

ADDENDUM TO THE NOTE

from : Secretariat

to : Convention

Subject : Part Two of the Constitution

- **Report by the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission**
 - = Section on economic and monetary policy**
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Convention members will find attached the economic and monetary policy section of the report by the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission.

ECONOMIC AND MONETARY POLICY

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ADDENDUM

of 18 March 2003

to the consolidated report of 13 March 2003

presented to the Praesidium of the European Convention

GENERAL COMMENTS

Introduction

1. In its consolidated report of 13 March 2003, the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission had said that the title on economic and monetary policy would be forwarded separately. The working party is accordingly submitting the present *Addendum*.
2. All comments set out in the introduction to the consolidated report and the terminological and typographical conventions indicated in Annex I to Volume I of that report apply to this *Addendum*.

In certain cases, more detailed explanations or comments are given in boxes in the text and in footnotes.

It will be seen that the wording of the first Article of the title in question – the present Article 4 of the the EC Treaty – which was already included in the consolidated report differs very slightly from that in the version distributed previously.

3. Given the considerable number of adjustments suggested for the text of Chapter 4 of the title under examination, which deals with transitional provisions, specific typographical conventions have been applied: the provisions which already exist in the present Treaty and have simply been moved remain in normal type, and their source is always indicated in footnotes; only those parts of the text which are genuinely new and are not in the present Treaty are given in bold type.

Moreover, in order to show the effects of the various modifications suggested in more readable form, a fair copy of this Chapter 4 is appended hereto.

A. Position of the present Articles 98 to 124 of the EC Treaty in the structure of the future Constitution

4. The structure of the preliminary draft Constitutional Treaty of 28 October 2002 (CONV 369/02) is designed to include the provisions on economic and monetary policy in section A 2 of Part Two, which deals with policies and implementation of action by the Union. That is therefore in the main where it is planned to insert the present Articles 98 to 124 from Title VII of Part Three of the EC Treaty.
5. It will however be seen that some of these provisions deal with the composition and remit of the European Central Bank. If the Convention were to decide that the Bank should become an institution, consistency with the abovementioned structure would require these provisions to be moved to Part One of the future Constitution (Title IV on the institutions) and to Part Two (section D), which deals with the functioning of the Union and contains the other institutional provisions.

B. Special arrangements

6. Under the two Protocols annexed to the EC Treaty, special arrangements on economic and monetary policy apply to the United Kingdom and Denmark. These Protocols refer to provisions currently contained Treaty in Chapter 4 of the title in question, to which amendments are suggested in the present *Addendum* (see, for example, Article 116(4)). To maintain the scope of these special arrangements while undertaking the suggested simplification, it might prove necessary to make some purely technical adjustments to the Protocols.

Moreover, it will be noted that the EC Treaty does not at present explicitly mention the existence of these two Protocols. With a view to transparency, the Convention would perhaps like to consider the advisability of inserting a reference to the existence of the Protocols in this title.

C. Introduction of a definitive legal basis for monetary policy

7. Since introduction of the euro in 1999, the present Article 123(4) has been used as a legal basis for adopting measures on use of the single currency.
8. However, this provision was intended to be transitional and contains outdated concepts such as "measures necessary for the rapid introduction of the ECU". Moreover, it is currently to be found in the chapter on transitional provisions.

9. It would seem appropriate to consolidate this legal basis in order to ensure the proper functioning of monetary union. It is therefore suggested that it should be moved to the chapter on "ordinary" arrangements for monetary policy and adjustments made. In particular, it is necessary to confirm its definitive nature – by replacing the words "rapid introduction of the ECU" with "use of the euro" – and to ensure that its consolidation does not affect the remit of the European Central Bank.
10. Confirmation of this legal basis should be examined by the Convention.

D. Chapter on transitional provisions

11. Suggestions for a substantial reworking of the present Articles 116 to 124 of the EC Treaty have been proposed to take account of the fact that transition to adoption of the euro has been completed. The chapter in question should in future deal mainly with the arrangements applicable to those Member States which have not adopted the euro and with the procedures for their adoption of it.
12. It is therefore suggested that many of the provisions currently in this chapter which are now obsolete should be deleted, and that there should be a more logical restructuring of the remaining provisions. It should be stressed that in the main the suggested modifications simply involve the moving of existing texts.
13. The logic behind the order in which the articles appear in the suggested new version is as follows:
 - Definition of the concept of a Member State for which there is a derogation and rules for participating in decision-making in the field of economic and monetary policy (new version of Article 116);
 - Procedures for repealing the derogation and introducing the euro in these Member States (new version of Article 117);
 - Specific provisions applicable to Member States for which there is a derogation (new versions of Articles 118 to 120).

