

**Compendium
of
Community Monetary Texts
1994**

MONETARY COMMITTEE OF THE EUROPEAN COMMUNITY
Rue de la Loi 200
B-1049 Brussels

Cataloguing data can be found at the end of this publication

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I

EXTRACTS FROM THE TREATY

ESTABLISHING THE EUROPEAN COMMUNITY

1. ACTIVITIES OF THE COMMUNITY

Article 3

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

- (a) the elimination, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
- (b) a common commercial policy;
- (c) an internal market characterized by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
- (d) measures concerning the entry and movement of persons in the internal market as provided for in Article 100c;
- (e) a common policy in the sphere of agriculture and fisheries;
- (f) a common policy in the sphere of transport;
- (g) a system ensuring that competition in the internal market is not distorted;
- (h) the approximation of the laws of Member States to the extent required for the functioning of the common market;
- (i) a policy in the social sphere comprising a European Social Fund;
- (j) the strengthening of economic and social cohesion;
- (k) a policy in the sphere of the environment;
- (l) the strengthening of the competitiveness of Community industry;
- (m) the promotion of research and technological development;
- (n) encouragement for the establishment and development of trans-European networks;
- (o) a contribution to the attainment of a high level of health protection;
- (p) a contribution to education and training of quality and to the flowering of the cultures of the Member States;
- (q) a policy in the sphere of development cooperation;
- (r) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;
- (s) a contribution to the strengthening of consumer protection;
- (t) measures in the spheres of energy, civil protection and tourism.

Article 3a

1. For the purposes set out in Article 2, the activities of the Member States and the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the

internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

2. Concurrently with the foregoing, and as provided in this Treaty and in accordance with the timetable and the procedures set out therein, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.

3. These activities of the Member States and the Community shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

2. CAPITAL AND PAYMENTS¹

Article 67

1. During the transitional period and to the extent necessary to ensure the proper functioning of the common market, Member States shall progressively abolish between themselves all restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.
2. Current payments connected with the movement of capital between Member States shall be freed from all restrictions by the end of the first stage at the latest.

Article 68

1. Member States shall, as regards the matters dealt with in this Chapter, be as liberal as possible in granting such exchange authorizations as are still necessary after the entry into force of this Treaty.
2. Where a Member State applies to the movements of capital liberalized in accordance with the provisions of this Chapter the domestic rules governing the capital market and the credit system, it shall do so in a non-discriminatory manner.
3. Loans for the direct or indirect financing of a Member State or its regional or local authorities shall not be issued or placed in other Member States unless the States concerned have reached agreement thereon. This provision shall not preclude the application of Article 22 of the Protocol on the Statute of the European Investment Bank.

Article 69

The Council shall, on a proposal from the Commission, which for its purpose shall consult the Monetary Committee provided for in Article 105, issue the necessary directives for the progressive implementation of the provisions of Article 67, acting unanimously during the first two stages and by a qualified majority thereafter.

Article 70

1. The Commission shall propose to the Council measures for the progressive coordination of the exchange policies of Member States in respect of the movement of capital between those States and third countries. For this purpose the Council shall issue directives, acting by a qualified majority. It shall endeavour to attain the highest possible degree of liberalization. Unanimity shall be required for measures which constitute a step back as regards the liberalization of capital movements.
2. Where the measures taken in accordance with paragraph 1 do not permit the elimination of differences between the exchange rules of Member States and where such differences could lead persons resident in

¹ See also Council Directive 88/361/EEC on capital movements in Chapter V.3.

one of the Member States to use the freer transfer facilities within the Community which are provided for in Article 67 in order to evade the rules of one of the Member States concerning the movement of capital to or from third countries, that State may, after consulting the other Member States and the Commission, take appropriate measures to overcome these difficulties.

Should the Council find that these measures are restricting the free movement of capital within the Community to a greater extent than is required for the purpose of overcoming the difficulties, it may, acting by a qualified majority on a proposal from the Commission, decide that the State concerned shall amend or abolish these measures.

Article 71

Member States shall endeavour to avoid introducing within the Community any new exchange restrictions on the movement of capital and current payments connected with such movements, and shall endeavour not to make existing rules more restrictive.

They declare their readiness to go beyond the degree of liberalization of capital movements provided for in the preceding Articles in so far as their economic situation, in particular the situation of their balance of payments, so permits.

The Commission may, after consulting the Monetary Committee, make recommendations to Member States on this subject.

Article 72

Member States shall keep the Commission informed of any movements of capital to and from third countries which come to their knowledge. The Commission may deliver to Member States any opinions which it considers appropriate on this subject.

Article 73

1. If movements of capital lead to disturbances in the functioning of the capital market in any Member State, the Commission shall, after consulting the Monetary Committee, authorize that State to take protective measures in the field of capital movements, the conditions and details of which the Commission shall determine. The Council may, acting by a qualified majority, revoke this authorization or amend the conditions or details thereof.

2. A Member State which is in difficulties may, however, on grounds of secrecy or urgency, take the measures mentioned above, where this proves necessary, on its own initiative. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. In this event the Commission may, after consulting the Monetary Committee, decide that the State concerned shall amend or abolish the measures.

Article 73a

As from 1 January 1994, Articles 67 to 73 shall be replaced by Articles 73b, c, d, e, f and g.

Article 73b

1. Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

Article 73c

1. The provisions of Article 73b shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Community law adopted in respect of the movement of capital to or from third countries involving direct investment — including in real estate — establishment, the provision of financial services or the admission of securities to capital markets.

2. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other Chapters of this Treaty, the Council may, acting by a qualified majority on a proposal from the Commission, adopt measures on the movement of capital to or from third countries involving direct investment — including investment in real estate — establishment, the provision of financial services or the admission of securities to capital markets. Unanimity shall be required for measures under this paragraph which constitute a step back in Community law as regards the liberalization of the movement of capital to or from third countries.

Article 73d

1. The provisions of Article 73b shall be without prejudice to the right of Member States:

- (a) to apply the relevant provisions of their tax law which distinguish between tax-payers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
- (b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. The provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with this Treaty.

3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 73b.

Article 73e

By way of derogation from Article 73b, Member States which, on 31 December 1993, enjoy a derogation on the basis of existing Community law, shall be entitled to maintain, until 31 December 1995 at the latest, restrictions on movements of capital authorized by such derogations as exist on that date.

Article 73f

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary.

Article 73g

1. If, in the cases envisaged in Article 228a, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 228a, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.

2. Without prejudice to Article 224 and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest.

The Council may, acting by a qualified majority on a proposal from the Commission, decide that the Member State concerned shall amend or abolish such measures. The President of the Council shall inform the European Parliament of any such decision taken by the Council.

Article 73b

Until 1 January 1994, the following provisions shall be applicable:

- (1) Each Member State undertakes to authorize, in the currency of the Member State in which the creditor or the beneficiary resides, any payments connected with the movement of goods, services or capital, and any transfers of capital and earnings, to the extent that the movement of goods, services, capital and persons between Member States has been liberalized pursuant to this Treaty. The Member States declare their readiness to undertake the liberalization of payments beyond the extent provided in the preceding subparagraph, in so far as their economic situation in general and the state of their balance of payments in particular so permit.
- (2) In so far as movements of goods, services and capital are limited only by restrictions on payments connected therewith, these restrictions shall be progressively abolished by applying, *mutatis mutandis*, the provisions of this Chapter and the Chapters relating to the abolition of quantitative restrictions and to the liberalization of services.
- (3) Member States undertake not to introduce between themselves any new restrictions on transfers connected with the invisible transactions listed in Annex III to this Treaty. The progressive abolition of existing restrictions shall be effected in accordance with the provisions of Articles 63 to 65, in so far as such abolition is not governed by the provisions contained in paragraphs 1 and 2 or by the other provisions of this Chapter.
- (4) If need be, Member States shall consult each other on the measures to be taken to enable the payments and transfers mentioned in this Article to be effected; such measures shall not prejudice the attainment of the objectives set out in this Treaty.

3. ECONOMIC AND MONETARY POLICY

(a) Economic policy

Article 102a

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

Article 103

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

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

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

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

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

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

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

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

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

Article 103a

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

Article 104

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

Article 104a

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

Article 104b

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

Article 104c

1. Member States shall avoid excessive government deficits.
2. The Commission shall monitor the development of the budgetary situation and of the stock of

government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:

- (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless
 - either the ratio has declined substantially and continuously and reached a level that comes close to the reference value;
 - or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
- (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

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

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

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

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

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

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

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

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

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

In such 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.

(b) Monetary policy

Article 105

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

2. The basic tasks to be carried out through the ESCB shall be:

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

3. The third indent of paragraph 2 shall be without prejudice to the holding and management by the governments of Member States of foreign exchange working balances.

4. The ECB shall be consulted:

- on any proposed Community act in its fields of competence,
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 106(6).

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

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

6. The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning

policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Article 105a

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

(c) 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 application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination. The Member States and the Commission shall each appoint two members of the Monetary Committee.
2. At the start of the third stage, an Economic and Financial Committee shall be set up. The Monetary Committee provided for in paragraph 1 shall be dissolved. The Economic and Financial Committee shall have the following tasks:
- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions,
 - to keep under review the economic and financial situation of the Member States and of the Community and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions,
 - without prejudice to Article 151, to contribute to the preparation of the work of the Council referred to in Articles 73f, 73g, 103(2), (3), (4) and (5), 103a, 104a, 104b, 104c, 105(6), 105a(2), 106(5) and (6), 109, 109h, 109i(2) and (3), 109k(2), 109l(4) and (5), and to carry out other advisory and preparatory tasks assigned to it by the Council,
 - to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination. The Member States, the Commission and the ECB shall each appoint no more than two members of the Committee.
3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the ECB and the Committee referred to in this Article, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.
4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Articles 109k and 109l, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

Article 109d

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

(d) Transitional provisions

Article 109e

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

2. Before that date:

(a) each Member State shall

- adopt, where necessary, appropriate measures to comply with the prohibitions laid down in Article 73b, without prejudice to Article 73e, and in Articles 104 and 104a(1),
- adopt, if necessary, with a view to permitting the assessment provided for in subparagraph (b), multiannual programmes intended to ensure the lasting convergence necessary for the achievement of economic and monetary union, in particular with regard to price stability and sound public finances;

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

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

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

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

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

Article 109f

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

The President shall be appointed by common accord of the Governments of the Member States at the level of Heads of State or 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 bank notes.

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

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

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

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

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

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

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

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

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

Article 109g

The currency composition of the ECU basket shall not be changed. From the start of the third stage, the value of the ECU shall be irrevocably fixed in accordance with Article 109I(4).

Article 109b

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.

4. PROTOCOLS CONCERNING ECONOMIC AND MONETARY POLICY

(a) PROTOCOL ON THE EXCESSIVE DEFICIT PROCEDURE

The High Contracting Parties,

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

Have agreed upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

Article 1

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

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

Article 2

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

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

Article 3

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

Article 4

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

(b) PROTOCOL ON THE CONVERGENCE CRITERIA REFERRED TO IN ARTICLE 109J OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

The High Contracting Parties,

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

Have agreed upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

Article 1

The criterion on price stability referred to in the first indent of Article 109j(1) of this Treaty shall mean that a Member State has a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1.5 percentage points that of, at most, the three best performing Member States in terms of price stability. Inflation shall be measured by means of the consumer price index on a comparable basis, taking into account differences in national definitions.

Article 2

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

Article 3

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

Article 4

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

Article 5

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

Article 6

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

(c) PROTOCOL ON THE TRANSITION TO THE THIRD STAGE OF ECONOMIC AND MONETARY UNION

The High Contracting Parties,

Declare the irreversible character of the Community's movement to the third stage of economic and monetary union by signing the new Treaty provisions on economic and monetary union.

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

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

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

(d) PROTOCOL ON CERTAIN PROVISIONS RELATING TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The High Contracting Parties,

Recognizing that the United Kingdom shall not be obliged or committed to move to the third stage of economic and monetary union without a separate decision to do so by its Government and Parliament,

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

Have agreed the following provisions, which shall be annexed to the Treaty establishing the European Community:

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

Unless the United Kingdom notifies the Council that it intends to move to the third stage, it shall be under no obligation to do so. If no date is set for the beginning of the third stage under Article 109j(3) of this Treaty, the United Kingdom may notify its intention to move to the third stage before 1 January 1998.

2. Paragraphs 3 to 9 shall have effect if the United Kingdom notifies the Council that it does not intend to move to the third stage.

3. The United Kingdom shall not be included among the majority of Member States which fulfil the necessary conditions referred to in the second indent of Article 109j(2) and the first indent of Article 109j(3) of this Treaty.

4. The United Kingdom shall retain its powers in the field of monetary policy according to national law.

5. Articles 3a(2), 104c(1), (9) and (11), 105(1) to (5), 105a, 107, 108, 108a, 109, 109a(1) and (2)(b) and 109l(4) and (5) of this Treaty shall not apply to the United Kingdom. In these provisions references to the Community or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.

6. Articles 109e(4) and 109h and 109i of this Treaty shall continue to apply to the United Kingdom. Articles 109c(4) and 109m shall apply to the United Kingdom as if it had a derogation.

7. The voting rights of the United Kingdom shall be suspended in respect of acts of the Council referred to in the Articles listed in paragraph 5. For this purpose the weighted votes of the United Kingdom shall be excluded from any calculation of a qualified majority under Article 109k(5) of this Treaty.

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

8. Articles 3, 4, 6, 7, 9.2, 10.1, 10.3, 11.2, 12.1, 14, 16, 18 to 20, 22, 23, 26, 27, 30 to 34, 50 and 52 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank ('the Statute') shall not apply to the United Kingdom. In those Articles, references to the Community or the Member States shall not include the United Kingdom and references to national central banks or shareholders shall not include the Bank of England.

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

9. Article 109l(3) of this Treaty and Articles 44 to 48 of the Statute shall have effect, whether or not there is any Member State with a derogation, subject to the following amendments:

- (a) References in Article 44 to the tasks of the ECB and the EMI shall include those tasks that still need to be performed in the third stage owing to any decision of the United Kingdom not to move to that stage.
- (b) In addition to the tasks referred to in Article 47 the ECB shall also give advice in relation to and contribute to the preparation of any decision of the Council with regard to the United Kingdom taken in accordance with paragraphs 10(a) and 10(c).
- (c) The Bank of England shall pay up its subscription to the capital of the ECB as a contribution to its operational costs on the same basis as national central banks of Member States with a derogation.

10. If the United Kingdom does not move to the third stage, it may change its notification at any time after the beginning of that stage. In that event:

- (a) The United Kingdom shall have the right to move to the third stage provided only that it satisfies the necessary conditions. The Council, acting at the request of the United Kingdom and under the conditions and in accordance with the procedure laid down in Article 109k(2) of this Treaty, shall decide whether it fulfils the necessary conditions.
- (b) The Bank of England shall pay up its subscribed capital, transfer to the ECB foreign reserve assets and contribute to its reserves on the same basis as the national central bank of a Member State whose derogation has been abrogated.
- (c) The Council, acting under the conditions and in accordance with the procedure laid down in Article 109l(5) of this Treaty, shall take all other necessary decisions to enable the United Kingdom to move to the third stage.

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

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

(e) PROTOCOL ON CERTAIN PROVISIONS RELATING TO DENMARK

The High Contracting Parties,

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

Taking into account that the Danish Constitution contains provisions which may imply a referendum in Denmark prior to Danish participation in the third stage of economic and monetary union,

Have agreed on the following provisions, which shall be annexed to the Treaty establishing the European Community:

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

Extracts from the conclusions of the Presidency — Edinburgh, 1992

1. The Protocol on certain provisions relating to Denmark attached to the Treaty establishing the European Community gives Denmark the right to notify the Council of the European Communities of its position concerning participation in the third stage of economic and monetary union. Denmark has given notification that it will not participate in the third stage. This notification will take effect upon the coming into effect of this decision.
2. As a consequence, Denmark will not participate in the single currency, will not be bound by the rules concerning economic policy which apply to the Member States participating in the third stage of economic and monetary union, and will retain its existing powers in the field of monetary policy according to its national laws and regulations, including powers of the National Bank of Denmark in the field of monetary policy.
3. Denmark will participate fully in the second stage of economic and monetary union and will continue to participate in exchange-rate cooperation within the EMS.

5. QUALIFIED MAJORITY VOTING

Article 148 as amended by the Act relating to the accession of Austria, Finland and Sweden

1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its members.
2. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows:

Belgium	5
Denmark	3
Germany	10
Greece.....	5
Spain.....	8
France	10
Ireland	3
Italy	10
Luxembourg.....	2
Netherlands	5
Austria	4
Portugal.....	5
Finland.....	3
Sweden.....	4
United Kingdom.....	10

For their adoption, acts of the Council shall require at least:

- 62 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,
- 62 votes in favour, cast by at least 10 members, in other cases.

3. Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which required unanimity.

6. PROCEDURES LEADING TO THE ADOPTION OF A COMMUNITY ACT

Article 189

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.

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

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

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

Recommendations and opinions shall have no binding force.

Article 189a

1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, subject to Article 189b(4) and (5).

2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

Article 189b

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, shall adopt a common position. The common position shall be communicated to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

- (a) approves the common position, the Council shall definitively adopt the act in question in accordance with that common position;
- (b) has not taken a decision, the Council shall adopt the act in question in accordance with its common position;
- (c) indicates, by an absolute majority of its component members, that it intends to reject the common position, it shall immediately inform the Council. The Council may convene a meeting of the Conciliation Committee referred to in paragraph 4 to explain further its position. The European Parliament shall thereafter either confirm, by an absolute majority of its component members, its

rejection of the common position, in which event the proposed act shall be deemed not to have been adopted, or propose amendments in accordance with subparagraph (d) of this paragraph;

(d) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, it shall amend its common position accordingly and adopt the act in question; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve the act in question, the President of the Council, in agreement with the President of the European Parliament, shall forthwith convene a meeting of the Conciliation Committee.

4. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If one of the two institutions fails to approve the proposed act, it shall be deemed not to have been adopted.

6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted unless the Council, acting by a qualified majority within six weeks of expiry of the period granted to the Conciliation Committee, confirms the common position to which it agreed before the conciliation procedure was initiated, possibly with amendments proposed by the European Parliament. In this case, the act in question shall be finally adopted unless the European Parliament, within six weeks of the date of confirmation by the Council, rejects the text by an absolute majority of its component members, in which case the proposed act shall be deemed not to have been adopted.

7. The periods of three months and six weeks referred to in this Article may be extended by a maximum of one month and two weeks respectively by common accord of the European Parliament and the Council. The period of three months referred to in paragraph 2 shall be automatically extended by two months where paragraph 2(c) applies.

8. The scope of the procedure under this Article may be widened, in accordance with the procedure provided for in Article N(2) of the Treaty on European Union, on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest.

Article 189c

Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply:

(a) The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.

(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position. If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

- (c) The European Parliament may, within the period of three months referred to in point (b), by an absolute majority of its component members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

- (d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them.

The Council may adopt these amendments unanimously.

- (e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission. Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

- (f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months.

If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

- (g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.

II

SECONDARY LEGISLATION

1. PROHIBITION OF MONETARY FINANCING

Council Regulation (EC) No 3603/93

of 13 December 1993

**specifying definitions for the application of the prohibitions referred to
in Articles 104 and 104b(1) of the Treaty**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104b(2) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Whereas Articles 104 and 104b(1) of the Treaty are directly applicable; whereas the terms featuring in Articles 104 and 104b(1) may be specified, if necessary;

Whereas the terms 'overdraft facilities' and 'other types of credit facility' used in Article 104 of the Treaty should be defined, particularly with reference to the treatment of claims existing at 1 January 1994;

Whereas it is desirable that the national central banks participating in the third stage of economic and monetary union should enter such union having on their balance sheets claims negotiable under market conditions, in particular to give the required flexibility to the monetary policy of the European System of Central Banks and to permit a standard contribution from the various national central banks participating in monetary union to the monetary income to be distributed among them;

Whereas the central banks which, after 1 January 1994, still hold claims against the public sector which are non-negotiable or are subject to conditions which are not market conditions should be authorized subsequently to convert such claims into negotiable fixed-maturity securities under market conditions;

Whereas paragraph 11 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland stipulates that the Government of the United Kingdom may maintain its 'ways and means' facility with the Bank of England if and so long as the United Kingdom does not move to the third stage; whereas it is appropriate to make provision for the conversion of the amount of this facility into marketable debt at a fixed maturity and on market terms if the United Kingdom moves to stage three of EMU;

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

Whereas Member States must take appropriate measures to ensure that the prohibitions referred to in Article 104 of the Treaty are applied effectively and fully; whereas, in particular, purchases made on the secondary market must not be used to circumvent the objective of that Article;

Whereas, within the limits laid down in this Regulation, the direct acquisition by the central bank of one Member State of marketable debt instruments issued by the public sector of another Member State does

not help to shield the public sector from the discipline of market mechanisms where such purchases are conducted for the sole purpose of managing foreign exchange reserves;

Whereas, notwithstanding the role assigned to the Commission pursuant to Article 169 of the Treaty, it is for the European Monetary Institute and, thereafter, for the European Central Bank, pursuant to Articles 109f(9) and 180 of the Treaty, to ensure that national central banks honour the obligations laid down by the Treaty;

Whereas intra-day credits by the central banks may assist the smooth operation of payment systems; whereas, therefore, intra-day credits in the public sector are compatible with the objectives of Article 104 of the Treaty, provided that no extension to the following day is possible;

Whereas the function of fiscal agent exercised by the central banks should not be impeded; whereas, even if clearing by the central banks of cheques issued by third parties for the public sector's account may occasionally involve a credit, Article 104 of the Treaty should not be regarded as prohibiting such operations, provided that they do not result overall in a credit for the public sector;

Whereas the holding by the central banks of coins issued by the public sector and credited to the public sector constitutes an interest-free form of credit for the public sector; whereas, however, if only limited amounts are involved, this practice does not interfere with the principle of Article 104 of the Treaty; whereas, therefore, in view of the difficulties which would arise from total prohibition of this form of credit, it may be permitted within the limits laid down in this Regulation;

Whereas, following unification, the Federal Republic of Germany has particular difficulty in complying with the limit set on such assets; whereas it is appropriate in those circumstances to authorize a higher percentage for a limited period;

Whereas the financing by the central banks of obligations falling upon the public sector *vis-à-vis* the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up within the Community results in foreign claims which have all the characteristics of reserve assets; whereas it is, therefore, appropriate to authorize them;

Whereas public undertakings are covered by the prohibition in Articles 104 and 104b(1); whereas they are defined in Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of Article 104 of the Treaty:

- (a) 'overdraft facilities' means any provision of funds to the public sector resulting or likely to result in a debit balance;
- (b) 'other type of credit facility' means:
 - (i) any claim against the public sector existing at 1 January 1994, except for fixed-maturity claims acquired before that date;
 - (ii) any financing of the public sector's obligations *vis-à-vis* third parties;
 - (iii) without prejudice to Article 104(2) of the Treaty, any transaction with the public sector resulting or likely to result in a claim against that sector.

