33.2. In the event of a loss incurred by the ECB, the shortfall may be offset against the general reserve fund of the ECB and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32.5.

Chapter VII - General provisions

Article 34. – *Legal acts*

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

– make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 or 25.2 and in cases which shall be laid down in the acts of the Council referred to in Article 42;

– take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and this Statute;

– make recommendations and deliver opinions.

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

Recommendations and opinions shall have no binding force.

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

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

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

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

Article 35. – *Judicial control and related matters*

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

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

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

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

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

35.6. The Court of Justice shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the ECB, the latter may bring the matter before the Court of Justice.

Article 36. – *Staff*

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

36.2. The Court of Justice shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.

Article 37. – *Seat*

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

Article 38. – *Professional secrecy*

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

38.2. Persons having access to data covered by Community legislation imposing an obligation of secrecy shall be subject to such legislation.

Article 39. – *Signatories*

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

Article 40. – *Privileges and immunities*

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

Chapter VIII - Amendment of the statute and complementary legislation

Article 41. – *Simplified amendment procedure*

41.1. In accordance with Article 106(5) of this Treaty, Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of this Statute may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission, or unanimously on a proposal from the Commission and after consulting the ECB. In either case the assent of the European Parliament shall be required.

41.2. A recommendation made by the ECB under this Article shall require a unanimous decision by the Governing Council.

Article 42. – *Complementary legislation*

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

Chapter IX - Transitional and other provisions for the ESCB

Article 43. – *General provisions*

43.1. A derogation as referred to in Article 109k(1) of this Treaty shall entail that the following Articles of this Statute shall not confer any rights or impose any obligations on the Member State concerned: 3, 6, 9.2, 12.1, 14.3, 16, 18, 19, 20, 22, 23, 26.2, 27, 30, 31, 32, 33, 34, 50 and 52.

43.2. The central banks of Member States with a derogation as specified in Article 109k(1) of this Treaty shall retain their powers in the field of monetary policy according to national law.

43.3. In accordance with Article 109k(4) of this Treaty, 'Member States' shall be read as 'Member States without a derogation' in the following Articles of this Statute: 3, 11.2, 19, 34.2 and 50.

43.4. 'National central banks' shall be read as 'central banks of Member States without a derogation' in the following Articles of this Statute: 9.2, 10.1, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and 52.

43.5. 'Shareholders' shall be read as 'central banks of Member States without a derogation' in Articles 10.3 and 33.1.

43.6. 'Subscribed capital of the ECB' shall be read as 'capital of the ECB subscribed by the central banks of Member States without a derogation' in Articles 10.3 and 30.2.

Article 44. – *Transitional tasks of the ECB*

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

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

Article 45. – *The General Council of the ECB*

45.1. Without prejudice to Article 106(3) of this Treaty, the General Council shall be constituted as a third decision-making body of the ECB.

45.2. The General Council shall comprise the President and Vice-President of the ECB and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.

45.3. The responsibilities of the General Council are listed in full in Article 47 of this Statute.

Article 46. – *Rules of procedure of the General Council*

46.1. The President or, in his absence, the Vice-President of the ECB shall chair the General Council of the ECB.

46.2. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the General Council.

46.3. The President shall prepare the meetings of the General Council.

46.4. By way of derogation from Article 12.3, the General Council shall adopt its Rules of Procedure.

46.5. The Secretariat of the General Council shall be provided by the ECB.

Article 47. – *Responsibilities of the General Council*

47.1. The General Council shall:

- perform the tasks referred to in Article 44;

- contribute to the advisory functions referred to in Articles 4 and 25.1.

47.2. The General Council shall contribute to:

- the collection of statistical information as referred to in Article 5;

- the reporting activities of the ECB as referred to in Article 15;

- the establishment of the necessary rules for the application of Article 26 as referred to in Article 26.4;

- the taking of all other measures necessary for the application of Article 29 as referred to in Article 29.4;

- the laying down of the conditions of employment of the staff of the ECB as referred to in Article 36.