E. Consequences of applying the recommendations by Working Group IX on Simplification

14. In accordance with its remit (CONV 529/03), the Working Party proposed amending the wording of the decision-making procedure referred to in the present Article 107(5) of the EC Treaty by changing from the assent procedure to the codecision procedure following a recommendation in the report by Working Group IX on Simplification (CONV 424/02, page 17).
15. In view of the fact that the codecision procedure as provided for in the present Article 251 of the EC Treaty – which will become the legislative procedure – is designed to function with only three institutions, the European Parliament, the Council and the Commission, the consequence of this procedural change is that the European Central Bank would lose the power of recommendation which it has pursuant to the present Article 107(5) of the EC Treaty.

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A2. ECONOMIC AND MONETARY POLICY

This title should be inserted in the consolidated report of 13 March 2003:

– in Volume I, page 32;

– in Volume II, page 51.

A2. ECONOMIC AND MONETARY POLICY^{1 2}

~~TITLE VII~~

~~ECONOMIC AND MONETARY POLICY~~

Article 4³

1. For the purposes set out in [Article 2]⁴, the activities of the Member States and the ~~Community~~ **Union** shall include, as provided in ~~this Treaty~~ **the Constitution**, 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~~ **the Constitution** and in accordance with the timetable and the procedures set out therein, these activities shall include, **with effect from** the irrevocable fixing of exchange rates **leading** to the introduction of a single currency, the ~~ECU~~ **euro**,⁵ ~~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~~ **Union**, in accordance with the principle of an open market economy with free competition.
3. These activities of the Member States and the ~~Community~~ **Union** shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

¹ Special arrangements apply to the United Kingdom and Denmark pursuant to their respective protocols. It may be necessary to make technical adjustments to these protocols, especially in the light of the suggestions for amendment and/or deletion of the provisions of this title set out below, for example in Article 116(4).

² It will be noted that the draft article on "the Union's objectives" in Part One (Article 3(2) CONV 528/03) uses the terms *"economic and monetary union"*.

³ This Article is currently in the first part of the EC Treaty, but for the purposes of the Constitution, it seems better to place it here. In addition, the wording has been slightly changed from the version in the consolidated report of 13 March 2003.

⁴ Article 2 has been replaced by the draft article on "The Union's objectives" in Part One (Article 3(2) CONV 528/03).

⁵ This amendment reflects the final changeover to the euro.

CHAPTER 1

ECONOMIC POLICY

Article 98

Member States shall conduct their economic policies ~~with a view in order~~ **in order** to contributing to the achievement of the **Union's** objectives ~~of the Community~~, as defined in [Article 2]¹, and in the context of the broad guidelines referred to in [Article 99(2)]. The Member States and the ~~Community~~ **Union** 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 4].

Article 99

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 98].
2. The Council shall, ~~acting by a qualified majority~~ on a recommendation from the Commission, formulate **by a qualified majority** a draft for the broad guidelines of the economic policies of the Member States and of the ~~UnionCommunity~~, 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 ~~UnionCommunity~~.

On the basis of this conclusion, the Council shall, ~~acting by a qualified majority~~, adopt **by a qualified majority** a recommendation setting out these broad guidelines. ~~ItThe 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~~ **Union** 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~~ **steps** taken by them in the field of their economic policy and such other information as they deem necessary.

¹ See footnote re Article 4(1).

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 jeopardising the proper functioning of economic and monetary union, the Council may, ~~acting by a qualified majority~~ on a recommendation from the Commission, **make adopt by a qualified majority** the necessary recommendations, **which it shall address** to the Member State concerned. The Council may, ~~acting by a qualified majority~~ on a proposal from the Commission, decide **by a qualified majority** 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 **European Parliament and the Council**, ~~acting~~ in accordance with the **legislative** procedure ~~referred to in Article 252~~, **may adopt** detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4 ~~of this Article~~.¹

Article 100

1. Without prejudice to any other procedures provided for in ~~this Treaty~~ **the Constitution**, the Council ~~may, acting by a qualified majority~~ on a proposal from the Commission, may ~~decide upon~~ **adopt by a qualified majority** 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 natural disasters or exceptional occurrences beyond its control, the Council ~~may, acting by a qualified majority~~ on a proposal from the Commission, may **adopt by a qualified majority a European decision granting** ~~grant~~, under certain conditions, ~~Community Union~~ **European Union** financial assistance to the Member State concerned. The President of the Council ² shall inform the European Parliament of the decision taken.

¹ Change from the cooperation procedure to the codecision procedure (see report from Working Group IX on Simplification, CONV 424/02 page 16).

² The term "*President of the Council*" instead of "*Presidency of the Council*" has been used in this title of the EC Treaty only (see also Article 113(1) and (2) and Article 114(3)).

Article 101

1. Overdraft facilities or any other type of credit facility with the *ECB*¹ or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of ~~Community~~ **Union** 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 102

1. Any measure **or provision**, not based on prudential considerations, **establishing** privileged access by ~~Community~~ **Union** 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, **on a proposal from the Commission, shall adopt by a qualified majority the measures specifying**~~acting in accordance with the procedure referred to in Article 252, shall, before 1 January 1994, specify~~ definitions for the application of the prohibition referred to in paragraph 1. **It shall act after consulting the European Parliament.**²

Article 103

1. The ~~Community~~ **Union** 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.

¹ The question arises as to whether abbreviations should be used in the Constitution ("*ECB*" for "*European Central Bank*", for example) or whether it might not be easier for readers if the official name of the institution or body concerned were used. The European Investment Bank is not abridged to "*EIB*" in the EC Treaty. If such abbreviations are to be used, the explanations would have to be clearly set out in the Constitution.