2. The following shall not be regarded as 'debt instruments' within the meaning of Article 104 of the Treaty: securities acquired from the public sector to ensure the conversion into negotiable fixed-maturity securities under market conditions of:

- fixed-maturity claims acquired before 1 January 1994 which are not negotiable or not under market conditions, provided that the maturity of the securities is not subsequent to that of the aforementioned claims,
- the amount of the 'ways and means' facility maintained by the United Kingdom Government with the Bank of England until the date, if any, on which the United Kingdom moves to stage three of EMU.

Article 2

1. During stage two of EMU, purchases by the national central bank of one Member State of marketable debt instruments issued by the public sector of another Member State shall not be considered direct purchases within the meaning of Article 104 of the Treaty, provided that such purchases are conducted for the sole purpose of managing foreign exchange reserves.

2. During stage three of EMU, the following purchases conducted for the sole purpose of managing foreign exchange reserves shall not be considered direct purchases within the meaning of Article 104 of the Treaty:

- purchases by the national central bank of a Member State not participating in stage three of EMU, from the public sector of another Member State, of marketable debt instruments of the latter,
- purchases by the European Central Bank or the national central bank of a Member State participating in stage three of EMU, from the public sector of a Member State not participating in stage three, of marketable debt instruments of the latter.

Article 3

For the purposes of this Regulation, 'public sector' means Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States.

'National central banks' means the central banks of the Member States and the Luxembourg Monetary Institute.

Article 4

Intra-day credits by the European Central Bank or the national banks to the public sector shall not be considered as a credit facility within the meaning of Article 104 of the Treaty, provided that they remain limited to the day and that no extension is possible.

Article 5

Where the European Central Bank or the national central banks receive from the public sector, for collection, cheques issued by third parties and credit the public sector's account before the drawee bank has been debited, this operation shall not be considered as a credit facility within the meaning of Article 104 of the Treaty if a fixed period of time corresponding to the normal period for the collection of cheques by the central bank of the Member State concerned has elapsed since receipt of the cheque, provided that any float which may arise is exceptional, is of a small amount and averages out in the short term.

Article 6

The holding by the European Central Bank or the national central banks of coins issued by the public sector and credited to the public sector shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty where the amount of these assets remains at less than 10% of the coins in circulation. Until 31 December 1996, this figure shall be 15% for Germany.

Article 7

The financing by the European Central Bank or the national central banks of obligations falling upon the public sector *vis-à-vis* the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up by Regulation (EEC) No 1969/88 shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty.

Article 8

1. For the purposes of Articles 104 and 104b(1) of the Treaty, 'public undertaking' shall be defined as any undertaking over which the State or other regional or local authorities may directly or indirectly exercise a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it.

A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

- (a) hold the major part of the undertaking's subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking; or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

2. For the purposes of Articles 104 and 104b(1) of the Treaty, the European Central Bank and the national central banks do not form part of the public sector.

Article 9

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels, 13 December 1993.

For the Council
The President
Ph. MAYSTADT

2. PROHIBITION OF PRIVILEGED ACCESS

Council Regulation (EC) No 3604/93

of 13 December 1993

specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104a(2) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Whereas the prohibition of privileged access to financial institutions, as laid down in Article 104a of the Treaty, forms an essential element of the submission of the public sector in its financing operations to the discipline of the market mechanism and so makes a contribution to the strengthening of budgetary discipline; whereas, moreover, it places the Member States on an equal footing as regards public sector access to financial institutions;

Whereas the Council must specify definitions for the application of such prohibition;

Whereas the Member States and the Community must act with due regard for the principle of an open market economy in which there is free competition;

Whereas, in particular, this Regulation cannot affect the methods for organizing markets complying with that principle;

Whereas this Regulation does not seek to interfere with any operation of public financial institutions complying with the same principle;

Whereas Article 104a of the Treaty prohibits measures establishing privileged access; whereas the types of acts concerned by this prohibition should be specified; whereas the commitments freely made by financial institutions in the framework of contractual relations unquestionably cannot be affected;

Whereas the same Article provides that prudential considerations may justify departure from the principle of this prohibition; whereas laws, regulations or administrative actions may not, however, under the cover of prudential consideration, be used to establish disguised privileged access;

Whereas public undertakings are covered by the same prohibition; whereas they are defined in Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between the Member States and public undertakings;

Whereas, for reasons of monetary policy, financial institutions and, in particular, credit institutions may be obliged to hold claims against the European Central Bank and/or national central banks;

Whereas the European Central Bank and national central banks may not, as public authorities, take measures establishing privileged access; whereas the rules on mobilization or pledging of debt instruments enacted by the European Central Bank or by national central banks must not be used as a means of circumventing the prohibition of privileged access;

Whereas, in order to avoid any circumvention of the prohibition, the definitions in Community law of the various types of financial institution should be supplemented by a reference to those institutions engaging in financial activities which have not yet been harmonized at Community level, such as, for instance, branches of third-country establishments, holding and factoring companies, uncoordinated undertakings for collective investment in transferable securities (UCITS), institutions for retirement provision, etc.,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of Article 104a of the Treaty, 'any measure establishing privileged access' shall be defined as any law, regulation or any other binding legal instrument adopted in the exercise of public authority which:

- obliges financial institutions to acquire or to hold liabilities 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 (hereinafter referred to as 'public sector'), or
- confers tax advantages which may benefit only financial institutions or financial advantages which do not comply with the principles of a market economy, in order to encourage the acquiring or the holding by those institutions of such liabilities.

2. Privileged access shall not be regarded as being established by those measures which give rise to:

- obligations for funding social housing under special terms such as, *inter alia*, an obligation to centralize funds with public financial institutions, when the funding terms prevailing for the public sector are identical to those for funding of the same nature granted to private borrowers for the same purposes,
- the obligation to centralize funds with a public credit institution, in so far as such a constraint is an integral part, as at 1 January 1994, of the organization of a particular network of credit institutions or of specific savings arrangements designed for households and intended to provide the whole of the network or the specific arrangements with financial security. The use of such centralized funds must be determined by the management bodies of the public credit institution concerned and comply with the principle of a market economy where there is free competition,
- obligations to finance the repair of disaster damage, provided that the conditions for financing repairs are not more favourable when damage is sustained by the public sector than when it is sustained by the private sector.

Article 2

For the purposes of Article 104a of the Treaty, 'prudential considerations' shall be those which underlie national laws, regulations or administrative actions based on, or consistent with, EC law and designed to promote the soundness of financial institutions so as to strengthen the stability of the financial system as a whole and the protection of the customers of those institutions.

Article 3

1. For the purposes of Article 104a of the Treaty, 'public undertaking' shall be defined as any undertaking over which the State or other regional or local authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it.

A dominant influence on the part of the State or other regional or local authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

- (a) hold the major part of the undertaking's subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking; or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

2. Without prejudice to their obligation as public authorities not to take measures establishing privileged access within the meaning of Article 104a of the Treaty, the European Central Bank and the national central banks shall not, for the purposes of this Article, be considered as forming part of the public sector.

3. 'National central banks' means the central banks of the Member States and the Luxembourg Monetary Institute.

Article 4

1. For the purposes of Article 104a of the Treaty, 'financial institutions' means:

- credit institutions as defined in the first indent of Article 1 of Directive 77/780/EEC,
- insurance undertakings as defined in Article 1, point (a) of Directive 92/49/EEC,
- assurance undertakings as defined in Article 1, point (a) of Directive 92/96/EEC,
- UCITS as defined in Article 1(2) of Directive 85/611/EEC,
- investment firms as defined in Article 1(2) of Directive 93/22/EEC,
- other undertakings the activities of which are similar to those of the undertakings referred to in the previous indents or the principal activity of which is to acquire holdings of financial assets or to transform financial claims.

2. The following institutions do not form part of the financial institutions defined in paragraph 1:

- the European Central Bank and national central banks,
- post office financial services when they form part of the general government sector defined in accordance with the European System of Integrated Economic Accounts or when their main activity is to act as the financial agent of government, and
- the institutions which are part of the general government sector defined in accordance with the European System of Integrated Economic Accounts or the liabilities of which correspond completely to a public debt.

Article 5

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels, 13 December 1993.

For the Council
The President
Ph. MAYSTADT

3. EXCESSIVE DEFICIT PROCEDURE

Council Regulation (EC) No 3605/93

of 22 November 1993

**on the application of the Protocol on the excessive deficit procedure
annexed to the Treaty establishing the European Community**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 104c(14) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the definitions of 'government', 'deficit' and 'investment' are laid down in the Protocol on the excessive deficit procedure by reference to the European System of Integrated Economic Accounts (ESA); whereas precise definitions referring to the classification codes of ESA are required; whereas these definitions may be subject to revision in the context of the necessary harmonization of national statistics or for other reasons; whereas any revision of ESA will be decided by the Council in accordance with the rules on competence and procedure laid down in the Treaty;

Whereas the definition of 'debt' laid down in the Protocol on the excessive deficit procedure needs to be amplified by a reference to the classification codes of ESA;

Whereas Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices provides an adequate, detailed definition of gross domestic product at market prices;

Whereas, pursuant to the terms of the Protocol on the excessive deficit procedure, the Commission is required to provide the statistical data to be used in that procedure;

Whereas detailed rules are required to organize the prompt and regular reporting by the Member States to the Commission of their planned and actual deficits and of the levels of their debt;

Whereas, pursuant to Article 104c(2) and (3) of the Treaty, the Commission is to monitor the development of the budgetary situation and of the stock of government debt in the Member States and to examine compliance with budgetary discipline on the basis of criteria relating to government deficit and government debt;

Whereas, if a Member State does not fulfil the requirements under one or both criteria, the Commission must take into account all relevant factors; whereas the Commission has to examine whether there is a risk of an excessive deficit in a Member State,

HAS ADOPTED THIS REGULATION:

Section 1: Definitions

Article 1

1. For the purposes of the Protocol on the excessive deficit procedure and of this Regulation, the terms given in the following paragraphs are defined according to the European System of Integrated Economic Accounts (ESA). The codes in brackets refer to ESA, second edition.

2. 'Government' means the sector of general government (S60), that is central government (S61), local government (S62) and social security funds (S63), to the exclusion of commercial operations, as defined in ESA.

The exclusion of commercial operations means that the sector of general government (S60) comprises only institutional units producing non-market services as their main activity.

3. 'Government deficit (surplus)' means the net borrowing (net lending) (N5) of the sector of general government (S60), as defined in ESA. The interest comprised in the government deficit is the sum of interest (R41), as defined in ESA.

4. 'Government investment' means the gross fixed capital formation (P41) of the sector of general government (S60), as defined in ESA.

5. 'Government debt' means the total gross debt at nominal value outstanding at the end of the year of the sector of general government (S60), with the exception of those liabilities the corresponding financial assets of which are held by the sector of general government (S60).

Government debt is constituted by the liabilities of general government in the following categories: currency and deposits (F20 and F30), bills and short-term bonds (F40), long-term bonds (F50), other short-term loans (F79) and other medium and long-term loans (F89) as defined in ESA.

The nominal value of a liability outstanding at the end of the year is the face value.

The nominal value of an index-linked liability corresponds to its face value adjusted by the index-related capital uplift accrued to the end of the year.

Liabilities denominated in foreign currencies shall be converted into the national currency at the representative market exchange rate prevailing on the last working day of each year.

Article 2

Gross domestic product means gross domestic product at market prices (GDP mp), as defined in Article 2 of Directive 89/130/EEC, Euratom.

Article 3

1. Planned government deficit figures mean the figures established for the current year by the Member States consistent with the most recent decisions of their budgetary authorities.

2. Actual government deficit and government debt level figures mean estimated, provisional, half-finalized or final results for a past year.

Section 2: Rules and coverage of reporting

Article 4

1. As from the beginning of 1994, Member States shall report to the Commission their planned and actual government deficits and levels of government debt twice a year, the first time before 1 March of the current year (year n) and the second time before 1 September of year n.
2. Before 1 March of year n, Member States:
 - shall report to the Commission their planned government deficit for year n, an up-to-date estimate of their actual government deficit for year n-1 and their actual government deficits for years n-2, n-3 and n-4,
 - shall simultaneously provide the Commission for years n, n-1 and n-2 with their corresponding public accounts budget deficits according to the definition which is given most prominence nationally and with the figures which explain the transition between this public accounts budget deficit and their government deficit. The figures explaining this transition which are provided to the Commission shall include, in particular, the figures for net borrowing of the subsectors S61, S62 and S63,
 - shall report to the Commission their estimate of the level of actual government debt at the end of year n-1 and their levels of actual government debt for years n-2, n-3 and n-4,
 - shall simultaneously provide the Commission for years n-1 and n-2 with the figures which explain the contributions of their government deficit and the other relevant factors contributing to the variation in the level of their government debt.
3. Before 1 September of year n, Member States shall report to the Commission:
 - their updated planned government deficit for year n and their actual government deficits for years n-1, n-2, n-3 and n-4 and shall comply with the requirements of the second indent of paragraph 2,
 - their actual level of government debt for years n-1, n-2, n-3 and n-4, and shall comply with the requirements of the fourth indent of paragraph 2.
4. The figures for the planned government deficit reported to the Commission in accordance with paragraphs 2 and 3 shall be expressed in national currency and in budget years.

The figures for actual government deficit and actual government debt level reported to the Commission in accordance with paragraphs 2 and 3 shall be expressed in national currency and in calendar years, with the exception of the up-to-date estimates for year n-1, which may be expressed in budget years.

Where the budget year differs from the calendar year, Member States shall also report to the Commission their figures for actual government deficit and actual government debt level in budget years for the two budget years preceding the current budget year.

Article 5

Member States shall, in accordance with the procedure laid down in Article 4(1), (2) and (3), provide the Commission with the figures for their government investment expenditure and interest expenditure.

Article 6

Member States shall provide the Commission with a forecast of their gross domestic product for year n and the actual amount of their gross domestic product for years n-1, n-2, n-3 and n-4, under the same timing conditions as those indicated in Article 4(1).

Article 7

In the event of a revision of ESA to be decided on by the Council in accordance with the rules on competence and procedure laid down in the Treaty, the Commission shall introduce the new references to ESA into Articles 1 and 4.

Article 8

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels, 22 November 1993.

For the Council
The President
Ph. MAYSTADT

4. EMI CONSULTATION
Council Decision

of 22 November 1993

**on the consultation of the European Monetary Institute by the authorities
of the Member States on draft legislative provisions (93/717/EC)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 109f(6) thereof, and Article 5.3 of the Protocol on the Statute of the European Monetary Institute annexed to this Treaty,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Committee of Governors,

Whereas the European Monetary Institute, hereafter referred to as 'the EMI', is to be established on 1 January 1994;

Whereas the Treaty stipulates that the authorities of the Member States shall consult the EMI on any draft legislative provision within its field of competence; whereas it is for the Council to set the limits and the conditions of such consultation;

Whereas this obligation on the authorities of the Member States to consult the EMI shall not prejudice the responsibility of national authorities for the matters which are the subject of such provisions;

Whereas this Decision does not concern decisions taken by national authorities in the context of the implementation of monetary policy;

Whereas consultation of the EMI must not unduly lengthen procedures for adopting legislative provisions in the Member States; whereas the time-limits within which the EMI must deliver its opinion must, nevertheless, enable it to examine the texts referred to it with the required care; whereas, in duly justified cases of extreme urgency, for example on account of market sensitivity, Member States may set a time-limit of less than one month; whereas, in these cases particularly, dialogue between the national authorities and the EMI should enable the interests of both to be taken into account,

HAS ADOPTED THIS DECISION:

Article 1

1. The authorities of the Member States shall consult the EMI on any draft legislative provision within its field of competence pursuant to Article 109f of the Treaty and in particular on:

- currency legislation, the status of the ecu and means of payment,
- the status and powers of national central banks and the instruments of monetary policy,
- the collection, compilation and dissemination of monetary, financial, banking and balance of payments statistics,

- clearing and payment systems, in particular for cross-border transactions,
 - rules applicable to financial institutions in so far as they influence the stability of financial institutions and markets.
2. The EMI shall, immediately on receipt of any draft legislative provision, notify the consulting authority whether, in its opinion, such provision is within its field of competence.

Article 2

1. 'Draft legislative provisions' shall mean any such provisions which are legally binding and of general applicability in the territory of a Member State, which lay down rules for an indefinite number of cases and which are addressed to an indefinite number of natural or legal persons.
2. Draft legislative provisions within the meaning of paragraph 1 shall not include draft provisions the exclusive purpose of which is the transposition of Community directives into the law of Member States.

Article 3

Each Member State shall take the measures necessary to ensure effective compliance with this Decision. To that end, it shall ensure that the EMI is consulted at an appropriate stage enabling the authority initiating the draft legislative provision to have the EMI's opinion before taking its decision on the substance and that the opinion received from the EMI is brought to the knowledge of the adopting authority if the latter is an authority other than that which has prepared the legislative provisions concerned.

Article 4

The authorities of the Member States preparing a legislative provision may, if they consider it necessary, set the EMI a time-limit for the submission of its opinion which may not be less than one month from the date on which the President of the EMI receives notification to this effect, save in case of extreme urgency. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action. Should the opinion of the EMI be received after the time-limit, the Member States shall, nevertheless, ensure that it is brought to the knowledge of the authorities referred to in Article 3.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 22 November 1993.

For the Council
The President
Ph. MAYSTADT

III

EUROPEAN MONETARY SYSTEM

1. Basic texts

(a) EXTRACTS FROM THE CONCLUSIONS OF THE PRESIDENCY OF THE EUROPEAN COUNCIL

Brussels, 4 and 5 December 1978

The European Council agreed, on the basis of the preparatory work of the Council (Economics and Finance Ministers) and of the Monetary Committee and the Committee of the Governors of the Central Banks to set up a European Monetary System as from 1 January 1979. This agreement is enclosed as an Annex.

The purpose of the European Monetary System is to establish a greater measure of monetary stability in the Community. It should be seen as a fundamental component of a more comprehensive strategy aimed at lasting growth with stability, a progressive return to full employment, the harmonization of living standards and the lessening of regional disparities in the Community. The Monetary System will facilitate the convergence of economic development and give fresh impetus to the process of European Union. The Council expects the European Monetary System to have a stabilizing effect on international economic and monetary relations. It will therefore certainly be in the interests of the industrial and the developing countries alike.

(b) RESOLUTION OF THE EUROPEAN COUNCIL
on the establishment of the European Monetary System (EMS)
and related matters

Brussels, 5 December 1978

A

THE EUROPEAN MONETARY SYSTEM

1. *Introduction*

- 1.1. In Bremen we discussed a 'scheme for the creation of closer monetary cooperation leading to a zone of monetary stability in Europe'. We regarded such a zone 'as a highly desirable objective' and envisaged 'a durable and effective scheme'.
- 1.2. Today, after careful examination of the preparatory work done by the Council and other Community bodies, we are agreed as follows:
A EUROPEAN MONETARY SYSTEM (EMS) WILL BE SET UP ON 1 JANUARY 1979.
- 1.3. We are firmly resolved to ensure the lasting success of the EMS by policies conducive to greater stability at home and abroad for both deficit and surplus countries.
- 1.4. The following chapters deal primarily with the initial phase of the EMS.
We remain firmly resolved to consolidate, not later than two years after the start of the scheme, into a final system the provisions and procedures thus created. This system will entail the creation of the European Monetary Fund as announced in the conclusions of the European Council meeting at Bremen on 6 and 7 July 1978, as well as the full utilization of the ecu as a reserve asset and a means of settlement. It will be based on adequate legislation at the Community as well as the national level.

2. *The ecu and its functions*

- 2.1. A European currency unit (ecu) will be at the centre of the EMS. The value and the composition of the ecu will be identical with the value of the EUA at the outset of the system.
- 2.2. The ecu will be used:
 - (a) as the denominator (numéraire) for the exchange-rate mechanism;
 - (b) as the basis for a divergence indicator;
 - (c) as the denominator for operations in both the intervention and the credit mechanism;
 - (d) as a means of settlement between monetary authorities of the European Community.
- 2.3. The weights of currencies in the ecu will be re-examined and if necessary revised within six months of the entry into force of the system and thereafter every five years or, on request, if the weight of any currency has changed by 25%.
Revisions have to be mutually accepted; they will, by themselves, not modify the external value of the ecu. They will be made in line with underlying economic criteria.