47.3. The General Council shall contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the currencies, or the single currency, of the Member States without a derogation, as referred to in Article 109l(5) of this Treaty.

47.4. The General Council shall be informed by the President of the ECB of decisions of the Governing Council.

Article 48. – *Transitional provisions for the capital of the ECB*

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

Article 49. – *Deferred payment of capital, reserves and provisions of the ECB*

49.1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the ECB to the same extent as the central banks of other Member States without a derogation, and shall transfer to the ECB foreign reserve assets in accordance with Article 30.1. The sum to be transferred shall be determined by multiplying the ecu value at current exchange rates of the foreign reserve assets which have already been transferred to the ECB in accordance with Article 30.1, by the ratio between the number of shares subscribed by the national central bank concerned and the number of shares already paid up by the other national central banks.

49.2. In addition to the payment to be made in accordance with Article 49.1, the central bank concerned shall contribute to the reserves of the ECB, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December of the year prior to the abrogation of the derogation. The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the ECB, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already paid up by the other central banks.

Article 50. – *Initial appointment of the members of the Executive Board*

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

Article 51. – *Derogation from Article 32*

51.1. If, after the start of the third stage, the Governing Council decides that the application of Article 32 results in significant changes in national central banks' relative income positions, the amount of income to be allocated pursuant to Article 32 shall be reduced by a uniform percentage which shall not exceed 60% in the first financial year after the start of the third stage and which shall decrease by at least 12 percentage points in each subsequent financial year.

51.2. Article 51.1 shall be applicable for not more than five financial years after the start of the third stage.

– Article 52 - *Exchange of banknotes in Community currencies* - Following the irrevocable fixing of exchange rates, the Governing Council shall take the necessary measures to ensure that banknotes denominated in currencies with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

– Article 53 - *Applicability of the transitional provisions* - If and as long as there are Member States with a derogation Articles 43 to 48 shall be applicable.

PROTOCOL ON THE STATUTE OF THE EUROPEAN MONETARY INSTITUTE

THE HIGH CONTRACTING PARTIES,

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

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

Article 1. – *Constitution and name*

1.1. The European Monetary Institute (EMI) shall be established in accordance with Article 109f of this Treaty; it shall perform its functions and carry out its activities in accordance with the provisions of this Treaty and of this Statute.

1.2. The members of the EMI shall be the central banks of the Member States ('national central banks'). For the purposes of this Statute, the Institut monétaire luxembourgeois shall be regarded as the central bank of Luxembourg.

1.3. Pursuant to Article 109f of this Treaty, both the Committee of Governors and the European Monetary Cooperation Fund (EMCF) shall be dissolved. All assets and liabilities of the EMCF shall pass automatically to the EMI.

Article 2. – *Objectives*

The EMI shall contribute to the realization of the conditions necessary for the transition to the third stage of economic and monetary union, in particular by:

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

Article 3. – *General principles*

3.1. The EMI shall carry out the tasks and functions conferred upon it by this Treaty and this Statute without prejudice to the responsibility of the

competent authorities for the conduct of the monetary policy within the respective Member States.

3.2. The EMI shall act in accordance with the objectives and principles stated in Article 2 of the Statute of the ESCB.

Article 4. – *Primary tasks*

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

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

The EMI shall also:

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

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

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

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

- promote the efficiency of cross-border payments;
- supervise the technical preparation of ecu banknotes.

Article 5. – *Advisory functions*

5.1. In accordance with Article 109f(4) of this Treaty, the Council of the EMI may formulate opinions or recommendations on the overall orientation of monetary policy and exchange-rate policy as well as on related measures introduced in each Member State. The EMI may submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the EMS.

5.2. The Council of the EMI may also make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.

5.3. In accordance with Article 109f(6) of this Treaty, the EMI shall be consulted by the Council regarding any proposed Community act within its field of competence.

Within the limits and under the conditions set out by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall be consulted by the authorities of the Member States on any draft legislative provision within its field of competence, in particular with regard to Article 4.2.