² Change from the cooperation procedure to the consultation procedure (see report from Working Group IX on Simplification, CONV 424/02 page 16).

2. ~~If necessary, t~~ The Council, ~~acting in accordance with the procedure referred to in Article 252,~~
on a proposal from the Commission, may adopt by a qualified majority measures
~~specifying~~~~may specify~~ definitions for the application of the prohibition referred to in [Article 101]
and in this Article. **It shall act after consulting the European Parliament.**¹

Article 104

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 in order 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:
 - (i) either the ratio has declined substantially and continuously and reached a level that comes close to the reference value;
 - (ii) 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.~~²

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.

¹ Change from the cooperation procedure to the consultation procedure (see report from Working Group IX on Simplification, CONV 424/02 page 16).

² This phrase is superfluous, since the protocols will be annexed to the Constitution anyway. An article in Part Three of the Constitution will provide for this, along the lines of the current Article 311 of the EC Treaty.

4. The **Economic and Financial** Committee ~~provided for in Article 114~~ 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 **and after an overall assessment**, decide **by a qualified majority**~~after an overall assessment~~ whether an excessive deficit exists.

7. **The Council, on a recommendation from the Commission, shall adopt by a majority of two-thirds of the votes of its members, weighted in accordance with [Article 205(2)], excluding the votes of the representative of the Member State concerned, the European decisions and recommendations referred to in paragraphs 8 to 12.**¹

~~78.~~ Where the existence of an excessive deficit is decided according to paragraph 6, the Council shall ~~make~~ **adopt** recommendations **addressed** 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 89,~~ these recommendations shall not be made public.

~~89.~~ 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.

~~910.~~ If a Member State persists in failing to put into practice the recommendations of the Council, the Council may ~~decide~~ **adopt a European decision giving**~~to give~~ notice to the Member State to take, within a specified time-limit, ~~measures~~ **steps** 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 226 and 227 may not be exercised within the framework of paragraphs 1 to 9 of this Article.~~²

11. As long as a Member State fails to comply with a **European decision adopted**~~taken~~ in accordance with paragraph **109**, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

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

¹ This paragraph corresponds to the current paragraph 13. It has been moved here to clarify the procedure for adopting the acts referred to in the following paragraphs.

² This paragraph, which concerns the right bring actions rather than decision-making procedures, has been moved to form a new paragraph 13 of this Article.

- (b) to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned;
- (c) to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the ~~Union Community~~ until the **Council considers that the** excessive deficit has, ~~in the view of the Council,~~ been corrected;
- (d) to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the **measures adopted**~~decisions taken~~.¹

12. The Council shall abrogate some or all of its ~~measures~~~~decisions~~ referred to in paragraphs 6 and 8 to 9 and 11 to the extent that **it considers** the excessive deficit in the Member State concerned ~~to have~~~~has, in the view of the Council,~~ been corrected. If the Council has previously made public recommendations, it shall **state publicly**, as soon as the decision under paragraph 9~~8~~² has been abrogated, ~~make a public statement that~~ **there is no longer** 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 205(2), excluding the votes of the representative of the Member State concerned.~~

13. The rights to bring actions provided for in [Articles 226 and 227] may not be exercised within the framework of paragraphs 1 to 6 or 8 to 10 of this Article.

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~~.³

The Council shall, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament and the ECB,~~ **shall adopt unanimously** the appropriate **measures** ~~toprovisions which shall then replace the said Protocol. It shall act after consulting the European Parliament and the ECB.~~

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,~~ **shall adopt by a qualified majority** ~~lay down~~ detailed rules and definitions for the application of the provisions of the said Protocol. **It shall act after consulting the European Parliament.**

¹ It seems that the term "*decision*" is here being used in its generic sense and does not meet the definition of "*decision*" in the fourth paragraph of Article 249 TEC.

² There may seem little point in abrogating a decision whose whole thrust is to make public a recommendation and whose effects are, therefore, exhausted on publication.

³ See the exact title of the protocol in question.

Chapters 2 and 3 of this title contain provisions on the composition and duties of the European Central Bank.

If the Convention were to decide that the Bank should become an institution, some of these provisions would need to be moved either to Part One of the future Constitution – to title IV on the institutions – or to Chapter D of Part Two, on the functioning of the Union, which contains other institutional provisions.