3. *The exchange-rate and intervention mechanism*

- 3.1. Each currency will have an ecu-related central rate. These central rates will be used to establish a grid of bilateral exchange rates.

Around these exchange rates fluctuation margins of $\pm 2.25\%$ will be established. EC countries with presently floating currencies may opt for wider margins up to $\pm 6\%$ at the outset of EMS; these margins should be gradually reduced as soon as economic conditions permit to do so.

A Member State which does not participate in the exchange-rate mechanism at the outset may participate at a later date.

- 3.2. Adjustments of central rates will be subject to mutual agreement by a common procedure which will comprise all countries participating in the exchange-rate mechanism and the Commission. There will be reciprocal consultation in the Community framework about important decisions concerning exchange-rate policy between countries participating and any country not participating in the system.
- 3.3. In principle, interventions will be made in participating currencies.
- 3.4. Intervention in participating currencies is compulsory when the intervention points defined by the fluctuation margins are reached.
- 3.5. An ecu basket formula will be used as an indicator to detect divergences between Community currencies. A 'threshold of divergence' will be fixed at 75% of the maximum spread of divergence for each currency. It will be calculated in such a way as to eliminate the influence of weight on the probability of reaching the threshold.
- 3.6. When a currency crosses its 'threshold of divergence', this results in a presumption that the authorities concerned will correct this situation by adequate measures, namely:
- (a) diversified intervention;
 - (b) measures of domestic monetary policy;
 - (c) changes in centre rates;
 - (d) other measures of economic policy.

In case such measures, on account of special circumstances, are not taken, the reasons for this shall be given to the other authorities, especially in the 'concertation between central banks'.

Consultations will, if necessary, then take place in the appropriate Community bodies, including the Council of Ministers.

After six months these provisions shall be reviewed in the light of experience. At that date the questions regarding imbalances accumulated by divergent creditor or debtor countries will be studied as well.

- 3.7. A very short-term facility of an unlimited amount will be established. Settlements will be made 45 days after the end of the month of intervention with the possibility of prolongation for another three months for amounts limited to the size of debtor quotas in the short-term monetary support.
- 3.8. To serve as a means of settlement, an initial supply of ecus will be provided by the EMCF against the deposit of 20% of gold and 20% of dollar reserves currently held by central banks.

This operation will take the form of specified, revolving swap arrangements. By periodical review and by an appropriate procedure it will be ensured that each central bank will maintain a deposit of at least 20% of these reserves with the EMCF. A Member State not participating in the exchange-rate mechanism may participate in this initial operation on the basis described above.

4. *The credit mechanisms*

- 4.1. The existing credit mechanisms with their present rules of application will be maintained for the initial phase of the EMS. They will be consolidated into a single fund in the final phase of the EMS.

- 4.2. The credit mechanisms will be extended to an amount of ECU 25 000 million of effectively available credit. The distribution of this amount will be as follows:
- Short-term monetary support = ECU 14 000 million
Medium-term financial assistance = ECU 11 000 million
- 4.3. The duration of the short-term monetary support will be extended for another three months on the same conditions as the first extension.
- 4.4. The increase of the medium-term financial assistance will be completed by 30 June 1979. In the meantime, countries which still need national legislation are expected to make their extended medium-term quotas available by an interim financing agreement of the central banks concerned.
5. *Third countries and international organizations*
- 5.1. The durability of the EMS and its international implications require coordination of exchange-rate policies *vis-à-vis* third countries and, as far as possible, a concertation with the monetary authorities of those countries.
- 5.2. European countries with particularly close economic and financial ties with the European Communities may participate in the exchange-rate and intervention mechanism.
- Participation will be based upon agreements between central banks; these agreements will be communicated to the Council and the Commission of the European Communities.
- 5.3. The EMS is and will remain fully compatible with the relevant articles of the IMF agreement.
6. *Further procedure*
- 6.1. To implement the decisions taken under A, the European Council requests the Council to consider and to take a decision on 18 December 1978 on the following proposals of the Commission:
- (a) Council Regulation modifying the unit of account used by the European Monetary Cooperation Fund, which introduces the ecu in the operations of the EMCF and defines its composition;
- (b) Council Regulation permitting the EMCF to receive monetary reserves and to issue ecus to the monetary authorities of the Member States which may use them as a means of settlement;
- (c) Council Regulation on the impact of the European Monetary System on the common agricultural policy. The European Council considers that the introduction of the EMS should not of itself result in any change in the situation obtaining prior to 1 January 1979 regarding the expression in national currencies of agricultural prices, monetary compensatory amounts and all other amounts fixed for the purposes of the common agricultural policy.
- The European Council stresses the importance of henceforth avoiding the creation of permanent MCAs and progressively reducing present MCAs in order to re-establish the unity of prices of the common agricultural policy, giving also due consideration to price policy.
- 6.2. It requests the Commission to submit in good time a proposal to amend the Council Decision of 22 March 1971 on setting up machinery for medium-term financial assistance to enable the Council (Economics and Finance Ministers) to take a decision on such a proposal at their session of 18 December 1978.
- 6.3. It requests the central banks of Member States to modify their Agreement of 10 April 1972 on the narrowing of margins of fluctuation between the currencies of Member States in accordance with the rules set forth above (see paragraph 3).
- 6.4. It requests the central banks of Member States to modify as follows the rules on short-term monetary support by 1 January 1979 at the latest:
- (a) the total of debtor quotas available for drawings by the central banks of Member States shall be increased to an aggregate amount of ECU 7 900 million;

- (b) the total of creditor quotas made available by the central banks of Member States for financing the debtor quotas shall be increased to an aggregate amount of ECU 15 800 million;
- (c) the total of the additional creditor amounts as well as the total of the additional debtor amount may not exceed ECU 8 800 million;
- (d) the duration of credit under the extended short-term monetary support may be prolonged *twice* for a period of three months.

B

MEASURES DESIGNED TO STRENGTHEN THE ECONOMIES OF THE LESS PROSPEROUS MEMBER STATES OF THE EUROPEAN MONETARY SYSTEM

1. We stress that, within the context of a broadly-based strategy aimed at improving the prospects of economic development and based on symmetrical rights and obligations of all participants, the most important concern should be to enhance the convergence of economic policies towards greater stability. We request the Council (Economics and Finance Ministers) to strengthen its procedures for coordination in order to improve that convergence.
2. We are aware that the convergence of economic policies and of economic performance will not be easy to achieve. Therefore, steps must be taken to strengthen the economic potential of the less prosperous countries of the Community. This is primarily the responsibility of the Member States concerned. Community measures can and should serve a supporting role.
3. The European Council agrees that in the context of the European Monetary System, the following measures in favour of the less prosperous Member States effectively and fully participating in the exchange-rate and intervention mechanism will be taken.
 - 3.1. The European Council requests the Community institutions by the utilization of the new financial instrument and the European Investment Bank to make available for a period of five years loans of up to 1 000 million EUA per year to these countries on special conditions.
 - 3.2. The European Council requests the Commission to submit a proposal to provide interest-rate subsidies of 3% for these loans, with the following elements: The total cost of this measure, divided into annual tranches of 200 million EUA each over a period of five years, shall not exceed 1 000 million EUA.
 - 3.3. Any less prosperous member country which subsequently effectively and fully participates in the mechanisms would have the right of access to this facility within the financial limits mentioned above. Member States not participating effectively and fully in the mechanisms will not contribute to the financing of the scheme.
 - 3.4. The funds thus provided are to be concentrated on the financing of selected infrastructure projects and programmes, with the understanding that any direct or indirect distortion of the competitive position of specific industries within Member States will have to be avoided.
 - 3.5. The European Council requests the Council (Economics and Finance Ministers) to take a decision on the abovementioned proposals in time so that the relevant measures can become effective on 1 April 1979 at the latest. There should be a review at the end of the initial phase of the EMS.
4. The European Council requests the Commission to study the relationship between greater convergence in economic performance of the Member States and the utilization of Community instruments, in particular the funds which aim at reducing structural imbalances. The results of these studies will be discussed at the next European Council.

(c) 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 System¹**

THE CENTRAL BANKS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Resolution of the European Council of 5 December 1978 on the establishment of the European Monetary System (EMS) and related matters,

Having regard to Regulation (EEC) No 907/73 of the Council of the European Communities of 3 April 1973 establishing a European Monetary Cooperation Fund,

Having regard to Regulation (EEC) No 3180/78 of the Council of the European Communities of 18 December 1978 changing the value of the unit of account used by the European Monetary Cooperation Fund,

Having regard to Regulation (EEC) No 3181/78 of the Council of the European Communities of 18 December 1978 concerning the European Monetary System,

Whereas the European Council has agreed to set up a scheme for the creation of closer monetary cooperation leading to a zone of monetary stability in Europe;

Whereas the said Resolution provides that a European currency unit, the ecu, shall be at the centre of the European Monetary System and that the value and composition of the ecu shall, initially be identical with the value and composition of the European unit of account (EUA);

Whereas under the terms of the said Resolution

- each currency will have an ecu-related central rate and the central rate will be used to establish a grid of bilateral parities or central rates,
- fluctuation margins of 2.25% will be fixed around these bilateral central rates, although Member States not at present participating in the narrower margins mechanism may in the initial stage of the European Monetary System opt for wider margins of up to 6%, which must be progressively reduced as soon as economic conditions permit;

Whereas the said Resolution further provides that a formula for an ecu-based basket shall be used as an indicator to detect divergences between Community currencies, and sets out the principles governing the operation of this indicator, which will be re-examined at the end of a period of six months;

Whereas this re-examination will also cover questions regarding imbalances accumulated by divergent creditor or debtor countries;

Whereas a Member State that does not initially participate in the exchange-rate mechanism can do so at a later date and whereas it is therefore advisable to ensure cooperation between the central bank of such a State and the central banks of the participating States;

¹ Text incorporating the amendments contained in the Instruments of 10 June 1985 and of 10 November 1987.

Whereas very short-term credit facilities of unlimited amount will be created;

Whereas the European Council has asked the central banks of the Member States of the Community to amend their Agreement of 10 April 1972 on the narrowing of the margins of fluctuation between the currencies of the Member States so as to embody the rules set forth in the said Resolution;

Whereas in order to make provision for means of settlement the central banks have been asked initially to transfer to the European Monetary Cooperation Fund, in the form of revolving swaps against ecus, 20% of their gold holdings and 20% of their US dollar reserves, and thereafter to keep at least 20% of the said reserves on deposit with the European Monetary Cooperation Fund,

HAVE AGREED AS FOLLOWS:

I. Exchange-rate mechanism

Article 1 — Central rates in terms of the ecu

Each participating central bank shall notify the Secretariat of the Committee of Governors of the Central Banks of the Member States of the European Economic Community of a central rate in terms of the ecu for this currency. The Secretariat shall pass on this information to the other central banks and the Commission of the European Communities.

Article 2 — Intervention rules

2.1. Each participating central bank shall notify the Secretariat of the Committee of Governors of the rates for compulsory intervention expressed in its currency, and the Secretariat shall pass on this information to the other central banks. These rates shall be fixed in relation to the bilateral central rates derived from the central rates in terms of the ecu referred to in Article 1 of the present Agreement. The market shall be notified of them.

2.2. Interventions shall in principle be effected in currencies of the participating central banks. These interventions shall be unlimited at the compulsory intervention rates. Other interventions in the foreign exchange market shall be conducted in accordance with the relevant guidelines that were adopted by the Committee of Governors in its Report of 9 December 1975 or that may be adopted in the future, or shall be subject to concertation among all the participating central banks.

Article 3 — Operation of the indicator of divergence

3.1. On either side of the central rate for its currency in terms of the ecu each participating central bank shall establish rates for its currency in terms of the ecu that will constitute 'thresholds of divergence'. These thresholds of divergence shall be calculated in such a way as to neutralize the influence of the differences in weights on the probability of their being reached; they shall be set at 75% of the maximum divergence spread, this being measured by the percentage difference between the daily rate and the central rate of a currency against the ecu when that currency is standing at the opposite pole from all the other currencies at the compulsory intervention rates referred to in Article 2.1 of the present Agreement. The necessary steps shall be taken to account of the effects of the adoption of different maximum margins of fluctuation for the participating currencies and of the possible non-participation of a currency in the exchange-rate mechanism.

3.2. If a currency crosses a divergence threshold, this shall entail the consequences set out in paragraph 3.6 of the Resolution of the European Council of 5 December 1978.

Article 4 — Method of calculating the values of the ecu in each currency

For the purposes of the operation of the indicator of divergence provided for under Article 3 of the present Agreement, the market value of the ecu in each currency shall be calculated by a uniform method as frequently as necessary and at least on the occasion of each daily concentration session among central banks.

Article 5 — Non-participation

Any central bank that is not participating in the exchange-rate mechanism shall cooperate with the other central banks in the concertation and the other exchanges of information necessary for the proper functioning of the exchange-rate mechanism.

II. Very short-term financing

Article 6 — Basic principles

6.1. To enable interventions to be made in Community currencies, the participating central banks shall open for each other very short-term credit facilities in accordance with the conditions set out in Articles 7 to 16 of the present Agreement. These facilities are automatically available and unlimited in amount in so far as they are to be used for financing interventions in Community currencies which are effected at the compulsory intervention rates referred to in Article 2.1 of the present Agreement. Use of the credit facilities for other interventions in Community currencies is governed by special arrangements between the parties to the present Agreement.

6.2. The financing operations concluded in this connection shall take the form of spot sales and purchases of Community currencies against the crediting or debiting of accounts denominated in ecus with the European Monetary Cooperation Fund (hereinafter referred to as 'EMCF').

Article 7 — Accounting procedures

7.1. The accounts opened for the central banks in the books of the EMCF shall be denominated in ecus. The conversion of currencies into ecus shall be effected at the daily rates for the ecu as established by the Commission's staff on the basis of the method adopted. The relevant rates shall be those ruling on the day on which the interventions were made.

7.2. The value date of the financing operations shall be identical with the value date of the interventions in the market.

Article 8 — Remuneration

8.1. The debtor and creditor interest rates applying to very short-term financing operations shall be the weighted average of the most representative domestic money-market rates in those EEC countries whose currencies make up the ecu basket. The average is weighted in accordance with the weights of these currencies in the ecu basket as derived from the ruling ecu central rates. The weighted average shall be calculated on the basis of the average of daily observations during each month and shall apply during the following month to all outstanding amounts in respect of very short-term financing operations.

8.2. Accrued interest shall be paid in ecus at each monthly settlement date or, between settlement dates, at the same time as advance liquidation of a debtor balance is effected.

8.3. For the purposes of Article 8.1 each central bank whose currency is in the ecu basket shall notify the Secretariat of the Committee of Governors of the Central Banks of the Member States of the European Economic Community of the title of its reference rate. The Secretariat shall pass on this information to the other central banks, the Commission of the European Communities and the agent of the European Monetary Cooperation Fund.

Article 9 — Initial settlement date

The initial settlement date for a very short-term financing operation shall be the last working day preceding the 16th day of the third month following that in which the value date of the intervention fell.

Article 10 — Automatic renewal

At the request of the debtor central bank, the initial settlement date for a financing operation may be extended for a period of three months.

However:

- (a) any initial settlement date may only be automatically extended once for a maximum of three months;
- (b) recourse may only be had to the renewal facility referred to above if the relevant debt does not thereby remain continuously outstanding for more than six consecutive months;
- (c) the total amount of indebtedness resulting from application of the present Article may at no time exceed a ceiling equal to twice the debtor quota of the central bank concerned under the short-term monetary support arrangement;
- (d) if a central bank has recourse to the additional automatic borrowing facility for six consecutive months, the Committee of Governors shall take steps to ascertain whether the payments deficit of the country concerned is such that recourse to other means of financing, in particular short-term monetary support or medium-term financial assistance within the EEC, would be more appropriate.

Article 11 — Renewal by mutual agreement

11.1. Any debt exceeding the ceiling laid down in Article 10(c) of this Agreement may be renewed once for three months subject to the agreement of the creditor or creditors in the EMCF.

11.2. Any debt already renewed automatically for three months may be renewed a second time for a further three months subject to the agreement of the creditor or creditors in the EMCF.

11.3. Debts and claims thus extended by mutual agreement shall be settled separately outside the provisions of Articles 12, 13 and 14 of this Agreement without prejudice, however, to the priority accorded to settlements carried out under those Articles. Offsetting or advance settlement of debts and claims of the kind for which provision is made in the present Article shall be subject to the agreement of all creditors and debtors in EMCF, whatever their status.

Article 12 — Order of repayment of claims

12.1. Claims arising from financing operations carried out in accordance with Articles 9 and 10 above shall be settled in order of seniority; however, if a central bank's claim exceeds the amount of its creditor quota under the short-term monetary support arrangement, that central bank may request that the excess be treated for purposes of the next settlement as equal in seniority to the most senior claims of other creditor central banks.

12.2. All claims arising within the same monthly accounting period shall be regarded as of equal seniority. When a settlement covers a number of claims regarded as of equal seniority, each of the components of the settlement shall be distributed in proportion to the respective amounts of the claims.

12.3. The rules governing the order or distribution of settlements may be departed from subject to the agreement of all the parties to the financing operations carried out in accordance with Articles 9 and 10 of the present Agreement.

Article 13 — Automatic offsetting

13.1. All the debts and claims of a single central bank arising from the operations provided for under Articles 9 and 10 of the present Agreement shall, where appropriate, be automatically offset against each other.

13.2. Any new liability shall be offset against the most senior claim of the same central bank. Any new claim shall be offset against the most senior debt of the same central bank.

Article 14 — Advance repayment

14.1. Any debtor balance recorded in accordance with Articles 9 and 10 of the present Agreement may be settled in advance at the request of the debtor central bank;

- at any time in the currency of a creditor in the EMCF under Articles 9 and 10 of the present Agreement,
- on the monthly settlement date by transfer of the means of settlement provided for in Article 16 of the present Agreement.

14.2. Any advance repayment shall be applied first to the most senior liabilities contracted under Article 10 of the present Agreement.

Article 15 — Working balances

The central banks may hold working balances in Community currencies within the limits laid down by the Committee of Governors. These limits may be exceeded only with the consent of the central bank concerned.

Article 16 — Means of settlement

16.1. When a financing operation falls due, settlement shall be carried out — in so far as this is not done in the first instance by means of holdings in the creditor's currency — entirely or in part by transferring ecus, with the proviso that:

- a creditor central bank shall not be obliged to accept settlement by means of ecus of an amount equal to more than 50% of its claim which is being settled, unless its assets in ecus are smaller than its forward sales of ecus to the EMCF;
- if, but only to the extent that, a creditor central bank's assets in ecus are smaller than its forward sales of ecus to the EMCF, it shall be obliged to accept full settlement in ecus; if the claim of the central bank in question exceeds the amount of its net debtor position in ecus, the rule set out in the above indent shall be applied to the balance of the claim.

Ecu assets referred to above include forward purchases of ecus from the EMCF.

In so far as settlement is only partially effected by transferring ecus, the balance shall be settled by transferring other reserve assets in accordance with the composition of the debtor central bank's reserves as at the end of the month preceding the settlement.

These provisions shall be without prejudice to other forms of settlement agreed between creditor and debtor central banks.

Debtor balances in ecus settled by means of assets denominated in currencies and in SDRs shall be converted into such assets on the basis of the daily rates for the ecu established by the Commission's staff.

16.2. For the purposes of the preceding paragraph the composition of the debtor's reserves shall be determined on the basis of assets denominated in SDRs and in currencies. Nevertheless, gold holdings may also be taken into account if the price proposed by the debtor central bank is accepted by the creditor central bank. As far as assets denominated in SDRs and in currencies are concerned, the debtor central bank may choose which assets it will deliver in settlement.

16.3. If the debtor central bank no longer possesses ecus and wishes to acquire some, it shall apply in the first instance to central banks that are net accumulators of ecus or possibly to the EMCF. In the latter case, the ecus shall be acquired against the contribution of an equal percentage of the gold and dollar assets held by that central bank.

III. Creation, utilization and remuneration of ecus

Article 17 — Creation of ecus against contributions of gold and dollars

17.1. Each central bank participating in the exchange-rate mechanism outlined in Chapter 1 of the present Agreement shall contribute to the EMCF 20% of its gold holdings and 20% of its gross dollar reserves as at the last working day of the month preceding the month in which the present Agreement takes effect; it shall be credited by the EMCF with an amount of ecus corresponding to these contributions.

Central banks that are not participating in the exchange-rate mechanism referred to above may likewise make contributions in accordance with the terms of the preceding subparagraph.

17.2. The contributions referred to in Article 17.1 of the present Agreement shall be made available in the case of the participating central banks 10 working days at the latest after the implementation of the present Agreement or in the case of the non-participating central banks at the time of exercising the option referred to above.

17.3. The contributions of gold and dollars shall take the form of three-month revolving swaps against ecus which may be unwound at two working days' notice. These operations shall be concluded at flat rates.

17.4. For the purposes of the swap operations referred to in the present Article the value of the reserve components transferred to the EMCF shall be established as follows:

- for the gold portion, the average of the prices, converted into ecus, recorded daily at the two London fixings during the previous six calendar months, but not exceeding the average price of the two fixings on the penultimate working day of the period;
- for the dollar portion, the market rate two working days prior to the value date.

17.5. Contracts shall be concluded between each central bank and the EMCF detailing the arrangements for the delivery of the gold and dollars to the EMCF and for their management in so far as this is entrusted to the central banks.