5.4. In accordance with Article 109f(5) of this Treaty, the EMI may decide to publish its opinions and its recommendations.

Article 6. – *Operational and technical functions*

6.1. The EMI shall:

- provide for the multilateralization of positions resulting from interventions by the national central banks in Community currencies and the multilateralization of intra-Community settlements;
- administer the very short-term financing mechanism provided for by the Agreement of 13 March 1979 between the central banks of the Member States of the European Economic Community laying down the operating procedures for the European Monetary System (hereinafter referred to as 'EMS Agreement') and the short-term monetary support mechanism provided for in the Agreement between the central banks of the Member States of the European Economic Community of 9 February 1970, as amended;
- perform the functions referred to in Article 11 of Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments.

6.2. The EMI may receive monetary reserves from the national central banks and issue ecus against such assets for the purpose of implementing the EMS Agreement. These ecus may be used by the EMI and the national central banks as a means of settlement and for transactions between them and the EMI. The EMI shall take the necessary administrative measures for the implementation of this paragraph.

6.3. The EMI may grant to the monetary authorities of third countries and to international monetary institutions the status of 'other holders' of ecus and fix the terms and conditions under which such ecus may be acquired, held or used by other holders.

6.4. The EMI shall be entitled to hold and manage foreign exchange reserves as an agent for and at the request of national central banks. Profits and losses regarding these reserves shall be for the account of the national central bank depositing the reserves. The EMI shall perform this function on the basis of bilateral contracts in accordance with rules laid down in a decision of the EMI. These rules shall ensure that transactions with these reserves shall not interfere with the monetary policy and exchange-rate policy of the competent monetary authority of any Member State and shall be consistent with the objectives of the EMI and the proper functioning of the exchange-rate mechanism of the EMS.

Article 7. – *Other tasks*

7.1. Once a year the EMI shall address a report to the Council on the state of the preparations for the third stage. These reports shall include an assessment of the progress towards convergence in the Community, and cover in particular the adaptation of monetary policy instruments and the preparation of the procedures necessary for carrying out a single monetary policy in the third stage, as well as the statutory requirements to be fulfilled for national central banks to become an integral part of the ESCB.

7.2. In accordance with the Council decisions referred to in Article 109f(7) of this Treaty, the EMI may perform other tasks for the preparation of the third stage.

Article 8. – *Independence*

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

Article 9. – *Administration*

9.1. In accordance with the Article 109f(1) of this Treaty, the EMI shall be directed and managed by the Council of the EMI.

9.2. The Council of the EMI shall consist of a President and the Governors of the national central banks, one of whom shall be Vice-President. If a Governor is prevented from attending a meeting, he may nominate another representative of his institution.

9.3. The President shall be appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from, as the case may be, the Committee of Governors or the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognized standing and professional experience in monetary or banking matters. Only nationals of Member States may be President of the EMI. The Council of the EMI shall appoint the Vice-President. The President and Vice-President shall be appointed for a period of three years.

9.4. The President shall perform his duties on a full-time basis. He shall not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council of the EMI.

9.5. The President shall:

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

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

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

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

9.8. The Rules of Procedure of the EMI shall be adopted by the Council of the EMI.

Article 10. – *Meetings of the Council of the EMI and voting procedures*

10.1. The Council of the EMI shall meet at least 10 times a year. The proceedings of Council meetings shall be confidential. The Council of the EMI may, acting unanimously, decide to make the outcome of its deliberations public.

10.2. Each member of the Council of the EMI or his nominee shall have one vote.

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

10.4. Decisions to be taken in the context of Articles 4.2, 5.4, 6.2 and 6.3 shall require unanimity of the members of the Council of the EMI.

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

Article 11. – *Interinstitutional cooperation and reporting requirements*

11.1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Council of the EMI.

11.2. The President of the EMI shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the EMI.

11.3. At a date to be established in the Rules of Procedure, the EMI shall prepare an annual report on its activities and on monetary and financial conditions in the Community. The annual report, together with the annual accounts of the EMI, shall be addressed to the European Parliament, the Council and the Commission and also to the European Council.