CHAPTER 2

MONETARY POLICY

Article 105

1. The primary objective of the *ESCB* shall be to maintain price stability. Without prejudice to ~~the~~ **this** objective of price stability, the *ESCB* shall support the general economic policies in the ~~Union Community with a view~~ **in order to contribute** contributing to the achievement of ~~its~~ **the** objectives of the Community as laid down in Article [2] ¹. 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 4].
2. The basic tasks to be carried out through the *ESCB* shall be:
 - (a) to define and implement the **Union's** monetary policy ~~of the Community~~;
 - (b) to conduct foreign exchange operations consistent with the provisions of [Article 111];
 - (c) to hold and manage the official foreign reserves of the Member States;
 - (d) to promote the smooth operation of payment systems.
3. ~~The third indent of p~~ Paragraph 2(c) shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

¹ See footnote re Article 4(1).

4. The *ECB* shall be consulted:

- (a) on any proposed ~~UnionCommunity~~ act ¹ in its fields of competence;
- (b) 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 107(6)].

The *ECB* may submit opinions to the ~~appropriate UnionCommunity~~ 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 **European Parliament and 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,~~ **in accordance with the legislative procedure, may** 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. ² **They shall act after consulting the *ECB*.**

Article 106

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

2. Member States may issue coins subject to approval by the *ECB* of the volume of the issue. The **European Parliament and the Council** ~~may, acting in accordance with the legislative procedure referred to in Article 252 and after consulting the ECB,~~ **may** adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the ~~UnionCommunity~~. ³ **They shall act after consulting the *ECB*.**

¹ The question arises whether the European Central Bank should be consulted solely on proposals - as the term "*proposed*" used in the provision would seem to suggest - or on recommendations as well, which seems to be what actually happens. If so, this phrase could be expanded by inserting "*or recommended*" after "*proposed*".

² Change from the assent procedure to the codecision procedure (see report from Working Group IX on Simplification, CONV 424/02 page 17).

³ Change from the cooperation procedure to the codecision procedure (see report from Working Group IX on Simplification, CONV 424/02 page 16).

Article 107

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 ~~thea Protocol annexed to this Treaty~~ **on the Statutes of the European System of Central Banks and the European Central Bank**.
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 **European Parliament and the Council, in accordance with the legislative procedure**, ~~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. They shall act after consulting the European Central Bank~~¹.
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 **measures**~~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*. **It shall act by a qualified majority, either on a proposal from the Commission after consulting the European Central Bank, or on a recommendation from the European Central Bank after consulting the Commission. In both cases, it shall act after consulting the European Parliament.**

¹ Change from the assent procedure to the codecision procedure (see report from Working Group IX on Simplification, CONV 424/02 page 17). Given that the codecision procedure as currently contained in Article 251 of the EC Treaty – which is to become the legislative procedure – is designed to operate with only three institutions: the European Parliament, the Council and the Commission, one consequence of this change of procedure is that the European Central Bank would lose its powers of recommendation under the current Article 107(5) of the EC Treaty.

Article 108

When exercising the powers and carrying out the tasks and duties conferred upon them by ~~the Constitutionthis 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 ~~UnionCommunity~~ institutions or bodies, from any government of a Member State or from any other body. The ~~UnionCommunity~~ 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 109

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 ~~the Constitutionthis Treaty~~ and the Statute of the *ESCB*.

Article 110

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

- (a) ~~Europeanmake~~ 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 107(6)];
- (b) ~~Europeantake~~ decisions necessary for carrying out the tasks entrusted to the *ESCB* under ~~the Constitutionthis Treaty~~ and the Statute of the *ESCB*;
- (c) ~~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.~~¹

[Articles 253,² 254 and 256 shall apply to **European** regulations and decisions adopted by the *ECB*].

¹ The first three subparagraphs of this paragraph are redundant, given the draft Article on legislative acts in Part One (Article 24(1) CONV 571/03).

² The reference to Article 253 (reasons for acts) is redundant, given the draft article on principles common to acts in Part One (Article 32(2) CONV 571/03).

The *ECB* may decide to publish ¹ its **European** decisions, recommendations and opinions.

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in [Article 107(6)], the *ECB* shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its **European** regulations and decisions.

Article 110a ²

Without prejudice to the powers of the *ECB*, ³ the Council, ~~acting by a qualified majority of the said Member States, shall, on a proposal from the Commission, and after consulting the ECB, shall take shall adopt by a qualified majority of the members of the Council representing the~~ Member States ⁴ without a derogation ⁵ the other measures necessary for use of the euro ~~the rapid introduction of the ECU as the single currency of those Member States. The [second sentence of Article 122(5)] ⁶ shall apply. The Council shall act after consulting the *ECB*.~~

¹ Since the term "*publish*" implies publication in the Official Journal of the European Union, it might perhaps be preferable to use the term "*make public*".

² Since the introduction of the euro in 1999, the current Article 123(4) has been used as a legal basis for adopting measures relating to the single currency. However, this legal basis, which was designed for the transitional phase, contains outdated expressions such as "*measures necessary for the rapid introduction of the ECU*" and is in the chapter on transitional measures. It is therefore appropriate to stabilise the legal basis to ensure that monetary union works properly. Accordingly, it is proposed that it be moved to the chapter on the "ordinary" arrangements for monetary policy and to make adjustments to establish its definitive character, by replacing "*rapid introduction of the ECU*" by "*use of the euro*".