17.6. At the beginning of each quarter, when the swaps referred to in the present Article are renewed, the central banks and the EMCF shall make the necessary adjustments to these swaps, firstly to ensure that each central bank's contribution to the EMCF continues to represent at least 20% of its gold and dollar reserves on the basis of its gross reserve position recorded on the last working day of the preceding quarter

and, secondly, to take account of any price or rate changes that may have occurred since the initial contribution or previous adjustment.

Article 18 — Utilization of ecus

18.1. Ecu assets shall be used in intra-Community settlements within the limits and on the terms set out in Article 16 of the present Agreement.

18.2. The EEC central banks may transfer ecus to one another against currencies, gold and other monetary assets. They may also exchange ecus with other central banks and international monetary institutions which have been accorded the status of 'other holder' by the EMCF on the terms and conditions it has established.

18.3. For the purposes of meeting a decline in its dollar reserves a central bank may acquire dollars against ecus from the EMCF between two periodic adjustments, initially by unwinding a swap transaction.

18.4. The operations referred to in Articles 18.2 and 18.3 of the present Agreement shall not be carried out for the sole purpose of altering the composition of a central bank's reserves.

Article 18a — Mobilization mechanism

18a.1. In the event of a need for intervention currency a central bank may mobilize ecu holdings against dollars through the intermediary of the EMCF up to a ceiling which is defined in the following way:

- a proportion of the ecus received by the central bank concerned through the operations referred to in Article 17.1 of the present Agreement. This proportion shall be determined at the beginning of each swap period by the ratio of the ecu equivalent of the EMCF's total dollar holdings to the total amount of ecus created by the EMCF under Article 17.1 of the present Agreement, multiplied by a factor which shall be agreed unanimously by the governors of the central banks;
- plus the amount of ecu assets held by the central bank in excess of its forward sales of ecus to the EMCF (net creditor position), or minus the amount by which its forward sales of ecus to the EMCF exceed its ecu assets (net debtor position). Ecu assets referred to above include forward purchases of ecus from the EMCF.

At least four working days' notice shall be given by the mobilizing central bank.

18a.2. To cover the mobilization operations referred to in the preceding paragraph, each central bank other than the mobilizing central bank undertakes to provide spot dollars in proportion to and up to an amount equivalent to its forward purchases of dollars from the EMCF in accordance with Article 17 of the present Agreement, minus any amount which may have been withdrawn in accordance with Article 18a.3. In exceptional circumstances, a central bank may opt out entirely or in part from participation in the initial mobilization operation (see Article 18a.1) or its renewal (see Article 18a.5). In such an event the uncovered amount shall be shared out in proportion to the undertakings of the other central banks. To the extent that a mobilization request cannot be met out of the commitments of the other central banks, it shall be automatically scaled down by the necessary amount.

18a.3. At the request of the mobilizing central bank and through the intermediary of the EMCF, the proceeds of the mobilizations referred to above may be converted immediately fully or in part into the currency of a participating central bank, subject to its agreement. In this event, the conversion request will be met by the central bank issuing the currency requested, together with any other central bank making voluntary contributions.

18a.4. All the operations with the EMCF referred to in the preceding paragraphs shall take the form of three-month swaps which shall be concluded at flat rates. The rate applicable is the market rate two working days prior to the value of the spot transactions.

18a.5. In the event of continuing need for intervention currency the swaps referred to above may be renewed once at the request of the mobilizing central bank. In this event, the EMCF and the central banks shall make the necessary adjustments:

- first, to ensure that a central bank's use of the mobilization mechanism does not exceed the ceiling referred to in Article 18a.1;
- secondly, to ensure that the dollar contributions made by the central banks in respect of Article 18a.2 are in proportion to and within the commitments defined there;
- thirdly, to take account of exchange-rate changes that may have occurred since the beginning of the swap to be renewed.

18a.6. At the request of the mobilizing central bank the swap may be unwound fully or in part before maturity with at least three working days' notice.

18a.7. Central banks receiving assets from the EMCF shall pay interest on these assets. Central banks which have provided currency assets to the EMCF shall receive interest on these assets. The rate of interest shall be the most representative domestic money-market rate in the country whose currency has been used, two working days prior to the value date of the spot transaction, i.e. in the case of the US dollar, the rate used by the IMF for the calculation of SDR remuneration and, in the case of Community currencies, the rates provided by Article 8.1 of the present Agreement. Interest payments shall be due at maturity of the swaps or when the swaps are unwound prematurely and shall be payable in the currency used.

Article 19 — Remuneration

19.1. Central banks whose ecu assets are less than their forward sales of ecus shall pay interest to the EMCF on the difference between these two aggregates. The EMCF shall pay central banks whose ecu assets exceed their forward sales interest on the difference between these two aggregates. The amount of interest due shall be calculated in proportion to the average daily balances.

19.2. The rate of interest provided for in Article 19.1 of the present Agreement shall be determined in accordance with the provisions of Article 8 of the present Agreement. Such interest shall be paid monthly.

19.3. Ecu assets referred to in Article 19.1 include forward purchases of ecus from the EMCF.

19.4. Articles 19.1 and 19.2 apply by analogy to remuneration of ecu assets held with the EMCF by 'other holders' referred to in Article 18.2 of the present Agreement.

Article 20 — Liquidation

20.1. Save in the event of a unanimous decision to the contrary, the swaps referred to in Articles 17.3 and 18a.4 of the present Agreement shall be unwound at the end of the period for which the Governors of the central banks extend the mechanism provided for in Article 17 of the present Agreement.

20.2. For this purpose central banks that are net users of ecu assets shall bring these back up to a level equal to that of their forward sales and central banks that are net accumulators shall transfer to the net users the excess of their ecu assets over their forward sales either directly or through the intermediary of the EMCF.

20.3. The transfers of ecus provided for in the preceding paragraph shall be effected in exchange for the currency of the central banks that are net accumulators, or in accordance with any other arrangements agreed between the parties, or against the transfer of reserve components in proportion to the composition of the reserves of the central bank repurchasing ecus, this composition being determined in accordance with the provisions of Article 16.2 of the present Agreement.

Article 21 — Institutional provisions

The Committee of Governors shall periodically review the operation of the present Agreement in the light of experience gained.

Article 22 — Termination of the Agreement of 10 April 1972

22.1 The present Agreement terminates and replaces, with effect from 13 March 1979, the Agreement of 10 April 1972, as amended by the Agreement of 8 July 1975, establishing a system for the narrowing of the margins of fluctuation between the currencies of the European Economic Community.

22.2. The present Agreement shall be drawn up in duly signed versions in English, French and German. A certified copy of the original in each language shall be sent to each central bank by the Secretariat of the Committee of Governors, which is required to retain the originals.

(d) COMMUNIQUÉ
of 2 August 1993
concerning the widening of the marginal intervention thresholds

The ministers and central bank governors of the Member States of the European Community have decided to widen temporarily the obligatory marginal intervention thresholds of the participants in the exchange-rate mechanism of the European Monetary System to $\pm 15\%$ around the bilateral central rates.

This measure of limited duration is in response to speculative movements, which are exceptional in amount as well as in nature. Indeed, having regard to the fundamental economic situation of the Member States participating in the system, the current parity grid is fully justified. The ministers and governors therefore reaffirm support for the current parities and are confident that the market rates will soon approach these parities once again.

The monetary authorities of the Member States will continue to direct their monetary policy towards the aim of price stability.

All the Member States reaffirm their determination to put the Treaty on European Union into operation as soon as its ratification is complete, including the evaluation procedure, which according to Article 109e must take place before 1 January 1994, the start of Stage II. Moreover, they reaffirm their support for the procedures and criteria laid down in the Treaty with respect to the attainment of a sufficient degree of convergence in order to allow the realization of economic and monetary union.

The new compulsory intervention rates will be communicated by the monetary authorities in time for the opening of foreign exchange markets on 2 August 1993.

2. Support mechanisms

(a) SHORT-TERM MONETARY SUPPORT¹

Having regard to the Commission's Memorandum to the Council on the coordination of economic policies and monetary cooperation within the Community,

Having regard to the letter of 10 July 1969 from the Chairman of the Committee of Governors to the President of the Commission setting out the Committee's opinion on the abovementioned Memorandum,

Having regard to the Council's Decision of 17 July 1969 on the coordination of the short-term economic policies of the Member States,

Having regard to the procedure for the coordination of medium-term economic policies,

THE CENTRAL BANKS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article I — Setting-up of the system

1. The central banks of the EEC Member States, noting the increasing solidarity among their countries, shall set up among themselves a short-term monetary support system of first resort.
2. Implementation of this system shall be closely linked with the standing arrangements for consultation on and coordination of economic policy among the Member States of the Community.
3. The possibilities offered by other international assistance mechanisms shall be taken into consideration when use is made of the system.
4. The way in which the system will function is determined by this Agreement.

The decisions necessary for its implementation shall be taken jointly by the governors of the participating central banks assembled in the Committee of Governors of the Central Banks of the Member States of the European Economic Community, hereinafter referred to as 'the Governors'. The Chairman of the Committee of Governors of the Central Banks of the Member States of the European Economic Community, hereinafter referred to as 'the Chairman', shall preside. The Commission representative on that Committee will hereinafter be referred to as 'the Commission representative'.

5. For the implementation of this Agreement the Governors shall employ an agent and delegate to it such tasks as they may determine in accordance with arrangements to be concluded with it.

¹ Agreement of 9 February 1970 incorporating the amendments contained in the Instrument of 8 January 1973 relating to the accession of the central banks of Denmark, Ireland and the United Kingdom, the Instruments relating to short-term monetary support dated 12 March 1974, 13 December 1977 and 13 March 1979 respectively, the Instrument of 9 December 1980 relating to the accession of the central bank of Greece and the Instrument of 10 December 1985 relating to the accession of the central banks of Spain and Portugal and the Instrument of 6 December 1994 relating to the accession of the central banks of Austria, Finland and Sweden.

Article II — Quotas and rallonges

1. Each participating central bank shall be assigned a debtor quota and a creditor quota, the respective amounts of which are laid down in Annex 1 to this Agreement.
2. The debtor quotas shall determine the amount of support which each central bank may receive under the terms laid down in this Agreement; the creditor quotas shall determine the amount of support which each central bank undertakes to finance under these same terms.
3. The Governors may alter the quotas, Every five years they shall examine whether the quotas should be revised. They may, however, conduct such an examination before the expiry of this period.
4. In particular cases where this is justified by circumstances, and notwithstanding Section 2, the Governors may decide for an amount, for a period and on conditions to be determined by them:
 - (a) to increase over and above its quota the amount of support which a central bank may receive ('debtor rallonge'); or
 - (b) to increase over and above its quota the amount of support which a central bank undertakes to finance ('creditor rallonge').

The total of the creditor rallonges and likewise that of the debtor rallonges thus granted may not exceed the amount specified in Annex 1.

When assessing the circumstances justifying the granting of rallonges the Governors shall take particular account of the trend of the balance of payments and the foreign exchange reserve position of the Member State to which each central bank concerned belongs, as well as of the other facilities available to them under other international arrangements. As a general rule, no central bank may be granted more than one-half of the total of the debtor rallonges, but the Governors may waive this limit if the special situation and the particular needs of the applicant warrant it.

Article III — Application for support

1. A participating central bank that wishes to use the monetary support facilities provided for in this Agreement shall inform the Chairman that the need has arisen for short-term financing in consequence of a temporary balance-of-payments deficit which is due to unforeseen difficulties or to conjunctural divergences and which has emerged despite the coordination of economic policies. It shall notify him of the amount of support desired, giving particulars of any other sources of financing it might consider turning to in order to overcome the difficulties encountered.
2. No application for support may be made by a central bank which is indebted to the system in consequence of failure to fulfil its repayment obligations.

Unless the Governors decide otherwise, no application for support will be entertained in the case referred to in Article VI, Section 3.

Article IV — Granting and financing of support

1. The Chairman shall inform the participating central banks and the Commission representative of any application for support lodged in accordance with Article III.

The Chairman shall call a meeting of the Governors on his own initiative or when a central bank so requests.

2. The monetary support shall be financed by each participating central bank other than the beneficiary central bank proportionately to and within the limits of its quota.

3. The Governors may decide to apportion the financing burden in a proportion different from that of the quotas; in that event, the contributions determined in accordance with Section 2 of this Article shall be appropriately refinanced among the central banks participating in the financing, unless the Governors decide otherwise.

4. A central bank which during the consultations following an application for support informs the Chairman that its country is experiencing balance-of-payments difficulties and/or a disturbing decline in its foreign exchange reserves shall be entitled to receive from the other participating central banks, in principle in proportion to their quotas, the partial or total refinancing of its contribution to the financing of the support.

5. When the monetary support applied for cannot be financed out of the quotas the Governors may decide, to such extent as they consider most appropriate and with due regard to the scope for tapping other international assistance facilities, to establish one or more creditor rallonges in accordance with the provisions of Article II of this Agreement or, failing this, to scale down the amount of support applied for by the necessary amount.

6. After consulting the participating central banks, the Chairman shall inform the central banks and the Commission representative of the granting of the support, its amount and its apportionment, and the timing of the provision of the funds.

Article V — Mobilization of the claim

Any central bank that is a creditor in connection with this Agreement may, if the Member State to which it belongs experiences balance-of-payments difficulties and/or suffers a sudden decline in its foreign exchange reserves, apply to the Governors for the premature repayment or the transfer of its claim. For this purpose the Governors shall take such steps as they consider appropriate.

Article VI — Technique of the operations

1. The beneficiary central bank shall receive from its partners, direct or through the agent, facilities in the form of swaps or deposits or in any other form agreed between the parties.

At the request of the participating central banks the agent may advance for their account all or part of the contributions due from them.

2. If the facilities made available under the terms of the Article are not utilized within one month they shall be cancelled. Utilization shall be for a period of three months and may be renewed twice for a period of three months at the request of the beneficiary central bank.

3. The beneficiary central banks shall refrain from making a further application for monetary support for a period equal to that for which the previous support was utilized.

4. The support facilities shall be expressed in the currency actually supplied by the granting central bank; this can be its national currency or any other means of payment agreed with the beneficiary central bank. They shall be denominated in ecus if the support is granted to a central bank in the form of a prolongation of a debt contracted by that central bank in the framework of the very short-term financing facilities, as defined by Article 6 of 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.

5. The charges to the debtor central bank for the support facilities shall be worked out in accordance with the rules laid down by the Governors.

6. The Governors shall take such steps as they consider appropriate in order to standardize as far as possible the conditions governing support operations.

7. The arrangements for each support operation shall be communicated to the agent.

Article VII — Coordination of economic policies

1. The central banks agree that on each occasion when monetary support is granted the Committee of Governors shall undertake an examination of the monetary situation and of the monetary policy of the beneficiary country.

2. The Governors shall be regularly informed of the course of the Community procedures as regards coordination of short and medium-term economic policies.

Article VIII — Duration

This Agreement shall run for five years. It shall be tacitly extended for five years at a time, unless six months' prior notice is given.

Article IX — Winding-up of the system

In the event of the support system being wound up, this Agreement shall remain in force as regards the repayment of the credits granted in accordance with Article IV.

ANNEX

QUOTAS AND RALLONGES IN ECUS

with effect from 1 January 1995

1. *Debtor and creditor quotas*

Central banks	Quotas		Percentage distribution
	debtor	creditor	
	(million ECU)		
Banque Nationale de Belgique	580	1 160	5.81
Danmarks Nationalbank	260	520	2.60
Deutsche Bundesbank	1 740	3 480	17.43
Bank of Greece	150	300	1.50
Banco de España	725	1 450	7.26
Banque de France	1 740	3 480	17.43
Central Bank of Ireland	100	200	1.00
Banca d'Italia	1 160	2 320	11.62
De Nederlandsche Bank	580	1 160	5.81
Oesterreichische Nationalbank	350	700	3.50
Banco de Portugal	145	290	1.45
Suomen Pankki	220	440	2.20
Sveriges Riksbank	495	990	4.96
Bank of England	1 740	3 480	17.43
TOTAL	9 985	19 970	100

2. *Debtor and creditor rallonges*

The total of creditor rallonges, and that of debtor rallonges, may not exceed ECU 8 800 million.

(b) MEDIUM-TERM FINANCIAL ASSISTANCE¹

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 108 and 235 thereof,

Having regard to the proposal from the Commission, submitted following consultation with the Monetary Committee,

Having regard to the opinion of the European Parliament,

Whereas Article 108 of the Treaty provides for the granting of mutual assistance, to be decided by the Council on a recommendation from the Commission, to a Member State in difficulties or seriously threatened with difficulties as regards its balance of payments; whereas the resolution of the European Council of 5 December 1978 on the establishment of the European Monetary System (EMS) and related matters confirmed the need for a Community facility for medium-term financial assistance for balances of payments;

Whereas it should be possible for the operation of lending to a Member State to take place soon enough to encourage that Member State to adopt, in good time in a situation where orderly exchange-rate conditions prevail, economic policy measures likely to prevent the occurrence of an acute balance-of-payments crisis and to support its efforts towards convergence;

Whereas each loan to a Member State must be linked to the adoption, by that Member State, of economic policy measures designed to re-establish or to ensure a sustainable balance-of-payments situation and adapted to the gravity of the balance-of-payments situation in that State and to the way in which it develops;

Whereas appropriate procedures and instruments should be provided for in advance to enable the Community and Member States to ensure that, if required, medium-term financial support is provided quickly, especially where circumstances call for immediate action;

Whereas, in order to finance support granted, the Community needs to be able to use its creditworthiness to borrow resources that will be placed at the disposal of the Member States concerned in the form of loans; whereas operations of this kind are necessary to the achievement of the objectives of the Community as defined in the Treaty, especially the harmonious development of economic activities in the Community as a whole; whereas the Treaty has not provided the necessary powers, other than those of Article 235;

Whereas by Decision 71/143/EEC, as last amended by Decision 86/656/EEC, the Council set up machinery for providing medium-term financial assistance which was initially valid for a period of four years from 1 January 1972; whereas this machinery has since been renewed and extended, on the last occasion for two years until 31 December 1988 by Decision 86/656/EEC; whereas this machinery provides for the Member States to grant medium-term loans, within certain limits, to one or more Member States experiencing balance-of-payments difficulties;

¹ 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.

Whereas, by Regulation (EEC) No 682/81, as amended by Regulation (EEC) No 1131/85, the Council adjusted a Community loan mechanism designed to support the balances of payments of the Member States; whereas this mechanism provides for the Community to contract loans, according to needs and within the limits set on outstanding borrowing, in order to on-lend the proceeds to one or more Member States experiencing balance-of-payments difficulties;

Whereas the Community loan mechanism has demonstrated its effectiveness; whereas its general design and the arrangements for implementing it still meet the needs of the Community; whereas, in view of the Community's borrowing capacity and of the conditions available to it for borrowing from financial institutions or on capital markets, the mechanism could constitute the main form of mutual assistance provided for under Article 108 of the Treaty; whereas the ceiling on amounts outstanding under the mechanism should be adjusted accordingly;

Whereas, however, it is appropriate that the financing obligations on Member States under the machinery for medium-term financial assistance remain in force until the final stage of the European Monetary System so as to ensure that system's cohesion and stability, irrespective of the conditions prevailing on international capital markets; whereas the present procedures for exempting a Member State from contributing or for mobilizing Member States' claims should, nevertheless, be simplified;

Whereas it is appropriate to merge medium-term financial assistance and the Community loan mechanism into a single facility for medium-term financial support,

HAS ADOPTED THIS REGULATION;

Article 1

1. A Community facility providing medium-term financial support shall be established, enabling loans to be granted to one or more Member States which are experiencing, or are seriously threatened with, difficulties in their balance of current payments or capital movements.

The outstanding amount of loans to be granted to Member States under this facility shall be limited to ECU 16 000 million in principal.

2. To this end, in accordance with a decision adopted by the Council pursuant to Article 3 and after consulting the Monetary Committee, the Commission shall be empowered, on behalf of the European Economic Community, to contract loans on the capital markets or with financial institutions.

The outstanding amount of loans so granted to Member States shall be limited to ECU 14 000 million in principal.

3. If conditions available on capital markets or with financial institutions are unsatisfactory or if the amount available under the ceiling referred to in paragraph 2 is insufficient, Community loans shall be financed in full or in part by the other Member States whose contributions in principal may not exceed the ceilings specified in the Annex.

Article 2

Where a Member State proposes to call upon sources of financing, outside the Community, which are subject to economic policy requirements, it shall first consult the Commission and the other Member States in order to examine, among other things, the possibilities available under the Community facility for medium-term financial support. Such consultations shall be held within the Monetary Committee.

Article 3

1. The medium-term financial support facility may be implemented by the Council on the initiative:
 - of the Commission acting pursuant to Article 108 of the Treaty in agreement with the Member State seeking Community financing,
 - of a Member State experiencing, or seriously threatened with, difficulties as regards its balance of current payments or capital movements.
2. The Council, after examining the situation in the Member State seeking medium-term financial assistance and the recovery or back-up programme presented in support of its application, shall decide, as a rule during the same meeting:
 - whether to grant a loan or appropriate financing facility, its amount and its average duration,
 - the economic policy conditions attached to the medium-term financial assistance with a view to re-establishing or ensuring a sustainable balance-of-payments situation,
 - the techniques for disbursing the loan or financing facility, the release or drawings of which shall as a rule be by successive instalments, the liberalization of each instalment being subject to verification of the results achieved in implementing the programme, in terms of the objectives set.
3. Any full or partial financing of medium-term financial assistance by recourse to the Member States shall be decided on by the Council. In that event the Council, in addition to taking the decisions referred to in paragraph 2, shall decide on the size of the contributions of these States and on the financial conditions attaching to the credits they make available in that connection. The Council may exempt from contributing any Member State which maintains that difficulties exist or can be foreseen as regards its balance of payments.