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

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

Article 12. – *Currency denomination*

The operations of the EMI shall be expressed in ecus.

Article 13. – *Seat*

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

Article 14. – *Legal capacity*

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

Article 15. – *Legal acts*

15.1. In the performance of its tasks, and under the conditions laid down in this Statute, the EMI shall:

- deliver opinions;
- make recommendations;
- adopt guidelines, and take decisions, which shall be addressed to the national central banks.

15.2. Opinions and recommendations of the EMI shall have no binding force.

15.3. The Council of the EMI may adopt guidelines laying down the methods for the implementation of the conditions necessary for the ESCB to perform its functions in the third stage. EMI guidelines shall have no binding force; they shall be submitted for decision to the ECB.

15.4. Without prejudice to Article 3.1, a decision of the EMI shall be binding in its entirety upon those to whom it is addressed. Articles 190 and 191 of this Treaty shall apply to these decisions.

Article 16. – *Financial resources*

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

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

16.3. The Council of the EMI shall determine the form in which contributions shall be paid up.

Article 17. – *Annual accounts and auditing*

17.1. The financial year of the EMI shall begin on the first day of January and end on the last day of December.

17.2. The Council of the EMI shall adopt an annual budget before the beginning of each financial year.

17.3. The annual accounts shall be drawn up in accordance with the principles established by the Council of the EMI. The annual accounts shall be approved by the Council of the EMI and shall thereafter be published.

17.4. The annual accounts shall be audited by independent external auditors approved by the Council of the EMI. The auditors shall have full power to examine all books and accounts of the EMI and to obtain full information about its transactions.

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

17.5. Any surplus of the EMI shall be transferred in the following order:

(a) an amount to be determined by the Council of the EMI shall be transferred to the general reserve fund of the EMI;

(b) any remaining surplus shall be distributed to the national central banks in accordance with the key referred to in Article 16.2.

17.6. In the event of a loss incurred by the EMI, the shortfall shall be offset against the general reserve fund of the EMI. Any remaining shortfall shall be made good by contributions from the national central banks, in accordance with the key as referred to in Article 16.2.

Article 18. – *Staff*

18.1. The Council of the EMI shall lay down the conditions of employment of the staff of the EMI.

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

Article 19. – *Judicial control and related matters*

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

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

19.3. The EMI shall be subject to the liability regime provided for in Article 215 of this Treaty.

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

19.5. A decision of the EMI to bring an action before the Court of Justice shall be taken by the Council of the EMI.

Article 20. – *Professional secrecy*

20.1. Members of the Council of the EMI and the staff of the EMI shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

20.2. Persons having access to data covered by Community legislation imposing an obligation of secrecy shall be subject to such legislation.

Article 21. – *Privileges and immunities*

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

Article 22. – *Signatories*

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

Article 23. – *Liquidation of the EMI*

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

23.2. The mechanism for the creation of ecus against gold and US dollars as provided for by Article 17 of the EMS Agreement shall be unwound by the first day of the third stage in accordance with Article 20 of the said Agreement.

23.3. All claims and liabilities arising from the very short-term financing mechanism and the short-term monetary support mechanism, under the Agreements referred to in Article 6.1, shall be settled by the first day of the third stage.

23.4. All remaining assets of the EMI shall be disposed of and all remaining liabilities of the EMI shall be settled.

23.5. The proceeds of the liquidation described in Article 23.4 shall be distributed to the national central banks in accordance with the key referred to in Article 16.2.

23.6. The Council of the EMI may take the measures necessary for the application of Articles 23.4 and 23.5.

23.7. Upon the establishment of the ECB, the President of the EMI shall relinquish his office.

THE CHANGEOVER TO THE SINGLE CURRENCY:
CHRONOLOGICAL SEQUENCE OF EVENTS
EUROPEAN COUNCIL, MADRID DECEMBER 1995: ANNEX

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

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