³ This clause is new; it has been included to prevent the "stabilisation" of the legal basis from affecting the ECB's remit.

⁴ This formula is longer than the original, but accurately reflects institutional realities.

⁵ This concept is defined in an article in the current chapter on transitional provisions (see the new version of Article 116(1) suggested below).

⁶ This should be read as a reference to the new version of Article 116(4) suggested below.

Article 111¹

1. *By way of derogation from Article 300, 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 300, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Community with one or more States or international organisations, 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, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, shall decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and on its representation, in compliance with the allocation of powers laid down in Articles 99 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.*

¹ The Convention is to consider this Article in the context of external relations questions; it is therefore not dealt with here.

CHAPTER 3

INSTITUTIONAL PROVISIONS

Article 112

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 **of the Member States without a derogation** ¹.
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 recognised 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 113

1. The President of the Council ² 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*.

¹ This amendment merely clarifies the existing arrangements, as they result from the combined provisions of the last sentence of the current Article 122(3) (which is to become Article 116(2) in the new version suggested below) and Articles 43.4 and 10.1 of the ESCB Statute.

² The Convention may wish to consider whether this provision should be adjusted to reflect current practice, viz., that when the Presidency of the Council is held by a Member State which has not adopted the euro, it is the Chairman of the "Eurogroup" who attends meetings of the ECB Governing Council on the Council's behalf. In addition, see footnote re Article 100 for use of the term "*President of the Council*".

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 114

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, ~~an Economic and Financial 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 207, to contribute to the preparation of the work of the Council referred to in Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 116(2), 117(6), 119, 120, 121(2) and 122(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.¹~~

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.~~

¹ This paragraph referring to the Monetary Committee is obsolete, as the Committee has already been dissolved under the preceding paragraph.

The ~~Economic and Financial~~ Committee shall have the following tasks:

- (a) to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;
- (b) to keep under review the economic and financial situation of the Member States and of the ~~UnionCommunity~~ and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions;
- (c) without prejudice to [Article 207], to contribute to the preparation of the work of the Council referred to in [Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 105(6), 106(2), 107(5) and (6), 111, 119, 120(2) and (3), 122(2), 123(4) and (5)], and to carry out other advisory and preparatory tasks assigned to it by the Council;
- (d) 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 ~~the Constitutionthis 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~~ **shall adopt by a qualified majority a European decision laying down** detailed provisions concerning the composition of the Economic and Financial Committee. **It shall act after consulting the *ECB* and the 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 122 and 123] ¹, 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. ²

¹ This should be read as a reference to the new version of Article 116(1) suggested below.

² Given its transitional nature, it might perhaps be better to move this paragraph to the current chapter on transitional provisions, for example to the new version of Article 118 suggested below.

Article 115

For matters within the scope of [Articles 99(4), 104 with the exception of paragraph 14, 111, 121 ¹, 122 ² and 123(4) ³ and (5) ⁴], 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.

¹ This should be read as a reference to the new version of Article 117(1) suggested below.

² This should be read as a reference to the new version of Articles 116 and 117(1) and (2) suggested below.

³ This should be read as a reference to the new version of Article 110a suggested above.

⁴ This should be read as a reference to the new version of Article 117(3) suggested below.

A substantial reworking of this chapter is proposed to take account of the fact that transition to adoption of the euro has been completed; it should in future deal mainly, with the arrangements applicable to those Member States which have not adopted the euro and with the procedures for their adoption of it.

It is therefore suggested that many of the provisions currently in this chapter which are now obsolete should be deleted, and that there should be a more logical restructuring of the remaining provisions. In most cases, the suggestions set out below simply involved the moving of existing texts. This is why, unlike the procedure adopted in the rest of the report, the provisions which have been moved remain in normal type, with a footnote to indicate their position in the current Treaty; only genuinely new text which is not in the current Treaty is shown in bold type.

A fair copy of the text of this chapter has been appended in order to show the effects of the various modifications suggested.

CHAPTER 4

TRANSITIONAL PROVISIONS

Article 116 ¹

~~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 56 and in Articles 101 and 102(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;~~

¹ The current text, which is obsolete, has been deleted (specific considerations on paragraph 5 are given in the following footnote). The text has therefore been replaced by a four-paragraph text taken from the existing provisions, see below.

~~(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 101, 102(1), 103(1) and 104 with the exception of paragraphs 1, 9, 11 and 14 shall apply from the beginning of the second stage.~~

~~The provisions of Articles 100(2), 104(1), (9) and (11), 105, 106, 108, 111, 112, 113 and 114(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 109.~~⁴

1. Member States which the Council has **decided** do not fulfil the necessary conditions for the adoption of **the euro** shall have a derogation as defined in paragraph 2 of this Article. Such Member States shall hereinafter be referred to as "Member States with a derogation".²

2. A derogation referred to in paragraph 1 shall entail that the following Articles do not apply to the Member State concerned: [Articles 104(9) and (11), 105(1), (2), (3) and (5), 106, 110, 111, and 112(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*.³

3. In [Articles 105(1), (2) and (3), 106, 110, 111 and 112(2)(b)], "Member States" shall be read as "Member States without a derogation".⁴

¹ The combined provisions of paragraph 2 of the new version of this Article, Articles 108 and 109 of the EC Treaty and Articles 7 and 14 of the ESCB Statute now require Member States' central banks to be independent.