Article 4

In cases where restrictions on capital movements are introduced or re-introduced pursuant to Article 109 of the Treaty during the term of the financial assistance, its conditions and arrangements shall be re-examined pursuant to Article 108 of the Treaty.

Article 5

The Commission shall take the necessary measures to verify at regular intervals, in collaboration with the Monetary Committee, that the economic policy of the Member State in receipt of a Community loan accords with the adjustment or back-up programme and with any other conditions laid down by the Council pursuant to Article 3. To this end, the Member State shall place all the necessary information at the disposal of the Commission. On the basis of the findings of such verification, the Commission, after the Monetary Committee has delivered an opinion, shall decide on the release of further instalments.

The Council shall decide on any adjustments to be made to the initial economic policy conditions.

Article 6

1. Loans granted as medium-term financial support may be granted as consolidation of short-term monetary support made available by the central banks of the Member States.
2. At the request of the beneficiary Member State, the loans referred to in paragraph 1 may carry the option of early repayment.

Article 7

1. The borrowing and lending operations referred to in Article 1 shall be carried out using the same value date and must not involve the Community in the transformation of maturities, in any exchange or interest-rate risk, or in any other commercial risk.

When the borrowings are expressed, payable or repayable in the currency of a Member State, they may be concluded only after consultation with the competent authorities of that State.

Where a Member State receives a loan carrying an early repayment clause and decides to exercise this option, the Commission shall take the necessary steps.

2. At the request of the debtor Member State and where circumstances permit an improvement in the interest rate on the loans, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions.

Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average duration of the borrowing concerned or increasing the amount, expressed at the current exchange rate, of capital outstanding at the date of the refinancing or restructuring.

3. The costs incurred by the Community in concluding and carrying out each operation shall be done by the beneficiary Member State.

4. The Monetary Committee shall be kept informed of developments in the operations referred to in the third subparagraph of paragraph 1 and the first subparagraph of paragraph 2.

Article 8

1. If one or more Member States that are creditors under the facility referred to in Article 1 experience difficulties as regards their balance of payments and/or a sudden decline in their foreign currency reserves, they may request mobilization of their claims. The Council, having due regard to the circumstances, shall decide to mobilize such claims, in particular in accordance with one of the following procedures, or a suitable combination thereof:

- by refinancing from Community borrowings from financial institutions or on capital markets under the conditions laid down in Article 7,
- by a transfer of the claim to other creditor Member States,
- by early repayment in full or in part by the debtor Member State or States.

2. Where refinancing takes place in accordance with paragraph 1, the debtor Member State shall agree that its debt, originally denominated in one currency, shall be replaced by a debt denominated in the currency used for the refinancing. Where applicable, the debtor Member State shall bear any additional cost resulting from an alteration in the interest rate and the costs incurred by the Community in concluding and carrying out the operation.

3. Any creditor Member State may arrange with one or more other Member States for the partial or total transfer of its claims. Member States concerned shall notify the Commission and Monetary Committee of the transfer.

4. Any Member State that is a creditor in respect of a loan carrying an early repayment clause shall take the requisite steps where the debtor Member State decides to invoke this option. The Member States concerned shall notify the Commission and the Monetary Committee of the operation.

Article 9

For the application of the ceilings referred to in Article 1, the loan operations shall be recorded at the exchange rate of the day on which they are concluded. The repayment operations shall be recorded at the exchange rate of the day on which the corresponding loan was concluded.

Article 10

The Council shall adopt the decisions referred to in Articles 3, 5 and 8, acting by qualified majority on a proposal from the Commission, made after consulting the Monetary Committee on the matter.

Article 11

The European Monetary Cooperaton Fund shall make the necessary arrangements for the administration of the loans.

The funds shall be paid only for the purposes indicated in Article 1.

*Article 12*¹

Before 31 December 1992, the Council shall examine, on the basis of a report from the Commission, after the Monetary Committee has delivered an opinion and after consulting the European Parliament, whether the facility established still meets, in its principle, arrangements and ceiling, the need which led to its creation.

Article 13

1. Regulation (EEC) No 682/81 and Decision 71/143/EEC are hereby repealed.
2. Amounts not yet repaid under outstanding Community loan operations concluded pursuant to Regulation (EEC) No 682/81 before the date of entry into force of this Regulation shall count against the ceiling referred to in Article 1(2) at their initial value in ecus.
3. References to the instruments repealed by virtue of paragraph 1 shall be deemed to be references to this Regulation.

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

Done at Luxembourg, 24 June 1988.

For the Council
The President
M. BANGEMANN

¹ Before the end of 1996, a second examination reviewing the position shall take place (1 642nd session of the Council of the European Communities).

ANNEX

The ceilings for outstanding loans provided for in Article 1(3) shall be as follows: ¹

Member State	million ECU	% total
Belgium	782	5.62
Denmark	364	2.62
FR of Germany	2 427	17.43
Greece	209	1.50
Spain	1 012	7.27
France	2 427	17.43
Ireland	141	1.01
Italy	1 617	11.61
Luxembourg	28	0.20
The Netherlands	808	5.80
Austria	485	3.48
Portugal	202	1.45
Finland	309	2.22
Sweden	687	4.93
United Kingdom	2 427	17.43
Total	13 925	100.00

¹ As amended by the Act relating to the accession of Austria, Finland and Sweden.

3. European monetary cooperation

(a) COUNCIL REGULATION (EEC) No 907/73

of 3 April 1973

establishing a European Monetary Cooperation Fund

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the Resolution of the Council and of the Representatives of the Governments of the Member States of 22 March 1971 on the progressive establishment of economic and monetary union in the Community provided for the establishment of a European Monetary Cooperation Fund to be integrated at a later stage into a Community organization of central banks;

Whereas the Heads of State or Government meeting in Paris on 19 and 20 October 1972 envisaged that the Fund should be established before 1 April 1973;

Whereas the Council has been informed of the opinions requested on this subject, in the Resolution of the Council and of the Representatives of the Member States of 21 March 1972, from the Monetary Committee and from the Committee of Governors of the Central Banks;

Whereas the purpose of the Fund must be to contribute to the progressive establishment of an economic and monetary union between the Member States of the European Economic Community, which, in its final stage as regards its monetary aspects will have the following characteristics:

- (i) either the total and irreversible convertibility, at irrevocable parities, of Community currencies against each other,
- (ii) or the introduction of a common currency;

Whereas it is necessary to confer immediately on the Fund the responsibility for facilitating both the concentration necessary for the smooth operation of the exchange arrangements introduced in the Community and the settlement of the position resulting from intervention in Community currencies, for assuring thereby the multilateralization of intra-Community settlements, and for administering a financing mechanism which combines the mechanism for short-term monetary support contained in the Agreement of 9 February 1970 between the central banks of the Community with the mechanism for very short-term financing which was contained in the Agreement of 10 April 1972 between those same central banks;

Whereas the conferment of these responsibilities constitutes merely a first stage in the progressive development of the Fund; whereas it is therefore important that the Statutes of the Fund should be drawn up in such a way as to permit the scope of its activities to be gradually extended;

Whereas it is necessary to establish the Fund if Community objectives are to be attained, in particular as regards the progressive harmonization of the Member States' economic policies, the proper functioning of the common market and the establishment of economic and monetary union; whereas the Treaty made no provision for the powers essential to the establishment of the Fund;

Whereas it is appropriate to specify that the general provisions of the Treaties concerning the European Communities as regards privileges and immunities, non-contractual liability and the obligation of professional secrecy are applicable to the Fund,

HAS ADOPTED THIS REGULATION:

Article 1

A European Monetary Cooperation Fund, hereinafter referred to as 'the Fund', is hereby established; it shall have legal personality.

Article 2

Within the limits of its powers the Fund shall promote:

- (i) the proper functioning of the progressive narrowing of the margins of fluctuation of the Community currencies against each other;
- (ii) interventions in Community currencies on the exchange markets;
- (iii) settlements between central banks leading to a concerted policy on reserves.

Article 3

In the first stage of its function the Fund shall be responsible for:

- (i) the concerted action necessary for the proper functioning of the Community exchange system;
- (ii) the multilateralization of positions resulting from interventions by central banks in Community currencies and the multilateralization of intra-Community settlements;
- (iii) the administration of the very short-term financing provided for by the Agreement between the central banks of the enlarged Community of 10 April 1972 and of the short-term monetary support provided for in the Agreement between the central banks of the Community of 9 February 1970, to which the central banks of Denmark, Ireland and the United Kingdom acceded with effect from 8 January 1973, and the regroupment of these mechanisms in a renewed mechanism.

Article 4

The provisions contained in the Agreements referred to in the third indent of Article 3 shall become the administrative rules of the Fund. The necessary technical adaptation to those provisions shall be made by the Board of Governors of the Fund without, however, changing the basic nature of those provisions and in particular the consultation procedures contained therein.

Article 5

The Statutes of the Fund are set out in the Annex to this Regulation and form an integral part thereof.

Article 6

This Regulation shall enter into force on 6 April 1973.

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

Done at Luxembourg, 3 April 1973.

For the Council
The President
R. VAN ELSLANDE

ANNEX

STATUTES OF THE EUROPEAN MONETARY COOPERATION FUND

Article 1

The Fund shall be directed and managed by a Board of Governors. The members of the Board of Governors shall be the members of the Committee of Governors of the Central Banks of the Member States of the European Economic Community established by the Council Decision of 8 May 1964 on collaboration between the central banks of the Member States of the European Economic Community.

If unable to attend they may be represented by another member of the governing body of their central bank.

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

A Member of the Commission shall take part in the proceedings of the Board of Governors. He may appoint an alternate.

Article 2

The Board of Governors shall, in order to achieve the aims of the Fund, act in accordance with the general economic policy guidelines drawn up under the Treaty by the Council and in accordance with such directives as the Council may adopt acting unanimously on a proposal from the Commission.

On 30 June and 31 December of each year, the Board of Governors shall draw up a report on its activities for submission to the Council and the Commission.

Article 3

The Board of Governors shall represent the Fund. It shall decide on the organization of the Fund, the powers which will be delegated and who may commit the Fund *vis-à-vis* third parties.

The Board of Governors may delegate to an agent the responsibility for the execution of technical aspects of the Fund's operations.

Article 4

In the first stage of its functions, the expenditure incurred in the management of the Fund which is not covered by income shall where necessary be made up by contributions from the central bank in accordance with the scale of contributions for short-term monetary support.

Article 5

The Fund's operations in the currencies of the Member States shall be expressed in a European monetary unit of account of a value of 0.88867088 grammes of fine gold.

When all the Member States alter the parity or the central rate of their currency simultaneously in the same direction, the value of the unit of account shall be changed automatically;

- (i) where the parities change in the same proportion: in the same direction and by the same proportion as the changes in parities or in the central rates;
- (ii) where the parities change in different proportions: in the same direction as the change and in the same proportion as the smallest change in parity or central rate, unless the Council decides on a larger change. In such a case the Council shall act within three days from that of the official announcement by the first Member State to change the parity or central rate of its currency, and in accordance with the procedure laid down in the fourth paragraph of this Article.

Simultaneous changes mean changes in the parity or central rate of the currencies of the Member States made within the three-day period referred to above.

Any other changes in the value of the unit of account shall be decided on by the Council, acting unanimously on a proposal from the Commission after consulting the Monetary Committee and the Board of Governors of the Fund.

Article 6

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

Article 7

The Protocol on the privileges and immunities of the European Communities shall apply to the Fund, the Board of Governors and the personnel of the Fund.

Article 8

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

Article 9

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

Article 10

The Board of Governors shall adopt the rules of procedure of the Fund. These rules of procedure shall require the unanimous approval of the Council, given after consulting the Commission.

**(b) PROVISIONAL RULES OF PROCEDURE ¹
OF THE EUROPEAN MONETARY COOPERATION FUND**

I — Board of Governors

Article 1

The members of the Committee of Governors of the Central Banks of the Member States of the European Economic Community set up by the Council Decision of 8 May 1964 shall be members of the Board of Governors. They may arrange to be accompanied or represented at meetings of the Board by another person belonging to their institutions, and in the event of being prevented from attending, arrange to be represented by another member of the policy board of their institution.

A representative of the Luxembourg monetary authorities or, if necessary, his alternate shall have a seat on the Board of Governors.

A Member of the Commission of the European Communities shall take part in the proceedings of the Board of Governors. He may arrange to be accompanied or have his place taken by an alternate.

Persons on the Board of Governors or their representative shall be entitled during meetings to have the assistance of experts of their institutions.

The Board of Governors may in addition, if it judges it necessary, invite qualified persons.

Article 2

Each member of the Board of Governors shall have one vote. In the event of his being prevented from attending, his vote shall automatically be delegated to the person representing him.

The representative of the Luxembourg monetary authorities shall take part in decisions whenever the rights and obligations of the Grand Duchy of Luxembourg are not exercised by the Banque Nationale de Belgique for account of the two States of the Belgo-Luxembourg Economic Union.

Decisions must be unanimous.

In emergencies, decisions may be taken by telephone or by letter. They shall then be recorded in the minutes of the next meeting of the Board of Governors.

Article 3

The chairmanship of the Board of Governors shall be held by the Chairman of the Committee of Governors.

¹ Text adopted by the Council of the European Communities and by the Board of Governors of the Fund on 28 June 1973.

If the Chairman of the Board of Governors is prevented from attending, the oldest member of the Board shall stand in for him.

Article 4

The Board of Governors shall meet at regular intervals and at least four times a year.

The Chairman shall, in addition, convene the Board of Governors:

- (i) at the request of a person of the Board and after consultation of the other members;
- (ii) when he considers that the situation makes this necessary.

The meeting of the Board shall be held, as a general rule, at the Fund's place of work. The Chairman may also call meetings of the Board elsewhere.

Article 5

The Chairman shall fix the time, place and agenda for each meeting.

Except in emergencies the notices convening them and the agenda must normally reach participants before the next meeting, when it will be approved.

Article 6

The proceedings of the Board of Governors and the documents submitted to it shall be confidential.

Article 7

Summary minutes shall be drawn up at each meeting. They shall be sent and submitted to the participants, as a general rule, before the following meeting, when they shall be approved. The approved minutes shall be authenticated by the signature of the Chairman.

Article 8

The Board of Governors shall secure the services of a secretariat which must in particular:

- (i) assist the Chairman in preparing meetings of the Board of Governors and, *inter alia*, draw up the draft agenda and circulate the necessary documents as quickly as possible;
- (ii) attend the meetings and draw up the minutes thereof;
- (iii) ensure the execution of the work entrusted by the Board of Governors;
- (iv) ensure liaison with the other institutions or divisions of the European Communities.

II — Organization of the services performed by the European Monetary Cooperation Fund

Article 9

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

Article 10

The terms for recruitment of the Fund's staff shall be laid down later on by the Board of Governors in line with the development of the Fund's activities; they shall form an integral part of the Rules of Procedure.

Until such time as Staff Regulations of the Fund are adopted, the Board of Governors shall conclude contracts of limited duration with the staff it recruits.

Article 11

The expenses incurred in running the Fund shall be submitted to the Board of Governors for its approval. The central banks shall be notified of the circumstances in which they will have to cover the expenses in accordance with the provisions of Article 4 of the Fund's Statutes.

Article 12

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

(c) COUNCIL REGULATION (EEC) No 3181/78
of 18 December 1978
relating to the European Monetary System ¹

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the European Council meeting in Brussels adopted, on 5 December 1978, a resolution setting out the arrangements related to the establishment of the European Monetary System which will come into effect from 1 January 1979;

Whereas, in this context, and not later than two years after the start of the system, the existing arrangements and institutions would be merged into a European Monetary Fund; whereas, in the mean time, responsibility for administering the new monetary system should be entrusted initially to the European Monetary Cooperation Fund, set up by Regulation (EEC) No 907/73;

Whereas, by Regulation (EEC) No 3180/78, the Council adopted the ecu as the unit of account used by the European Monetary Cooperation Fund;

Whereas, for the system to begin functioning, it is necessary to provide immediately for the creation of a supply of ecus against part of the central banks' reserves placed with the system, and for those ecus to be used as a means of settlement within the system;

Whereas, in this context, the introduction of the ecu into the operations of the European Monetary Cooperation Fund and its utilization as a means of settlement are necessary if the objectives pursued by the Community are to be achieved, notably the gradual convergence of Member States' economic policies, the smooth functioning of the common market and the attainment of economic and monetary union; whereas the powers needed to set up the system are not provided for in the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

The European Monetary Cooperation Fund is hereby empowered to receive monetary reserves from the monetary authorities of the Member States and to issue ecus against such assets.

¹ Text incorporating the amendments contained in Council Regulation (EEC) No 3066/85 of 28 October 1985.

Article 2

The Fund and the monetary authorities of the Member States are hereby empowered to use ecus as a means of settlement and for transactions between those authorities and the Fund.

The Fund is also empowered to grant to the monetary authorities of non-member countries and international monetary institutions the status of 'other holders' of ecus as referred to in Article 1 and to fix the terms and conditions under which such ecus may be acquired, held and used.

Article 3

The Board of Governors of the Fund shall take the administrative measures necessary for the implementation of Articles 1 and 2.

Article 4

This Regulation shall enter into force on 1 January 1979.

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

Done at Brussels, 18 December 1978.

For the Council
The President
H. MATTHÖFER

IV

ECU AND AGRICULTURAL UNIT OF ACCOUNT

1. COMMISSION INFORMATION

on the new composition of the ecu

(89/C 241/01)

In accordance with Council Regulation (EEC) No 1971/89 amending the composition of the ecu, and based on the weights announced therein, the Commission hereby announces the new national currency amounts composing the ecu, to take effect from 21 September 1989, as follows:

DM	0.6242	LFR	0.130
FF	1.332	PTA	6.885
UKL	0.08784	DKR	0.1976
LIT	151.8	IRL	0.008552
HFL	0.2198	DR	1.440
BFR	3.301	ESC	1.393

2. COUNCIL REGULATION (EEC) No 3813/92

of 28 December 1992

**on the unit of account and the conversion rates to be applied for the purposes
of the common agricultural policy¹**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Monetary Committee,

Whereas the internal market provided for in Article 8a of the Treaty will comprise, from 1 January 1993, an area without internal frontiers; whereas application of the agrimonetary arrangements on the basis of:

- Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy,
- Council Regulation (EEC) No 1677/85 of 11 June 1985 on monetary compensatory amounts in agriculture,
- Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture,
- Council Regulation (EEC) No 129/78 of 24 January 1978 on the exchange rates to be applied for the purposes of the common agricultural structures policy,

requires checks at the Community's internal frontiers; whereas, therefore, agrimonetary arrangements must be established which are compatible with the internal market and the Regulations in question should be repealed;

Whereas the ecu was defined by Council Regulation (EEC) No 3180/78 of 18 September 1978 changing the value of the unit of account used by the European Monetary Cooperation Fund; whereas it should be possible to use this unit of account to fix and express the prices or amounts established under the common agricultural policy;

Whereas, prior to the achievement of economic and monetary union, prices and amounts fixed in ecus must be paid in national currency and the conversion rates applicable in the agricultural sector must therefore be determined; whereas such rates must be reasonably stable while closely reflecting actual economic and monetary circumstances; whereas, without prejudice to the rates provided for in Article 22 of Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments specific rates may be necessary in certain special cases;

¹ As amended by Council Regulation (EC) No 3528/93 of 21 December 1993.