² This paragraph has been taken from the second subparagraph of Article 122(1), with some purely formal adjustments. For the ten candidate countries, the derogation will be explicitly stated in the Act of Accession.

³ Paragraphs 2 to 4 have been taken from paragraphs 3 to 5 of the current Article 122.

⁴ Article 105(1) does not contain any explicit reference to "*Member States*".

4. The voting rights of Member States with a derogation shall be suspended for the Council ~~measures~~ decisions referred to in the Articles of ~~the Constitution~~ ~~this Treaty mentioned~~ **listed** in paragraph 3 ~~2~~. In that case, by way of derogation from [Articles 205 and 250(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 205(2)], and unanimity of those Member States shall be required for an act requiring unanimity.

Article 117 ¹

~~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 the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognised 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.~~

~~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.*~~

¹ Paragraphs 1 and 3 to 9 of the current text, which are obsolete, have been deleted. Part of paragraph 2 (in italics, struck through) has been kept, with some adjustments, but moved to the new Article 118(2). Article 117 has been replaced by a text made up of three paragraphs from the current provisions, see below.

~~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 harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence;~~
- ~~—— prepare the rules for operations to be undertaken by the national central banks within the framework of the ESCB;~~
- ~~—— promote the efficiency of cross-border payments;~~
- ~~—— supervise the technical preparation of ECU banknotes.~~

~~At the latest by 31 December 1996, the EMI shall specify the regulatory, organisational 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.~~

~~9. During the second stage, the term "ECB" used in Articles 230, 232, 233, 234, 237 and 288 shall be read as referring to the EMI.~~

1. 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 ¹ on the progress made ~~in the fulfilment~~ by the Member States **with a derogation in fulfilling** of their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each **of these** Member States' national legislation, including the statutes of its national central bank, and [Articles 108 and 109] of ~~the Constitution~~~~this Treaty~~ and the Statute of the *ESCB*. The reports shall also examine ~~whether the achievement of~~ a high degree of sustainable convergence **has been achieved**, by **analysing how far**~~reference to the fulfilment~~ by each **of these** Member States **has fulfilled** of the following criteria:

- (a) 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;
- (b) 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 104(6)];
- (c) the observance of the normal fluctuation margins provided for by the exchange-rate mechanism ~~of the European Monetary System~~², for at least two years, without devaluing against the **euro**³ ~~currency of any other Member State~~;
- (d) the durability of convergence achieved by the Member State **with a derogation** and of its participation in the exchange-rate mechanism ~~of the European Monetary System~~⁴ being reflected in the long-term interest-rate levels.

¹ This phrase has been taken from the first sentence of the current Article 122(2). The rest of the paragraph is taken, with some adjustments, from the current Article 121(1).

² Following introduction of the euro, the various components of the European Monetary System, apart from the exchange-rate mechanism, no longer exist. Furthermore, the mechanism has been amended and is now called "ERM II". For the sake of simplicity, and to avoid the risk that references in the future Constitution may become obsolete, it might be a good idea not to refer to a specific exchange-rate mechanism, but to use a generic formula, as suggested here.

³ Amendment suggested to reflect the fact that the reference parameter is now the euro.

⁴ As stated above in the footnote on paragraph (c), the various components of the European Monetary System other than the exchange-rate mechanism no longer exist; the mechanism itself has been amended and is now called "ERM II".

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in ~~thea~~ **Protocol on the convergence criteria** ~~annexed to this Treaty~~. The reports of the Commission and the ~~ECB~~ **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. 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, shall decide **by a qualified majority** which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in [Article 121(1)] ¹, and abrogate the derogations of the Member States concerned. ²

3. If it is decided, according to the procedure set out in [Article 122(2)] ³, 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~~, **with the unanimity of the members of the Council** ⁴ **representing Member States without a derogation and the Member State concerned, irrevocably** ⁵ ~~fix~~ **adopt** the rate at which the ~~euro~~ **ECU** ~~shall~~ **is to** be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the ~~euro~~ **ECU** as the single currency in ~~that the~~ **the** Member State concerned. **The Council shall act after consulting the European Central Bank.** ⁶

Article 118 ⁷

~~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 123(4).~~

¹ This should be read as a reference to paragraph 1 of this Article, in the new version suggested here.

² This paragraph has been taken from the second sentence of the current Article 122(2), with purely formal adjustments.

³ This should be read as a reference to paragraph 2 of this Article, in the new version suggested here.

⁴ This formula is longer than the original, but accurately reflects institutional realities.

⁵ Addition of this adverb takes on board a substantial element of Article 118, which it is proposed to repeal.

⁶ This paragraph has been taken from the current Article 123(5), with purely formal adjustments.

⁷ The current text is obsolete and has been deleted. The reference to the irrevocable nature of the fixing of the value of the single currency has been taken from the new version of Article 117(3) suggested below. This article has been replaced by a two-paragraph text taken from the existing provisions, see below.

1. If and as long as there are Member States with a derogation, and without prejudice to [Article 107(3)] of ~~the Constitution~~^{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*.¹

2. **If and as long as there are Member States with a derogation, the *ECB*² shall, as regards those Member States:**

- (a) strengthen cooperation between the national central banks;
- (b) strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability;
- (c) monitor the functioning of the **exchange rate mechanism**~~European Monetary System~~³;
- (d) hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;
- (e) **carry out**~~take over~~ the **former** tasks of the European Monetary Cooperation Fund, ~~which shall be dissolved; the modalities of dissolution are laid down in the Statute of the EMI~~⁴ **previously taken over by the *EMI*.**

Article 118a⁵

~~Until the beginning of the third stage, e~~Each Member State **with a derogation** shall treat its exchange-rate policy as a matter of common interest. In so doing, ~~it~~^{Member States} shall take account of the experience acquired in cooperation within the framework of the **exchange rate mechanism**.⁶ ~~European Monetary System (EMS) and in developing the ECU, and shall respect existing powers in this field~~

¹ This paragraph has been taken from the current Article 123(3), with purely formal adjustments.

² New phrase to take account of the fact that the European Central Bank has replaced the European Monetary Institute.

³ As regards this reference to the European Monetary System, see the footnote on the new version of Article 117(1)(c) suggested above.

⁴ Apart from the introductory phrase (see above for the phrase added at the beginning of the paragraph) this paragraph has been taken from the current Article 117(2), with some adjustments, to take account of the liquidation of the European Monetary Institute.

⁵ This is a new provision taken over, with some adjustments, from the current Article 124(1).

⁶ As regards this reference to the European Monetary System, see the footnote on the new version of Article 117(1)(c) suggested above.

Article 119¹

1. Where a Member State **with a derogation** 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 jeopardise the functioning of the **internalecommon** 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 **Constitution**~~provisions of this Treaty~~. The Commission shall state what measures it recommends the **Member** State concerned to take.

If the action taken by a Member State **with a derogation** 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 **Economic and Financial** Committee ~~referred to in Article 114~~, 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 **by a qualified majority**; it shall adopt **European framework laws**~~directives~~ or **European** 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 organisations to which Member States **with a derogation** may have recourse;
- (b) measures needed to avoid deflection of trade where the **Member State with a derogation** 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 authorise the **Member State with a derogation** which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

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

¹ The text of this Article has been kept, with some adjustments, apart from paragraph 4, which has been deleted, but retained in substance by adding the words "*with a derogation*" in paragraphs 1, 2 and 3.

~~4. Subject to Article 122(6), this Article shall cease to apply from the beginning of the third stage.~~¹

Article 120²

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of [Article 119(2)] is not immediately taken, ~~at the~~ Member State **with a derogation**~~concerned~~ may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the **internal**~~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 119].

3. After the Commission has delivered an opinion and the **Economic and Financial** Committee ~~referred to in Article 114~~ has been consulted, the Council may, ~~acting by a qualified majority~~, decide **by a qualified majority** that the **Member** State concerned shall amend, suspend or abolish the protective measures referred to above.

~~4. Subject to Article 122(6), this Article shall cease to apply from the beginning of the third stage.~~³

~~ARTICLE 121~~⁴

~~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 108 and 109 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;*~~

¹ See preceding footnote.

² The text of this Article has been kept, with some adjustments, apart from paragraph 4, which has been deleted, but retained in substance by adding the words "*with a derogation*" in paragraph 1.

³ See preceding footnote.

⁴ Paragraphs 2 to 4 of the current text, which are obsolete, have been deleted. Paragraph 1 (in italics, struck though) has been kept, with some adjustments, but moved to the new version of Article 117(1) suggested above. Hence, Article 121 will disappear from the new text.

- ~~— 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 104(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 the 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 the 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 122¹~~

~~1. If the decision has been taken to set the date in accordance with Article 121(3), the Council shall, on the basis of its recommendations referred to in Article 121(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 121(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 121(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 121(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 104(9) and (11), 105(1), (2), (3) and (5), 106, 110, 111, and 112(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.~~

¹ The first subparagraph of paragraph 1 of the current text is obsolete and has been deleted, as has paragraph 6, the substance of which has nevertheless been taken over in Article 119(1) and Article 120(1) (see footnotes on those Articles). The second subparagraph of paragraph 1 and paragraphs 2 to 5 (in italics, struck through) have been kept, with some adjustments, but moved to the new version of Articles 116 and 117(1) and (2) suggested above. Hence, Article 122 will disappear from the new text.