Whereas, in the event of a monetary realignment, the agricultural conversion rates should in principle be adjusted immediately; whereas, however, it may be desirable to make the adjustment to a certain extent gradually in order to avoid market disturbance, as a result of minor adaptations, or it may be necessary to proceed in this manner in order to lessen the impact of major adjustments; whereas, in all cases, a permissible bilateral monetary gap must not be overstepped if significant market disturbance is to be avoided;

Whereas the conversion rates between the ecu and the currencies of third countries used in agriculture should be indicated, particularly in order to determine the influence of the situation on the world market;

Whereas, if the agricultural conversion rate is changed during the period when an operation is being carried out, the rate applicable to the amounts concerned must be determined; whereas, as a general rule, the operative event for the agricultural conversion rate is the event whereby the economic objective of the operation is attained; whereas it may be necessary to specify or derogate from this operative event, while respecting certain criteria, and particularly the speed with which the new agricultural conversion rates are actually applied and whereas this, on principle, excludes the various possibilities for long-term advance fixing of the rate; whereas, as regards the amounts fixed by the Council in the context of the agricultural structures policy, a reduction in the aid granted before the new agricultural conversion rate takes effect should be avoided;

Whereas, in the event of major monetary re-evaluations, agricultural incomes concerned shrink more rapidly and to a greater extent than incomes in other sectors of the economy; whereas it is therefore justified to provide for the possibility of granting temporary and degressive re-evaluation compensatory aid to accompany the adjustment of agricultural prices without hindering the definitive adjustment of agriculture to the rules of the economy in general; whereas the principle of the cohesion provided for in Article 130A of the Treaty calls for the possibility of a Community contribution towards the compensatory aid to farmers; whereas the level of the Community contribution must vary according to the requirements and the financial resources available in the regions of the Community which are referred to by Objective 1 provided for in Article 1 of Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Fund and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments;

Whereas it is appropriate, moreover, to extend, for a limited period, the mechanism relating to the transfer of the fixed positive monetary gaps referred to in Article 6 of Regulation (EEC) No 1677/85; whereas, however, the reduction, in the prices and amounts, referred to in paragraphs 3 and 4 of the said Article do not apply to the compensation decided upon in the context of the common agricultural policy and referred to in Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops, Council Regulation (EEC) No 1357/80 of 5 June 1980 introducing a system of premiums for maintaining suckler cows, in Article 4a of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal, in Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside, in Council Regulation (EEC) No 2079/92 of 30 June 1992 instituting a Community aid scheme for early retirement from farming and in Council Regulation (EEC) No 2080/92 of 30 June 1992 instituting a Community aid scheme for forestry measures in agriculture;

Whereas provisions must be made to enable aspects of the arrangements governing trade in agricultural products with third countries to be adapted rapidly in the event of changes in the central rates of the currencies of the Member States or the exchange rates of the currencies of certain third countries;

Whereas reason dictates that special rules be laid down for dealing with exceptional situations arising either within the Community or on the world market and requiring immediate action to ensure that the arrangements established under the common agricultural policy operate effectively;

Whereas, to facilitate implementation of this Regulation, provision should be made for a procedure instituting close cooperation between the Member States and the Commission;

Whereas provision should be made for the possibility of interim measures to facilitate the introduction of the new agrimonetary arrangements,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation:

- (a) 'legal instruments relating to the common agricultural policy' shall mean:
 - legal instruments based directly or indirectly on Article 43 of the EEC Treaty, with the exception of the Common Customs Tariff and other legal instruments of customs legislation applicable to both agricultural and industrial products,
 - legal instruments applicable to goods processed from agricultural products and subject to specific trade arrangements;
- (b) 'fixed currencies' shall mean currencies which are maintained within a maximum spread at any given time of 2.25% or less within the European Monetary System;
 - 'floating currencies' shall mean other currencies of Member States or of third countries;
- (c) 'correcting factor' shall mean a coefficient which:
 - from 1 January 1993 is equal to the coefficient referred to in Article 6(1) of Regulation (EEC) No 1677/85 and as applied on 31 December 1992,
 - thereafter, is altered by the Commission, whenever parities are realigned within the European Monetary System, in line with the highest revaluation of the central rate of the fixed currencies against the ecu;
- (d) 'representative market rate' shall mean:
 - in the case of a fixed currency, the central rate for the ecu fixed within the framework of the European Monetary System, multiplied by the correcting factor,
 - in the case of a floating currency, the average exchange-rate for the ecu with respect to that currency, recorded over a reference period determined in accordance with the procedure laid down in Article 12 and multiplied by the correcting factor;
- (e) 'agricultural conversion rate' shall mean the rate used in legal instruments relating to the common agricultural policy, to convert:
 - amounts expressed in ecus into the national currency of a Member State,
 - amounts expressed in the national currency of a Member State into ecus;
- (f) 'monetary gap' shall mean the percentage of the agricultural conversion rate representing the difference between that rate and the representative market rate.

Article 2

1. The unit of account used in legal instruments relating to the common agricultural policy shall be the ecu as defined in Regulation (EEC) No 3180/78.

2. It may be decided, in accordance with the procedure provided for in Article 12, that the price and amounts concerned shall be expressed in ecus and where appropriate, in national currency in the main administrative documents drawn up by the Community or by the Member States, for the purpose of applying the instruments referred to in paragraph 1.

Article 3

1. Without prejudice to the derogations provided for in paragraphs 2, 3 and 4 the agricultural conversion rate shall be fixed by the Commission on the basis of the representative market rate and in accordance with Article 4.

The agricultural conversion rate shall initially, for fixed currencies, be equal to the representative market rate as applied on 1 January 1993; for the floating currencies it shall be fixed taking account of the representative market rate for a reference period in the month preceding that date.

2. In the case of measures Community financing of which under the European Agricultural Guidance and Guarantee Fund (EAGGF) comes solely from the Guidance Section, the agricultural conversion rate shall be equal to the rate applying for the entry into the accounts of expenditure to the general budget of the European Communities.

3. Taking into account the correcting factor, a specific agricultural conversion rate closely reflecting the actual economic circumstances may be determined or, where required, detailed rules for determining such a rate may be adopted in accordance with the procedure laid down in Article 12 in order to forestall risks of market distortion of monetary origin, and in particular:

- to avoid exceeding the monetary gap characteristic of the trend in the representative market rate at the time the agricultural conversion rate is determined,
- to convert into ecus amounts relating to world market data and expressed in the national currency of a Member State.

4. Where a budgetary limit is set, the agricultural conversion rate may be fixed at the rate applying for entry into the accounts of expenditure to the general budget of the European Communities, in accordance with the procedure whereby the limit was determined.

Article 4

1. The agricultural conversion rate for a floating currency shall be adjusted where the monetary gap exceeds 2 points for the last referenced period of a month. In that case, the new agricultural conversion rate shall be fixed so as to reduce that monetary gap by half, without prejudice to paragraph 3 and shall take effect from the start of the following month.

2. In the event of a monetary realignment affecting the central rates determined for the Member States with fixed currencies, the agricultural conversion rates shall be adjusted immediately so as to:

- eliminate the monetary gaps of the fixed currencies, and
- reduce the monetary gaps of the floating currencies by half, where they exceed 2 points over an appropriate reference period, without prejudice to paragraph 3.

However, should a monetary realignment lead to a monetary gap for a fixed currency:

- less than, or equal to, 0.5 points, this gap shall be dismantled by the beginning of the next marketing year at the latest,
- greater than four points, this gap shall be immediately reduced to two points. The remaining gap shall be dismantled over a maximum period of 12 months from the date of realignment.

The adjustments of the agricultural conversion rates, provided for in the second subparagraph, shall be made by the Commission in accordance with the procedure laid down in Article 12.

3. If, over a reference period, the absolute value of the difference in the gaps between the currencies of any two Member States exceeds four points, any monetary gaps for the Member States concerned that exceed two points shall immediately be reduced to two points. This adjustment shall be made after any adjustment required pursuant to paragraphs 1 and 2.

Article 4a

Until 31 December 1994, notwithstanding Article 4:

1. The agricultural conversion rate for a floating currency shall be adjusted where the monetary gap for the last reference period of not more than a month exceeds:

- three points where the gap is positive, or
- two points where the gap is negative.

In such cases, the new agricultural conversion rate shall be fixed so as to reduce the monetary gap by half, without prejudice to paragraph 3, and shall take effect from the start of the following reference period.

2. In the event of a monetary realignment affecting the central rates determined for the Member States with fixed currencies, the agricultural conversion rates shall be adjusted immediately so as to:

- eliminate the monetary gaps for the fixed currencies, and
- reduce the monetary gaps for the floating currencies by half where they exceed the limits referred to in paragraph 1 over an appropriate reference period, without prejudice to paragraph 3.

However, should a monetary realignment lead to a monetary gap for a fixed currency:

- less than or equal to 0.5 points, that gap shall be dismantled by the beginning of the next marketing year at the latest,
- greater than five points where the gap is positive or four points where the gap is negative, that gap shall immediately be reduced to two points less than the above limits. The remaining gap shall be dismantled over a maximum period of 12 months from the date of realignment.

The adjustments to the agricultural conversion rates provided for in the second subparagraph shall be made by the Commission in accordance with the procedure laid down in Article 12.

3. If, over a reference period, the absolute value of the difference between the gaps for the currencies of any two Member States exceeds five points, any monetary gaps for the Member States concerned that exceed:

- three points where the gaps are positive, or
- two points where the gaps are negative,

shall immediately be reduced to the above limits. This adjustment shall be made after any adjustment pursuant to paragraphs 1 and 2.

4. Where the positive monetary gap for a currency exceeds three points, the three and two point limits referred to in paragraphs 1 and 3 shall be adjusted by the Commission, as necessary, to up to five and zero points respectively so as to avoid a reduction in the positive gap in question, while maintaining a value of five points for the combination of those limits.

Article 5

1. The representative market rate for the national currency of a third country shall be used in legal instruments relating to the common agricultural policy to convert:

- amounts expressed in ecus into the national currency of that third country,
- amounts expressed in the national currency of that third country into ecus.

2. Without account being taken of the correcting factor, in order to avoid risks of market distortion of monetary origin, the Commission, by virtue of the powers conferred on it by the legal instruments relating to the common agricultural policy in each individual case, may derogate from paragraph 1 to permit the use of conversion rates more closely reflecting the actual economic circumstances.

3. The detailed rules for determining a specific conversion rate closely reflecting the actual economic circumstances may be laid down in accordance with the procedure provided for in Article 12 with a view to

the conversion of amounts expressed in the national currency of a third country into the national currency of a Member State.

Article 6

1. The operative event for the agricultural conversion rate shall be:
 - the completion of customs import or export formalities in the case of amounts collected or granted in trade with the third countries,
 - the event whereby the economic objective of the operation is attained in all other cases.

However, for the amounts fixed in advance in ecus and for the amounts established in ecus following an invitation to tender procedure, the agricultural conversion rate may be fixed in advance for a period which may last until the end of the third month following that in which it was fixed in advance. In this case, the agricultural conversion rate shall be the one which obtains, respectively, on the date on which it was fixed in advance or on the date on which the period for submitting tenders ended.

2. Where the operative event as referred to in paragraph 1 has to be specified or cannot be taken into account for reasons peculiar to the market organization or the amount in question, a specific operative event shall be determined in accordance with the procedure laid down in Article 12, taking account of the following criteria:

- (a) actual applicability as soon as possible of adjustments to the agricultural conversion rate;
- (b) similarity of the operative events for analogous operations carried out under those different market organizations;
- (c) coherence in the operative events for the various prices and amounts relating to a single market organization;
- (d) practicability and effectiveness of checks on the application of suitable agricultural conversion rates.

3. The amounts fixed by the Council in the context of aid for which Community financing is provided by the EAGGF Guidance Section shall be converted into national currency at the agricultural conversion rate applicable on 1 January of the year during which the decision to grant the aid is taken.

Where the Community rules stipulate that payment of the aid is to be spread over several years, the aid instalments shall be converted using the most devalued agricultural conversion rate of those applicable on 1 January of each of the years from that in which the decision to grant the aid is taken until that for which the instalment in question is to be paid.

Article 7

Where the agricultural conversion rate applicable to:

- flat-rate aid calculated per hectare or per livestock unit,
or
- a compensatory premium per sheep or goat,
or
- amounts of a structural or environmental nature is lower than that previously applied, the aid or amounts concerned shall be increased in ecus in accordance with the procedure laid down in Article 12.

The increase in the amounts referred to in the first subparagraph shall be determined in such a way as to avoid their reduction, in terms of the national currency of the Member State whose agricultural conversion rate is reduced the most among those which request application of this Article.

Application of this Article may not be requested for amounts for which an agricultural conversion rate lower than the new rate concerned was applied during the 24 months preceding the introduction of the latter.

Article 8

1. Member States with floating currencies may for three years grant farmers compensatory aid when the average agricultural conversion rate over the previous 12 months is lower than the average agricultural conversion rate over the 12 months preceding that period. The periods taken into account in order for aid to be granted may not be taken into account for the grant of further aid.

2. The amount of the first annual instalment of aid shall be determined on the basis of the fall in average agricultural income in the Member State concerned caused by the reduction in the agricultural conversion rate. The amount of each annual instalment shall be reduced at least by one third of the amount granted during the first year.

Compensatory aid may not be granted in the form of an amount per unit of quantity produced.

2a. Where the average rate triggering off the granting of aid is lower than the average agricultural conversion rate applied subsequently for 12 consecutive months, the annual instalments of aid commencing after the 12 months in question shall be cancelled or reduced in accordance with the procedure laid down in Article 12.

3. The Community contribution to the financing of the compensatory aid shall amount to:

- 75% of the aid actually granted to farmers in regions covered by Objective No 1 as referred to in Article 1 of Regulation (EEC) No 2052/88,
- 50% of the amounts actually granted in other cases.

For the purposes of the financing of the common agricultural policy, this contribution shall be deemed to be part of intervention intended to stabilize the agricultural markets.

4. The Council shall, acting by a qualified majority on a proposal from the Commission and subject to the attainment of minimum limits, establish the maximum amounts which can be granted for each instalment of aid.

Article 9

1. Where the correcting factor is increased, the prices fixed in ecus in the context of the common agricultural policy shall be reduced at the beginning of the following marketing year in accordance with the procedure provided for in Article 12 by 25% of the percentage of the change in the correcting factor.

2. Member States in which the prices in national currencies are reduced as a result of paragraph 1 being applied shall be authorized, according to a procedure to be determined by the Council, acting by a qualified majority on a proposal from the Commission, to grant national compensation aid. Such aid must be directed towards the socio-structural field and may not be linked to production.

3. The amounts fixed in ecus under the common agricultural policy, except for those referred to in:

- Regulation (EEC) No 1765/92,
- Regulation (EEC) No 1357/80 and Article 4a of Regulation (EEC) No 805/68,
- Regulations (EEC) No 2078/92, (EEC) No 2079/92 and (EEC) No 2080/92,

shall be altered appropriately as the need arises.

Article 10

In the case of a monetary realignment within the framework of the European Monetary System or of an abrupt and significant change in the exchange rates between the ecu and certain national currencies of third countries, the following amounts, fixed in the legal instruments relating to the common agricultural policy, may, as required, be fixed anew by the Commission using the new agricultural conversion rates in accordance with the methods applicable in each case and, where appropriate, in the light of developments in the market situation:

- import duties,
- export duties,
- export refunds,
- sluice-gate prices,
- aid fixed on the basis of world market data,
- import subsidies.

Article 11

1. Where exceptional monetary practices are liable to jeopardize the application of the legal instruments relating to the common agricultural policy, the Commission shall decide upon suitable protective measures, which may, where necessary, derogate from the existing legal instruments relating to the common agricultural policy.

The Council and the Member States shall be notified forthwith of the measures referred to in the first subparagraph.

Any Member State may refer the Commission's decision to the Council during the three working days following that on which they are notified of protective measures.

The Council, acting by a qualified majority, may take a different decision within one month of notification of the measures in question.

2. Where exceptional monetary practices are liable to jeopardize the application of the legal instruments relating to the common agricultural policy, the Commission may, by virtue of the powers conferred on it by these instruments in each individual derogate from this Regulation, in particular in the following cases:

- where a country uses abnormal exchange techniques such as multiple exchange rates or operates barter agreements,
- where countries have currencies which are not quoted on official foreign exchange markets or where the trend in such currencies is likely to create distortion in trade.

Article 12

The detailed rules of application for this Regulation shall be laid down in accordance with the procedure provided for in:

- (a) Article 26 of Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals,
or
- (b) the corresponding articles of the other Regulations on the common organization of the markets in agricultural or fishery products,
or
- (c) the corresponding articles of other Community provisions introducing a similar procedure.

Article 13

1. Where transitional measures prove necessary to facilitate the initial application of this Regulation, such measures shall be adopted by the Commission in accordance with the procedure laid down in Article 12 and shall remain applicable for the period strictly necessary to facilitate the introduction of the new arrangements.
2. The correcting factor and the elements of this Regulation relating to it shall apply for a period not exceeding two years from the date of entry into force of this Regulation. Before the expiry of that period, the Commission will present a report to the Council on the arrangements contained in this Regulation, accompanied by appropriate proposals, in order to permit the Council, acting by qualified majority, to decide on future policy in this field.
3. Regulations (EEC) No 1676/85, (EEC) No 1677/85, (EEC) No 1678/85 and (EEC) No 129/78 are hereby repealed.

Article 14

This Regulation shall enter into force on 1 January 1993. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 December 1992.

For the Council
The President
J. GUMMER

3. COMMISSION REGULATION (EEC) No 1068/93
of 30 April 1993
on detailed rules for determining and applying the agricultural
conversion rates¹

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy, and in particular point (d) of Article 1 and Articles 3(3), 4(2), 5(3), 6(2) and 12 thereof,

Whereas it has been found that certain aspects of Commission Regulation (EEC) No 3819/92 of 28 December 1992 on detailed rules for determining and applying the agricultural conversion rates must be expanded and made more explicit; whereas, in order to facilitate implementation of the agrimonetary arrangements, that Regulation should be repealed and the relevant provisions should be amended and expanded and included in a single Regulation;

Whereas the representative market rates defined in Article 1 of Regulation (EEC) No 3813/92 are used to convert amounts expressed in the national currencies of third countries and form the basis for fixing the agricultural conversion rates for Member States' currencies; whereas it is necessary to define the rules for their calculation in the case of floating currencies and in particular in respect of third countries' currencies whose value in ecus is not published in the *Official Journal of the European Communities*;

Whereas, in order to provide better information to traders and to avoid the risks of market distortion, the representative market rates for floating currencies should be adjusted on fixed dates immediately following the end of each basic reference period; whereas, however, in the event of major currency fluctuations the representative market rates of currencies fluctuating outside certain limits need to be established quickly on the basis of a brief reference period;

Whereas, in order to guarantee a uniform approach throughout the Community and to simplify administration of trade arrangements, the rates fixed by Commission Regulation (EEC) No 1766/85 of 27 June 1985 on the rates of exchange to be used in the determination of customs value, as amended by Regulation (EEC) No 593/91, should be used by Member States to convert amounts expressed in third countries' currencies directly into their own national currency;

Whereas the agricultural conversion rate should be applicable as quickly as possible after the reference period on the basis of which it is calculated in order to avoid risks of market distortion or commercially unjustified profit-taking; whereas the agricultural conversion rate applicable at the beginning of a month should be adjusted in order to take account of the development of the representative market rate in the event of major currency fluctuations;

Whereas the order of adjustments to agricultural conversion rates should be indicated if they occur simultaneously, except as part of a currency realignment; whereas, in accordance with Article 4(3) of Regulation (EEC) No 3813/92, priority should be accorded to the adjustment of the agricultural conversion

¹ As amended by Commission Regulation (EC) No 547/94 of 10 March 1994.

rate referred to in paragraph 1 of that Article and then, if relevant, to that referred to in paragraph 3 of that Article, taking account of the basic reference period; whereas the same priority shall then apply taking account of the result thus obtained and of the derogation referred to in Article 2(2);

Whereas data for the world market must be established in ecus at frequent intervals and with a high degree of accuracy; whereas in respect of those data expressed in the national currencies of Member States a special agricultural conversion rate equal to the representative market rate should be used;

Whereas in the event of a currency realignment the reference period used to establish the new agricultural conversion rates for floating currencies must be as brief as possible in order to prevent speculative movements of products; whereas, in order to alter agricultural conversion rates quickly, the Commission should fix the new rates for fixed currencies at the same time as those for floating currencies in accordance with the minimum dismantlements stipulated by Article 4(2) of Regulation (EEC) No 3813/92; whereas, in order to achieve the objective in pursuit of which the correcting factor was introduced, changes in agricultural conversion rates caused by roundings-off in the calculation of the representative market rate for the fixed currencies which undergo the greatest revaluation should be avoided;

Whereas it is necessary to establish the operative events for the agricultural conversion rates applicable, in the absence of advance fixing, after the transitional measures laid down in Article 1 of Commission Regulation (EEC) No 3820/92, without prejudice to any details or exemptions provided for in the rules for the sectors concerned on the basis of the criteria mentioned in Article 6 of Regulation (EEC) No 3813/92;

Whereas for all the prices or amounts involved in trading transactions the acceptance of the customs declaration represents a suitable operative event; whereas in the case of prices and amounts linked to those prices the commercial objective is attained in the case of buying or selling operations when the product is paid for or taken over and, in the case of withdrawal operations by producer groups, on the first day of the month concerned; whereas, in the case of aid paid for a given quantity of product and in particular where the aid is conditional on a specific use of that product such as its processing, preservation, packaging or consumption, the commercial objective is attained when the product is taken over by the relevant operator and, where relevant, when the particular use of that product is guaranteed; whereas, in the case of private storage aid, products are no longer available on the market from the first day for which the aid is granted;

Whereas, in the case of aid granted per hectare, the commercial objective is attained when the product is harvested, usually at the beginning of the marketing year; whereas, in the case of structural aid financed exclusively by the EAGGF Guarantee Section, an operative event similar to that laid down in Article 6(3) of Regulation (EEC) No 3813/92 should be established;

Whereas, for amounts not linked to the market prices of agricultural products, the operative event can be established as a date to be determined on the basis of the period during which the operation occurs; whereas it should be stated that the operative event applicable for the recording of prices or offers on the market is to occur on the day on which the prices or offers themselves are applicable; whereas, in the case of advances and securities, the agricultural conversion rate must approximate to that applicable to the prices or amounts in question where this is known at the time the advances or securities are paid;

Whereas, pursuant to the second subparagraph of Article 6(1) of Regulation (EEC) No 3813/92, it is necessary to establish a strict relationship between the request for advance fixing of the agricultural conversion rate and that of the amount concerned in ecus; whereas, to avoid the risk of speculation, it is necessary to restrict the validity of certificates fixing agricultural conversion rates in advance to the territory of the Member State stipulated by the interested party, for the duration of the advance fixing of that rate;

Whereas it is necessary to indicate in the various Community languages the wording to appear on the appropriate documents indicating the advance fixing of the agricultural conversion rate and the duration of its validity;

Whereas the agricultural conversion rates are determined according to very precise rules which allow for a degree of anticipation of their results prior to each fixing of those rates; whereas, in order to avoid the risk of speculation, the value of the agricultural conversion rate fixed in advance should be adjusted during the

period which brings about the change in that rate; whereas Regulation (EEC) No 3813/92 specifies the need to overstep a permitted monetary gap in order to avoid significant market disturbance; whereas, therefore, it is necessary to adjust the advance fixing of an agricultural conversion rate which would produce a sizeable monetary gap with the rates in force;

Whereas the advance fixing of agricultural conversion rates may bring about the risk of speculation in the event of major exchange-rate fluctuations; whereas, therefore, it is necessary to provide for the suspension of advance fixing by means of a rapid procedure where necessary; whereas where advance fixing is suspended, applications may be submitted subject to special conditions and in accordance with the provisions of Articles 13, 14 and 15 of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products, as last amended by Regulation (EEC) No 2101/92;

Whereas the method of calculating the correcting factor to be modified in the event of currency realignment and the rules for rounding-off the values which are calculated in order to determine conversion rates should be specified;

Whereas the entry into force of this Regulation may allow its application for as many sectors as possible from the beginning of the 1993/94 marketing year;

Whereas the relevant Management Committees have not delivered an opinion within the time laid down by their chairmen,

HAS ADOPTED THIS REGULATION:

TITLE I.

Representative market rates

Article 1

1. The exchange rates from which representative market rates for floating currencies are established shall be the daily ECU rates published in the 'C' series of the *Official Journal of the European Communities*.
2. Where the ecu rate for a third country's currency is not published in the *Official Journal of the European Communities*, the representative market rate for that currency shall be established taking account of exchange rates reflecting as effectively as possible the current value of the currency in question in commercial transactions.

Article 2

1. The representative market rate for a floating currency shall be calculated on the basis of basic reference periods. These shall be the periods running from the first to the 10th, the 11th to the 20th and the 21st to the last day of each month, reduced if necessary in accordance with paragraphs 2 and 3.
2. Notwithstanding paragraph 1, in cases where the absolute difference between the monetary gaps in two Member States, calculated, in the case of floating currencies, on the basis of the average of the ECU rates for three consecutive quotation days not interrupted by a currency realignment, exceeds six points:
 - (a) the representative market rate for each currency in question, in respect of which a monetary gap exists which is equal to or greater than the limit referred to
 - in Article 4(1) of Regulation (EEC) No 3813/92, or

- until 31 December 1994, in Article 4a(1) of Regulation (EEC) No 3813/92, where applicable adjusted in accordance with Article 4a(4) thereof,

shall be adjusted on the basis of the three quotation days in question, and

- (b) the basic reference period in which the representative market rate is adjusted for the currency or currencies in question shall be altered so as to commence on the day following the three quotation days in question; the end of that period shall not be affected by this provision.

3. In the event of a currency realignment:

- the reference period referred to in the second indent of the first subparagraph of Article 4(2) of Regulation (EEC) No 3813/93 and that referred to in the second indent of the first subparagraph of Article 4a(2) of that Regulation shall be equal to the two quotation days following the date of the realignment, and
- the basic reference period in which the representative market rates is adjusted shall be altered so as to commence on the day following the two quotation days referred to in the first indent; the end of that period shall not be affected by this provision.

Article 3

The representative market rate shall be used from the day following the period on the basis of which it was calculated until the end of the following period for which a new representative market rate may be calculated.

Article 4

By way of derogation from use of the representative market rate in applying trade arrangements, conversion into the national currency of a Member State of an amount expressed in the national currency of a third country shall be effected by the Member State concerned using the conversion rate to be used in the determination of the customs value.

TITLE II.

Agricultural conversion rates

Article 5

1. Notwithstanding Article 3(2) of Regulation (EEC) No 3813/92 with regard to measures financed by the EAGGF Guidance Section, the agricultural conversion rates for floating currencies shall be adjusted in accordance with Article 4(1) of that Regulation at the end of each month, on the basis of the final reference period of the month as referred to in Article 2 of this Regulation.

2. The agricultural conversion rates shall be adjusted in accordance with Article 4(3) of Regulation (EEC) No 3813/92 in line with the monetary gaps for the representative market rates based on the reference periods referred to in Article 2 of this Regulation.

3. Where conditions are fulfilled for several types of adjustment to the agricultural conversion rate for a floating currency to be made on the same day, the procedure shall be as follows:

- (a) adjustments shall first of all be made on the basis of the representative market rate calculated on the basis of the basic reference period,
 - pursuant to paragraph 1, and then

- pursuant to paragraph 2;
- (b) where appropriate, adjustments shall then be made on the basis of the representative market rate calculated pursuant to Article 2(2), taking account of the agricultural conversion rate resulting from the application of (a) above,
 - pursuant to paragraph 1, and then
 - pursuant to paragraph 2.

4. Notwithstanding paragraphs 1, 2 and 3, until 31 December 1994 adjustments to the agricultural conversion rates shall be made:

- (a) on the basis of the representative market rates calculated on the basis of the basic reference period;
- (b) in accordance with:
 - Article 4a(1) of Regulation (EEC) No 3813/92, where applicable after applying paragraph 4 thereof, and then
 - Article 4a(3) of that Regulation, where applicable after applying paragraph 4 thereof.

Where the adjustments referred to in Article 2(2) are made on the basis of agricultural conversion rates:

- fixed during a reference period, or
- calculated pursuant to the first subparagraph at the end of a basic reference period,

the agricultural conversion rates in question shall be adjusted on the basis of the representative market rates calculated pursuant to Article 2(2) and the rule contained in point (b) of the first subparagraph.

Article 6

The agricultural conversion rate for a floating currency shall apply from the first day following the reference period on the basis of which it was determined.

Article 7

Amounts relating to world market data expressed in the national currency of a Member State shall be converted into ecus using a special agricultural conversion rate equal to the representative market rate.

Article 8

1. In the event of a currency realignment, the Commission shall set:

- the agricultural conversion rates with effect from the day following the reference period referred to in the first indent of Article 2(3), and
- the correcting factor with effect from the quotation day following the realignment.

The operation referred to in the first indent of the first subparagraph shall be carried out without prejudice to the possibility of deciding as soon as possible, in accordance with the procedure referred to in Article 12 of Regulation (EEC) No 3813/92, on a subsequent further dismantling of monetary gaps. Where a Member State makes such a request before 4.30 p.m., Belgian time, on the quotation day following the realignment, the matter will be raised at the Management Committees concerned by their chairmen on the following quotation day.

However, where the monetary realignment concerns fixed currencies, the rules for fixing the agricultural conversion rates and the correcting factor shall be laid down in accordance with the procedure provided for in Article 12 of Regulation (EEC) No 3813/92.

TITLE III.

Operative events for the agricultural conversion rates

Article 9

The operative event for the agricultural conversion rate shall be the acceptance of the customs declaration with regard to the prices and amounts fixed in ecus under Community rules and to be applied in trade with third countries.

Article 10

1. For prices or, without prejudice to Article 9 and paragraph 2 of this Article, amounts linked to those prices,

- fixed in ecus in Community legislation, or
- fixed in ecus by a tender procedure, the operative event for the agricultural conversion rate shall be:
 - in the case of purchases or sales, the taking over by the purchaser of the batch of products concerned or the transfer of the first payment, whichever is earlier,
 - in the case of withdrawals of products in the fruit and vegetable or fishery product sectors, the first day of the month in which the withdrawal takes place.

For the purposes of this Regulation, for purchases by intervention agencies, taking-over shall be the commencement of physical delivery of the batch concerned or, where there is no physical movement, provisional acceptance of the seller's tender.

2. For aid granted by quantity of marketed product or by quantity of product to be used in a specific way, the operative event for the agricultural conversion rate shall be the first operation which:

- guarantees the appropriate use of the products in question and entails grant of the aid, and
- occurs after the date of taking-over of the products by the operator concerned and, where appropriate, before the date of specific use.

3. For private storage aid the operative event for the agricultural conversion rate shall be the first day in respect of which the aid relating to one and the same contract is granted.

Article 11

1. Notwithstanding paragraph 2, in the case of aid per hectare the operative event for the agricultural conversion rate shall be the commencement of the marketing year in respect of which the aid is granted.

2. In the case of amounts of a structural or environmental character, in particular those granted under environmental protection, early retirement or afforestation schemes, the operative event for the agricultural conversion rate shall be 1 January of the year during which the decision to grant the aid is taken.

However, notwithstanding Article 6(3) of Council Regulation (EEC) No 3813/92, in cases where, in line with Community rules, payment of the amounts referred to in the first subparagraph is staggered over several years, the annual instalments shall be converted using the agricultural conversion rates applicable on 1 January of the year in respect of which the instalment in question is paid.

Article 12

1. For costs of transport, processing or, without prejudice to Article 10(3), storage and for amounts allocated to studies or promotional measures and determined under a tendering procedure, the operative event for the agricultural conversion rate shall be the final day for the submission of tenders.
2. For the recording of market rates for prices, amounts or tenders, the operative event for the agricultural conversion rate shall be the day in respect of which the price, amount or tender is recorded.
3. For advances:
 - (a) the operative event for the agricultural conversion rate shall be:
 - the event applicable to the price or amount to which the advance relates, where this event has occurred by the time the advance is paid, or
 - the date of fixing in ecus of the advance or, in other cases, the date of payment of the advance;
 - (b) the adjustments referred to in Article 15 shall not apply where, at the time the advances are granted, such adjustments cannot be determined in respect of the agricultural conversion rate fixed in advance for the price or amount concerned;
 - (c) the operative event for the agricultural conversion rate shall be applied without prejudice to application to the entire price or amount in question of the operative event determined for that price or amount.
4. The operative event for the agricultural conversion rate for securities shall be, for each separate operation:
 - in respect of advances, that defined for the amount of the advance, where this event has occurred by the time the security is paid,
 - in respect of the submission of tenders, the day on which the tender is submitted,
 - in respect of the execution of tenders, the closing date of the invitation to tender,
 - in other cases, the date on which the security takes effect.

TITLE IV.

Advance fixing of agricultural conversion rates

Article 13

1. The agricultural conversion rate shall be fixed in advance on the conditions referred to in the second subparagraph of Article 6(1) of Regulation (EEC) No 3813/92 at the request of the interested party provided the application is lodged at the same time as:
 - the application for a certificate or equivalent document attesting the advance fixing of the amount concerned in ecus, or, as the case may be,
 - submission of a tender in response to an invitation to tender.

In the case of an invitation to tender, the application for advance fixing of the agricultural conversion rate shall be considered subject to all or part of the tender being accepted.

Applications for advance fixing of the agricultural conversion rate shall relate to the price or amount in question and the relevant securities, fixed under the same invitation to tender.

2. The duration of validity of the advance fixing of the agricultural conversion rate shall be the same as that of the advance fixing of the amount concerned in ecus, or as that of the award of the tender. However, the

duration of validity for agricultural conversion rates shall be restricted to the end of the third month following the month of advance fixing, without prejudice to the duration for the amount concerned, in ecus.

After the end of the duration of validity of the advance fixing of the agricultural conversion rate, the operative event for the agricultural conversion rate applicable to the amount concerned shall be that fixed in the first subparagraph of Article 6(1) of Regulation (EEC) No 3813/92.

3. For the duration of validity of the advance fixing of the agricultural conversion rate, the relevant certificate or equivalent document shall only be valid in a single Member State, to be nominated by the applicant at the time of submitting the application for advance fixing of the agricultural conversion rate.

Article 14¹

1. If advance fixing of the agricultural conversion rate is requested, the application for a certificate or equivalent document, or the tender, shall bear one of the following entries:

(...)

The application shall also indicate the Member State in which the certificate is to be used.

2. The certificate or equivalent document, or the statement of award of tender, shall bear one of the following entries:

(...)

Article 15

1. If the agricultural conversion rate of a fixed currency is altered in accordance with Article 8, the rate fixed in advance for that currency after the day of the realignment and prior to the day on which the new agricultural conversion rate takes effect shall be adjusted so as to be replaced by the latter.

2. If the agricultural conversion rate of a floating currency is altered, the rate fixed in advance for that currency during the reference period on which the new agricultural conversion rate is based shall be adjusted so as to be replaced by the new rate with effect from the date of its applicability.

3. In the event that the absolute value of the monetary gap between the agricultural conversion rate fixed in advance, where necessary adjusted in accordance with paragraphs 1 and 2, and the agricultural conversion rate in force at the time of the operative event referred to in the first subparagraph of Article 6(1) of Regulation (EEC) No 3813/92 exceeds four points, the agricultural conversion rate fixed in advance shall be adjusted to bring it closer to the rate in force until it reaches the level of a four-point gap with that rate.

Article 16

1. Where a study of the monetary or market situation indicates the existence of difficulties as a result of application of the provisions relating to the advance fixing of the agricultural conversion rate or if there is the risk of such difficulties, a decision may be taken to suspend application of the provisions to the products concerned in accordance with the procedure referred to in Article 12 of Regulation (EEC) No 3813/92.

¹ Parts of Article 14 have not been reprinted in this Compendium.

2. In extreme emergencies the Commission may, after studying the situation on the basis of all available information, decide to suspend the advance fixing of the agricultural conversion rate for a maximum of three quotation days.

3. During the period when advance fixing of the agricultural conversion rate is suspended, applications for advance fixing of the agricultural conversion rate shall not be accepted.

An application for advance fixing of the agricultural conversion rate submitted prior to suspension of the advance fixing shall not be affected by the suspension decision.

4. The provisions of this Article shall not affect applications for certificates and equivalent documents or tenders involving advance fixing of the amounts concerned in ecus.

Article 17

1. With regard to a currency to which the suspension referred to in Article 16 applies, an application for advance fixing of the agricultural conversion rate may be submitted during the seven days following the end of the period of suspension in respect of amounts fixed in advance in ecus during that period.

2. Applications for advance fixing shall refer to the agricultural conversion rate applicable on the day of its submission to the body to which the application for a certificate or an equivalent document or the tender with advance fixing of the amount in ecus has previously been submitted. Applications for advance fixing of the agricultural conversion rate shall be accompanied by the originals of the certificates, equivalent documents or statements of award of tender issued for the amounts in question.

Articles 13, 14(1) and 15 of Regulation (EEC) No 3719/88 shall apply to applications for advance fixing of the agricultural conversion rate.

3. The body referred to in paragraph 2 shall retain the originals of the documents accompanying the application for advance fixing and issue the applicant with a replacement document. The replacement document shall bear the entry referred to in Article 14(2), the information and entries contained in the original document it replaces and the number of that original document. The replacement document shall be issued for a quantity of product which, plus the tolerance, corresponds to the available quantity indicated in the document it replaces.

TITLE V.

General provisions

Article 18

1. For the calculation of the correcting factor, the revaluation relative to the ecu shall be determined by the difference between the old and the new central rate for the ecu with respect to the currency concerned, expressed in a percentage of that new central rate.

2. The correcting factor shall be calculated to six decimal places by dividing former representative market rate for the fixed currency which has undergone the greatest revaluation by the new central ecu rate for that currency.

Article 19

For the purposes of this Regulation a quotation day is understood to be any day in respect of which the Commission determines a rate for the ecu, with the exception of 31 December.

Article 20

Amounts quoted in tenders submitted in response to invitations to tender organized under an instrument forming part of the common agricultural policy shall, with the exception of amounts the Community contribution to which is financed from the EAGGF Guidance Section, be expressed in ecus.

Article 21

1. Monetary gaps shall be established to three decimal places, the third decimal being rounded off.

Representative market rates and agricultural conversion rates shall be established to six significant figures, the sixth figure being rounded off.

2. For the purposes of this Regulation 'significant figures' means:

- all figures, in the case of a number whose absolute value is greater than or equal to 1, or
- all decimal places starting from the first one which is not zero, in other cases.

The roundings-off referred to in this Article shall be effected by increasing by one unit the figure concerned in cases where the following figure would be greater than or equal to five and by leaving it unchanged in other cases.

Article 22

Regulation (EEC) No 3819/92 is hereby repealed.

Article 23

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

However, Articles 9 to 12 shall apply from:

- 1 January 1993 with regard to the amounts referred to in Council Regulations (EEC) No 2078/92, (EEC) No 2079/92 and (EEC) No 2080/92,
- 1 July 1993 with regard to products, or amounts other than those referred to in the first indent, for which there is no marketing year,
- the beginning of the 1994/95 marketing year with regard to sheepmeat and goatmeat, fishery products, tomatoes, cucumbers, courgettes and aubergines,
- the beginning of the 1993/94 marketing year for other products.

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

Done at Brussels, 30 April 1993.

For the Commission
René STEICHEN
Member of the Commission

V

OTHER TEXTS

115-116

1. STATUTES OF THE MONETARY COMMITTEE ¹

THE COUNCIL,

Having regard to Article 105(2) of the Treaty establishing the European Economic Community which sets up a Monetary Committee in order to promote coordination of the policies of Member States in the monetary field to the full extent needed for the functioning of the common market,

Having regard to Article 153 of the Treaty pursuant to which the Council determines the rules governing the committees provided for in the Treaty,

Having obtained the opinion of the Commission,

HAS DECIDED:

that the rules governing the Monetary Committee shall be as follows:

Article 1

The Committee shall keep under review the monetary and financial situation of Member States and of the Community and also the general payments system of Member States, and shall report regularly to the Council and to the Commission thereon.

Article 2

When examining the monetary and financial situation of Member States, the Committee shall endeavour in particular to foresee any difficulties which may affect their balance of payments. It shall address to the Council and to the Commission any suggestions designed to avert these difficulties while at the same time preserving the internal and external financial stability of each Member State.

Article 3

In respect of the general payments system of Member States, the Committee shall, in particular, keep under review the implementation of the provisions of Article 106(1) to (3) of the Treaty. Where necessary, it shall address to the Council suggestions concerning measures to be taken by Member States in accordance with Article 106(4). It shall inform the Commission thereof.

¹ Council Decision of 18 March 1958 amended by Council Decision of 2 April 1962, by Article 29 of the Act of Accession of 22 January 1972, by Council Decision of 25 March 1976 (76/332/EEC) and by subsequent Acts of Accession.

Article 4

The opinion of the Monetary Committee must be obtained either by the Council or, in the cases provided for in Article 69, in the last subparagraph of Article 71, in the first subparagraph of paragraph 1 of Article 73 and in paragraph 2 thereof, in Article 107(2), in the second subparagraph of Article 108(1), and in Article 109(3), by the Commission.

The opinion of the Committee may also be obtained in other cases by the Council or the Commission.

In any event, the Committee has the power and the obligation to draw up opinions on its own initiative whenever it considers it necessary for the proper fulfilment of its task.

Article 5

Member States and the Commission shall each appoint two members of the Committee. They may also appoint two alternate members of the Committee. The members of the Committee and the alternates must be selected from among experts possessing outstanding competence in the monetary field. As a general rule, each Member State shall select one member from among senior officials of the administration and the other member on the proposal of the central bank; the alternates may be selected in the same way.

Members of the Committee and alternates shall be appointed in their personal capacity and shall, in the general interests of the Community, be completely independent in the performance of their duties.

The term of office of the members of the Committee and of the alternates shall be two years. It shall be renewable. It shall end on death, voluntary resignation, or compulsory retirement. In such cases the new member or alternate shall be appointed for the remainder of the term of office.

A member of the Committee or an alternate may be compulsorily retired against his wishes only by the authority which appointed him and then only if the member or alternate no longer fulfils the conditions required for the performance of his duties.

Article 6

Each member of the Committee shall have one vote.

Article 7

The Committee shall appoint from among its members a Chairman and three Vice-Chairmen to be elected by a majority of 17 votes for a period of two years. If a Chairman or Vice-Chairman ceases to hold office before his full term has expired, the vacancy thus caused shall be filled for the remainder of the term of office.

Article 8

Unless the Committee decides otherwise, alternates may attend meetings of the Committee. They shall not take part in the discussions and shall not vote.

A member who is unable to attend a meeting of the Committee may delegate his functions to one of the alternates; he may also delegate them to another member.

Article 9

The Committee shall meet not less than six times a year.

It shall be convened by the Chairman on his own initiative or at the request of the Council or of the Commission or of two members of the Committee.

Article 10

Opinions of the Committee, within the meaning of Article 4, shall be adopted by a majority of 17 votes. The minority may set out its views in a document attached to the opinion of the Committee.

Where a majority within the meaning of the preceding subparagraph is not obtained, and in the case of any other decision, suggestion or communication intended for the Council or the Commission, the Committee shall submit a report setting out either the unanimous opinion of its members or the various opinions expressed in the course of the discussion.

Article 11

The Committee may propose to the Council or to the Commission that one or more of its members be attached to these institutions in order to comment orally on any document which may be addressed to them by the Committee.

Article 12

The Committee may entrust the study of specific questions to working parties composed of members of the Committee or alternates. The Committee and the working parties may call upon experts to assist them.

Article 13

In important cases the Committee may, before drawing up a report or delivering an opinion on a specific country, request all necessary information.

Article 14

The Committee shall establish close cooperation with the Managing Board of the European Payments Union or, if the case should arise, with the Board of Management of the European Monetary Agreement, on all questions of common interest. To this end, the Committee may in particular invite the Managing Board of the European Payments Union or, if the case should arise, the Board of Management of the European Monetary Agreement, to be represented at its meetings, or may propose that joint meetings be arranged.

Article 15

Discussions of the Committee and of the working parties shall be confidential.

Article 16

The Committee shall be assisted by a secretariat. The staff needed for this shall be supplied by the Commission.

The expenses of the Committee shall be included in the estimates of the Commission.

Article 17

The Committee shall adopt its own rules of procedure.

Done at Strasbourg, 18 March 1958.

For the Council
The President
V. LAROCK

2. 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 bank notes.

Article 5 — Advisory functions

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

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

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

Within the limits and under the conditions set out by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall

be consulted by the authorities of the Member States on any draft legislative provision within its field of competence, in particular with regard to Article 4.2.