~~4. In Articles 105(1), (2) and (3), 106, 110, 111 and 112(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 205 and 250(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 205(2), and unanimity of those Member States shall be required for an act requiring unanimity.~~

~~6. Articles 119 and 120 shall continue to apply to a Member State with a derogation.~~

ARTICLE 123¹

~~1. Immediately after the decision on the date for the beginning of the third stage has been taken in accordance with Article 121(3), or, as the case may be, immediately after 1 July 1998:~~

~~—— the Council shall adopt the provisions referred to in Article 107(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 107(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.~~

¹ Paragraphs 1 and 2 of the current text are obsolete and have been deleted. Paragraphs 3, 4 and 5 (in italics, struck through) have been kept, with some adjustments, but moved to the new versions of Articles 118(1), 110a and 117(3) respectively, suggested above. Hence, Article 123 will disappear from the new text

~~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, acting by a qualified majority of the said Member States, on a proposal from the Commission and after consulting the ECB, shall take the other measures necessary for the rapid introduction of the ECU as the single currency of those Member States. The second sentence of Article 122(5) shall apply.~~

~~5.— If it is decided, according to the procedure set out in Article 122(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 124¹

~~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.~~

* * *

¹ Article 124 of the current text has been deleted, but its substance has been taken over in the new version of Article 118a suggested above. Hence, Article 124 will disappear from the new text.

Economic and monetary policy

Appendix

to the addendum of 18 March 2003

to the consolidated report of 13 March 2003

submitted by the Working Party of experts of the Legal Services

CHAPTER 4

TRANSITIONAL PROVISIONS

(fair copy)

Article 116

1. Member States which the Council has decided do not fulfil the necessary conditions for the adoption of the euro shall have a derogation as defined in paragraph 2 of this Article. Such Member States shall hereinafter be referred to as "Member States with a derogation".
2. A derogation referred to in paragraph 1 shall entail that the following Articles do not apply to the Member State concerned: [*Articles 104(9) and (11), 105(1), (2), (3) and (5), 106, 110, 111, and 112(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.
3. In [*Articles 105(1), (2) and (3), 106, 110, 111 and 112(2)(b)*], "Member States" shall be read as "Member States without a derogation".
4. The voting rights of Member States with a derogation shall be suspended for the Council measures referred to in the Articles of the Constitution listed in paragraph 2. In that case, by way of derogation from [*Articles 205 and 250(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 205(2)*], and unanimity of those Member States shall be required for an act requiring unanimity.

Article 117

1. 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 on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each of these Member States' national legislation, including the statutes of its national central bank, and [*Articles 108 and 109*] of the Constitution and the Statute of the ESCB. The reports shall also examine whether a high degree of sustainable convergence has been achieved, by analysing how far each of the Member States has fulfilled the following criteria:
 - (a) 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;

- (b) 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 104(6)*];
- (c) the observance of the normal fluctuation margins provided for by the exchange-rate mechanism, for at least two years, without devaluing against the euro;
- (d) the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism 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 the Protocol on the convergence criteria. The reports of the Commission and the ECB shall also take account of 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. After consulting the European Parliament and after discussion in the Council, meeting in the composition of the Heads of State or Government, the Council, on a proposal from the Commission, shall decide by a qualified majority which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in paragraph 1, and abrogate the derogations of the Member States concerned.

3. If it is decided, according to the procedure set out in paragraph 2, to abrogate a derogation, the Council shall, on a proposal from the Commission, with the unanimity of the members of the Council representing Member States without a derogation and the Member State concerned, irrevocably fix the rate at which the euro is to be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the euro as the single currency in that Member State. The Council shall act after consulting the European Central Bank.

Article 118

1. If and as long as there are Member States with a derogation, and without prejudice to [*Article 107(3)*] of the Constitution, 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.

2. If and as long as there are Member States with a derogation, the ECB shall, as regards those Member States:

- (a) strengthen cooperation between the national central banks;
- (b) strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability;

- (c) monitor the functioning of the exchange rate mechanism;
- (d) hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;
- (e) carry out the former tasks of the European Monetary Cooperation Fund previously taken over by the EMI.

Article 118a

Each Member State with a derogation shall treat its exchange-rate policy as a matter of common interest. In so doing, it shall take account of the experience acquired in cooperation within the framework of the exchange rate mechanism.

Article 119

1. Where a Member State with a derogation 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 jeopardise the functioning of the internal market or the 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 Constitution. The Commission shall state what measures it recommends the Member State concerned to take.

If the action taken by a Member State with a derogation 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 Economic and Financial Committee, recommend to the Council the granting of mutual assistance and appropriate methods.

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

2. The Council shall grant such mutual assistance by a qualified majority; it shall adopt European framework laws or European 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 organisations to which Member States with a derogation may have recourse;
- (b) measures needed to avoid deflection of trade where the Member State with a derogation 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 authorise the Member State with a derogation which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

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

Article 120

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of [Article 119(2)] is not immediately taken, a Member State with a derogation may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the internal 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 119].

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

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