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

Article 6 — Operational and technical functions

6.1. The EMI shall:

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

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

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

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

Article 7 — Other tasks

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

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

Article 8 — Independence

The members of the Council of the EMI who are the representatives of their institutions shall, with respect to their activities, act according to their own responsibilities. In exercising the powers and performing the

tasks and duties conferred upon them by this Treaty and this Statute, the Council of the EMI may not seek or take any instructions from Community institutions or bodies or governments of Member States. The Community institutions and bodies as well as the governments of the Member States undertake to respect this principle and not to seek to influence the Council of the EMI in the performance of its tasks.

Article 9 — Administration

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

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

9.3. The President shall be appointed by common accord of the governments of the Member States at the level of Heads of State or 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 109l of this Treaty, the EMI shall go into liquidation on the establishment of the ECB. All assets and liabilities of the EMI shall then pass automatically to the ECB. The latter shall liquidate the EMI according to the provisions of this Article. The liquidation shall be completed by the beginning of the third stage.

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

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

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

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

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

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

3. COUNCIL DIRECTIVE

of 24 June 1988

for the implementation of Article 67 of the Treaty (88/361/EEC)¹

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 69 and 70(1) thereof,

Having regard to the proposal from the Commission, submitted following consultation with the Monetary Committee,

Having regard to the opinion of the European Parliament,

Whereas Article 8a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of capital is ensured, without prejudice to the other provisions of the Treaty;

Whereas Member States should be able to take the requisite measures to regulate bank liquidity; whereas these measures should be restricted to this purpose;

Whereas Member States should, if necessary, be able to take measures to restrict, temporarily and within the framework of appropriate Community procedures, short-term capital movements which, even where there is no appreciable divergence in economic fundamentals, might seriously disrupt the conduct of their monetary and exchange-rate policies;

Whereas, in the interests of transparency, it is advisable to indicate the scope, in accordance with the arrangements laid down in this Directive, of the transitional measures adopted for the benefit of the Kingdom of Spain and the Portuguese Republic by the 1985 Act of Accession in the field of capital movements;

Whereas the Kingdom of Spain and the Portuguese Republic may, under the terms of Articles 61 to 66 and 222 to 232 respectively of the 1985 Act of Accession, postpone the liberalization of certain capital movements in derogation from the obligations set out in the First Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty, as last amended by Directive 86/566/EEC; whereas Directive 86/566/EEC also provides for transitional arrangements to be applied for the benefit of those two Member States in respect of their obligations to liberalize capital movements; whereas it is appropriate for those two Member States to be able to postpone the application of the new liberalization obligations resulting from this Directive;

Whereas the Hellenic Republic and Ireland are faced, albeit to differing degrees, with difficult balance-of-payments situations and high levels of external indebtedness; whereas the immediate and complete liberalization of capital movements by those two Member States would make it more difficult for them to continue to apply the measures they have taken to improve their external positions and to reinforce the capacity of their financial systems to adapt to the requirements of an integrated financial market in the Community; whereas it is appropriate, in accordance with Article 8c of the Treaty, to grant to those two

¹ OJ L 178/8, 8.7.1988; Annexes III-V have not been reprinted in this Compendium.

Member States, in the light of their specific circumstances, further time in which to comply with the obligations arising from this Directive;

Whereas, since the full liberalization of capital movements could in some Member States, and especially in border areas, contribute to difficulties in the market for secondary residences; whereas existing national legislation regulating these purchases should not be affected by the entry into effect of this Directive;

Whereas advantage should be taken of the period adopted for bringing this Directive into effect in order to enable the Commission to submit proposals designed to eliminate or reduce risks of distortion, tax evasion and tax avoidance resulting from the diversity of national systems for taxation and to permit the Council to take a position on such proposals;

Whereas, in accordance with Article 70(1) of the Treaty, the Community shall endeavour to attain the highest possible degree of liberalization in respect of the movement of capital between its residents and those of third countries;

Whereas large-scale short-term capital movements to or from third countries may seriously disturb the monetary or financial situation of Member States or cause serious stresses on the exchange markets; whereas such developments may prove harmful for the cohesion of the European Monetary System, for the smooth operation of the internal market and for the progressive achievement of economic and monetary union; whereas it is therefore appropriate to create the requisite conditions for concerted action by Member States should this prove necessary;

Whereas this Directive replaces Council Directive 72/156/EEC of 21 March 1972 on regulating international capital flows and neutralizing their undesirable effects on domestic liquidity;

Whereas Directive 72/156/EEC should accordingly be repealed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Without prejudice to the following provisions, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member States. To facilitate application of this Directive, capital movements shall be classified in accordance with the Nomenclature in Annex I.
2. Transfers in respect of capital movements shall be made on the same exchange-rate conditions as those governing payments relating to current transactions.

Article 2

Member States shall notify the Committee of Governors of the Central Banks, the Monetary Committee and the Commission, by the date of their entry into force at the latest, of measures to regulate bank liquidity which have a specific impact on capital transactions carried out by credit institutions with non-residents.

Such measures shall be confined to what is necessary for the purposes of domestic monetary regulation. The Monetary Committee and the Committee of Governors of the Central Banks shall provide the Commission with opinions on this subject.

Article 3

1. Where short-term capital movements of exceptional magnitude impose severe strains on foreign-exchange markets and lead to serious disturbances in the conduct of a Member State's monetary and

exchange-rate policies, being reflected in particular in substantial variations in domestic liquidity, the Commission may, after consulting the Monetary Committee and the Committee of Governors of the Central Banks, authorize that Member State to take, in respect of the capital movements listed in Annex II, protective measures the conditions and details of which the Commission shall determine.

2. The Member State concerned may itself take the protective measures referred to above, on grounds of urgency, should these measures be necessary. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. The Commission, after consulting the Monetary Committee and the Committee of Governors of the Central Banks, shall decide whether the Member State concerned may continue to apply these measures or whether it should amend or abolish them.

3. The decisions taken by the Commission under paragraphs 1 and 2 may be revoked or amended by the Council acting by a qualified majority.

4. The period of application of protective measures taken pursuant to this Article shall not exceed six months.

5. Before 31 December 1992, the Council shall examine, on the basis of a report from the Commission, after delivery of an opinion by the Monetary Committee and the Committee of Governors of the Central Banks, whether the provisions of this Article remain appropriate, as regards their principle and details, to the requirements which they were intended to satisfy.

Article 4

This Directive shall be without prejudice to the right of Member States to take all requisite measures to prevent infringements of their laws and regulations, *inter alia* in the field of taxation and prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information.

Application of those measures and procedures may not have the effect of impeding capital movements carried out in accordance with Community law.

Article 5

For the Kingdom of Spain and the Portuguese Republic, the scope, in accordance with the Nomenclature of capital movements contained in Annex I, of the provisions of the 1985 Act of Accession in the field of capital movements shall be as indicated in Annex III.

Article 6

1. Member States shall take the measures necessary to comply with this Directive no later than 1 July 1990. They shall forthwith inform the Commission thereof. They shall also make known, by the date of their entry into force at the latest, any new measure or any amendment made to the provisions governing the capital movements listed in Annex I.

2. The Kingdom of Spain and the Portuguese Republic, without prejudice for these two Member States to Articles 61 to 66 and 222 to 232 of the 1985 Act of Accession, and the Hellenic Republic and Ireland may temporarily continue to apply restrictions to the capital movements listed in Annex IV, subject to the conditions and time limits laid down in that Annex.

If, before expiry of the time limit set for the liberalization of the capital movements referred to in Lists III and IV of Annex IV, the Portuguese Republic or the Hellenic Republic considers that it is unable to

proceed with liberalization, in particular because of difficulties as regards its balance of payments or because the national financial system is insufficiently adapted, the Commission, at the request of one or other of these Member States, shall in collaboration with the Monetary Committee, review the economic and financial situation of the Member State concerned. On the basis of the outcome of this review, the Commission shall propose to the Council an extension of the time limit set for liberalization of all or part of the capital movements referred to. This extension may not exceed three years. The Council shall act in accordance with the procedure laid down in Article 69 of the Treaty.

3. The Kingdom of Belgium and the Grand Duchy of Luxembourg may temporarily continue to operate the dual exchange market under the conditions and for the periods laid down in Annex V.

4. Existing national legislation regulating purchases of secondary residences may be upheld until the Council adopts further provisions in this area in accordance with Article 69 of the Treaty. This provision does not affect the applicability of other provisions of Community law.

5. The Commission shall submit to the Council, by 31 December 1988, proposals aimed at eliminating or reducing risks of distortion, tax evasion and tax avoidance linked to the diversity of national systems for the taxation of savings and for controlling the application of these systems.

The Council shall take a position on these Commission proposals by 30 June 1989. Any tax provisions of a Community nature shall, in accordance with the Treaty, be adopted unanimously.

Article 7

1. In their treatment of transfers in respect of movements of capital to or from third countries, the Member States shall endeavour to attain the same degree of liberalization as that which applies to operations with residents of other Member States, subject to the other provisions of this Directive.

The provisions of the preceding subparagraph shall not prejudice the application to third countries of domestic rules or Community law, particularly any reciprocal conditions, concerning operations involving establishment, the provisions of financial services and the admission of securities to capital markets.

2. Where large-scale short-term capital movements to or from third countries seriously disturb the domestic or external monetary or financial situation of the Member States, or of a number of them, or cause serious strains in exchange relations within the Community or between the Community and third countries, Member States shall consult with one another on any measure to be taken to counteract such difficulties. This consultation shall take place within the Committee of Governors of the Central Banks and the Monetary Committee on the initiative of the Commission or of any Member State.

Article 8

At least once a year the Monetary Committee shall examine the situation regarding free movement of capital as it results from the application of this Directive. The examination shall cover measures concerning the domestic regulation of credit and financial and monetary markets which could have a specific impact on international capital movements and on all other aspects of this Directive. The Committee shall report to the Commission on the outcome of this examination.

Article 9

The First Directive of 11 May 1960 and Directive 72/156/EEC shall be repealed with effect from 1 July 1990.

Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 24 June 1988.

For the Council
The President
M. BANGEMANN

ANNEX I

**NOMENCLATURE OF THE CAPITAL MOVEMENTS REFERRED TO IN
ARTICLE 1 OF THE DIRECTIVE**

In this Nomenclature, capital movements are classified according to the economic nature of the assets and liabilities they concern, denominated either in national currency or in foreign exchange.

The capital movements listed in this Nomenclature are taken to cover:

- all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The transaction is generally between residents of different Member States although some capital movements are carried out by a single person for his own account (e.g. transfers of assets belonging to emigrants),
- operations carried out by any natural or legal person,¹ including operations in respect of the assets or liabilities of Member States or of other public administrations and agencies, subject to the provisions of Article 68(3) of the Treaty,
- access for the economic operator to all the financial techniques available on the market approached for the purpose of carrying out the operation in question. For example, the concept of acquisition of securities and other financial instruments covers not only spot transactions but also all the dealing techniques available: forward transactions, transactions carrying an option or warrant, swaps against other assets, etc. Similarly, the concept of operations in current and deposit accounts with financial institutions, includes not only the opening and placing of funds on accounts but also forward foreign exchange transactions, irrespective of whether these are intended to cover an exchange risk or to take an open foreign exchange position,
- operations to liquidate or assign assets built up, repatriation of the proceeds of liquidation thereof¹ or immediate use of such proceeds within the limits of Community obligations,
- operations to repay credits or loans.

This Nomenclature is not an exhaustive list for the notion of capital movements — whence a heading XIII — F. 'Other capital movements — Miscellaneous'. It should not therefore be interpreted as restricting the scope of the principle of full liberalization of capital movements as referred to in Article 1 of the Directive.

¹ See Explanatory Notes below.

I — DIRECT INVESTMENTS¹

1. Establishment and extension of branches or new undertakings belonging solely to the person providing the capital, and the acquisition in full of existing undertakings.
2. Participation in new or existing undertakings with a view to establishing or maintaining lasting economic links.
3. Long-term loans with a view to establishing or maintaining lasting economic links.
4. Reinvestment of profits with a view to maintaining lasting economic links.

A — **Direct investments on national territory by non-residents¹**

B — **Direct investments abroad by residents¹**

II — INVESTMENTS IN REAL ESTATE (not included under I)¹

A — **Investments in real estate on national territory by non-residents**

B — **Investments in real estate abroad by residents**

III — OPERATIONS IN SECURITIES NORMALLY DEALT IN ON THE CAPITAL MARKET (not included under I, IV and V)

(a) *Shares and other securities of a participating nature.*¹

(b) *Bonds.*¹

A — **Transactions in securities on the capital market**

1. Acquisition by non-residents of domestic securities dealt in on a stock exchange.¹
2. Acquisition by residents of foreign securities dealt in on a stock exchange.
3. Acquisition by non-residents of domestic securities not dealt in on a stock exchange.¹
4. Acquisition by residents of foreign securities not dealt in on a stock exchange.

B — **Admission of securities to the capital market¹**

(i) *Introduction on a stock exchange.*¹

(ii) *Issue and placing on a capital market.*¹

1. Admission of domestic securities to a foreign capital market.
2. Admission of foreign securities to the domestic capital market.

IV — OPERATIONS IN UNITS OF COLLECTIVE INVESTMENT UNDERTAKINGS¹

(a) *Units of undertakings for collective investment in securities normally dealt in on the capital market (shares, other equities and bonds).*

¹ See Explanatory Notes below.

(b) *Units of undertakings for collective investment in securities or instruments normally dealt in on the money market.*

(c) *Units of undertakings for collective investment in other assets.*

A — Transactions in units of collective investment undertakings

1. Acquisition by non-residents of units of national undertakings dealt in on a stock exchange.
2. Acquisition by residents of units of foreign undertakings dealt in on a stock exchange.
3. Acquisition by non-residents of units of national undertakings not dealt in on a stock exchange.
4. Acquisition by residents of units of foreign undertakings not dealt in on a stock exchange.

B — Administration of units of collective investment undertakings to the capital market

(i) *Introduction on a stock exchange.*

(ii) *Issue and placing on a capital market.*

1. Admission of units of national collective investment undertakings to a foreign capital market.
2. Admission of units of foreign collective investment undertakings to the domestic capital market.

**V — OPERATIONS IN SECURITIES AND OTHER INSTRUMENTS NORMALLY DEALT
IN ON THE MONEY MARKET¹**

A — Transactions in securities and other instruments on the money market

1. Acquisition by non-residents of domestic money market securities and instruments.
2. Acquisition by residents of foreign money market securities and instruments.

B — Admission of securities and other instruments to the money market

(i) *Introduction on a recognized money market.¹*

(ii) *Issue and placing on a recognized money market.*

1. Admission of domestic securities and instruments to a foreign money market.
2. Admission of foreign securities and instruments to the domestic money market.

**VI — OPERATIONS IN CURRENT AND DEPOSIT ACCOUNTS WITH
FINANCIAL INSTITUTIONS¹**

A — Operations carried out by non-residents with domestic financial institutions

B — Operations carried out by residents with foreign financial institutions

**VII — CREDITS RELATED TO COMMERCIAL TRANSACTIONS OR TO THE PROVISION
OF SERVICES IN WHICH A RESIDENT IS PARTICIPATING¹**

1. Short-term (less than one year).
2. Medium-term (from one to five years).

¹ See Explanatory Notes below.

3. Long-term (five years or more).
- A — **Credits granted by non-residents to residents**
- B — **Credits granted by residents to non-residents**

VIII — FINANCIAL LOANS AND CREDITS (not included under I, VII and XI)¹

1. Short-term (less than one year).
 2. Medium-term (from one to five years).
 3. Long-term (five years or more).
- A — **Loans and credits granted by non-residents to residents**
- B — **Loans and credits granted by residents to non-residents**

IX — SURETIES, OTHER GUARANTEES AND RIGHTS OF PLEDGE

- A — **Granted by non-residents to residents**
- B — **Granted by residents to non-residents**

X — TRANSFERS IN PERFORMANCE OF INSURANCE CONTRACTS

- A — **Premiums and payments in respect of life assurance**
1. Contracts concluded between domestic life assurance companies and non-residents.
 2. Contracts concluded between foreign life assurance companies and residents.
- B — **Premiums and payments in respect of credit insurance**
1. Contracts concluded between domestic credit insurance companies and non-residents.
 2. Contracts concluded between foreign credit insurance companies and residents.
- C — **Other transfers of capital in respect of insurance contracts**

XI — PERSONAL CAPITAL MOVEMENTS

- A — **Loans**
- B — **Gifts and endowments**
- C — **Dowries**
- D — **Inheritances and legacies**
- E — **Settlement of debts by immigrants in their previous country of residence**
- F — **Transfers of assets constituted by residents, in the event of emigration, at the time of their installation or during their period of stay abroad**
- G — **Transfers, during their period of stay, of immigrants' savings to their previous country of residence**

¹ See Explanatory Notes below.

XII — PHYSICAL IMPORT AND EXPORT OF FINANCIAL ASSETS

A — **Securities**

B — **Means of payment of every kind**

XIII — OTHER CAPITAL MOVEMENTS

A — **Death duties**

B — **Damages (where these can be considered as capital)**

C — **Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)**

D — **Authors' royalties: patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)**

E — **Transfers of the monies required for the provision of services (not included under VI)**

F — **Miscellaneous**

EXPLANATORY NOTES

For the purposes of this Nomenclature and the Directive only, the following expressions have the meanings assigned to them respectively:

Direct investments

Investments of all kinds by natural persons or commercial, industrial or financial undertakings, and which serve to establish or to maintain lasting and direct links between the person providing the capital and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity. This concept must therefore be understood in its widest sense.

The undertakings mentioned under I-1 of the Nomenclature include legally independent undertakings (wholly-owned subsidiaries) and branches.

As regards those undertakings mentioned under I-2 of the Nomenclature which have the status of companies limited by shares, there is participation in the nature of direct investment where the block of shares held by a natural person of another undertaking or any other holder enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control.

Long-term loans of a participating nature, mentioned under I-3 of the Nomenclature, means loans for a period of more than five years which are made for the purpose of establishing or maintaining lasting economic links. The main examples which may be cited are loans granted by a company to its subsidiaries or to companies in which it has a share and loans linked with a profit-sharing arrangement. Loans granted by financial institutions with a view to establishing or maintaining lasting economic links are also included under this heading.

Investments in real estate

Purchases of buildings and land and the construction of buildings by private persons for gain or personal use. This category also includes rights of usufruct, easements and building rights.

Introduction on a stock exchange or on a recognized money market

Access — in accordance with a specified procedure — for securities and other negotiable instruments to dealings, whether controlled officially or unofficially, on an officially recognized stock exchange or in an officially recognized segment of the money market.

Securities dealt in on a stock exchange (quoted or unquoted)

Securities the dealings in which are controlled by regulations, the prices for which are regularly published, either by official stock exchanges (quoted securities) or by other bodies attached to a stock exchange — e.g. committees of banks (unquoted securities).

Issue of securities and other negotiable instruments

Sale by way of an offer to the public.

Placing of securities and other negotiable instruments

The direct sale of securities by the issuer or by the consortium which the issuer has instructed to sell them, with no offer being made to the public.

Domestic or foreign securities and other instruments

Securities according to the country in which the issuer has his principal place of business. Acquisition by residents of domestic securities and other instruments issued on a foreign market ranks as the acquisition of foreign securities.

Shares and other securities of a participating nature

Including rights to subscribe to new issues of shares.

Bonds

Negotiable securities with a maturity of two years or more from issue for which the interest rate and the terms for the repayment of the principal and the payment of interest are determined at the time of issue.

Collective investment undertakings

Undertakings:

- the object of which is the collective investment in transferable securities or other assets of the capital they raise and which operate on the principle of risk-spreading, and
- the units of which are, at the request of holders, under the legal, contractual or statutory conditions governing them, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

Such undertakings may be constituted according to law either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of the Directive, 'common funds' shall also include unit trusts.

Securities and other instruments normally dealt in on the money market

Treasury bills and other negotiable bills, certificates of deposit, bankers' acceptances, commercial paper and other like instruments.

Credits related to commercial transactions or to the provision of services

Contractual trade credits (advances or payments by instalment in respect of work in progress or on order and extended payment terms, whether or not involving subscription to a commercial bill) and their financing by credits provided by credit institutions. This category also includes factoring operations.

Financial loans and credits

Financing of every kind granted by financial institutions, including financing related to commercial transactions or to the provision of services in which no resident is participating.

This category also includes mortgage loans, consumer credit and financial leasing, as well as back-up facilities and other note-issuance facilities.

Residents or non-residents

Natural and legal persons according to the definitions laid down in the exchange control regulations in force in each Member State.

Proceeds of liquidation (of investments, securities, etc.)

Proceeds of sale including any capital appreciation, amount of repayments, proceeds of execution of judgments, etc.

Natural or legal persons

As defined by the national rules.

Financial institutions

Banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit, and insurance companies, building societies, investment companies and other institutions of like character.

Credit institutions

Banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit.

ANNEX II**LIST OF OPERATIONS REFERRED TO IN ARTICLE 3 OF THE DIRECTIVE**

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings	IV-A and B (c)
— undertakings for investment in securities or instruments normally dealt in on the money market	
Financial loans and credits	VIII-A and B-1
— short-term	
Personal capital movements	XI-A
— loans	
Physical import and export of financial assets	XII
— securities normally dealt in on the money market	
— means of payment	
Other capital movements: Miscellaneous	XIII-F
— short-term operations similar to those listed above	

The restrictions which Member States may apply to the capital movements listed above must be defined and applied in such a way as to cause the least possible hindrance to the free movement of persons, goods and services.

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