



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Amendment of the IMF Articles of Agreement on Capital
Movements

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1. Introduction

When the Interim Committee of the Board of Governors of the International Monetary Fund met on 28 April 1997 in Washington, it was agreed that the IMF's Articles of Agreement should be amended to make the promotion of capital account liberalisation a specific purpose of the Fund and to give it appropriate jurisdiction over capital movements. The Committee invited the Fund's Executive Board to continue its work on the issue with a view to making specific recommendations on key elements of an amendment by the time of the Committee's next meeting in September 1997.

An amendment of the Articles of Agreement to lay down binding obligations for IMF members with a view to promoting the liberalisation of capital movements would be a positive development for international trade and investment. Through the competence accorded to it in the Treaty on European Union in this area, the Community has itself widely liberalised capital movements between Member States and with third countries; it is in its interest similarly to promote liberalisation by third countries while protecting the exceptions and safeguard clauses existing at Community level. The purpose of this Communication, therefore, is to recall the Community competences in this field and to ensure that the necessary steps are taken to respect them throughout the processes involved.

2. The IMF Initiative

The IMF has, by its Articles of Agreement, a mandate to oversee the international monetary system. Apart from the Fund's surveillance activities in this field, the Articles give the IMF jurisdiction over payments and transfers related to current transactions. Given the widespread trend towards globalisation of markets and capital account liberalisation, the international monetary and financial system is increasingly shaped by capital movements. It has, therefore, been suggested that the jurisdiction of the Fund should be extended to this area. The way to achieve this extension would be through an amendment of the Articles, a process which would require acceptance by at least three-fifths of the members having eighty-five percent of the total voting power. As an amendment of the Articles constitutes an international agreement, it would have to be accepted by the members according to their respective national procedures.

According to information available to the Commission, the discussions within the Executive Board of the Fund are still at a relatively early stage; however, an initial prognosis as to the general features of the proposed amendment may already be made. First, unlike the treatment of current transactions, the Fund's extension of jurisdiction would, no doubt, not be confined to the payments and transfers associated with the

transaction, but would also cover the underlying transactions¹. Second, although the amendment would be drafted with considerable compression, leaving much of the explanatory text for the commentary, it would create rights and obligations for signatories to the amendment and would thus go beyond a mere inclusion of capital account liberalisation as a general purpose of the Fund. Third, the text would tend to include a general obligation to liberalise capital movements and to make most restrictions, including possible temporary safeguards, subject to Fund approval. Fourth, the amendment would need to include transitional arrangements similar to the ones used to promote the liberalisation of payments with respect to current transactions.

3. Promoting and Defending the Community Interests

The Community has unilaterally committed itself to freedom of capital movements between its Member States and with third countries, with only relatively minor exceptions. It therefore has a strong interest in the promotion of orderly liberalisation of capital movements at a global level, including through binding international rules such as those envisaged in the IMF initiative. Free capital movements facilitate a more efficient global allocation of savings and allow resources to be channelled into their most productive uses.

The Community will also have to ensure that the new rules are consistent with Community law. The nature of the existing set of rules and competences from the Community's side and the experience in other negotiations in which rules on capital movements are being discussed strongly suggest that there is a very real possibility that the powers to be granted to the Fund would affect Community prerogatives and that the risk for conflict would not be negligible. Any agreement would, for instance, have to preserve the Community's powers to maintain restrictions on certain types of capital movements², or to introduce safeguard measures in case of serious difficulties for the operation of EMU³.

4. Community Law

The Treaty on European Union introduced a new set of provisions⁴ into the EC Treaty according to which all restrictions on the movement of capital and payments between Member States and between Member States and third countries are to be prohibited⁵ as of 1 January 1994⁶. This prohibition, although directly applicable and of a general nature, is, however, subject to certain exceptions set out in the Treaty⁷. The exceptions are precisely circumscribed, either in the form of a "standstill clause" regarding restrictions existing on 31 December 1993 which may continue to be applied on certain transactions, or the right of the Community bodies, or the Member States, to take measures or apply provisions in certain well-defined circumstances.

¹ Inward foreign direct investment could well be excluded.

² Article 73c(1).

³ Article 73f.

⁴ Articles 73a to 73g; Articles 73e and 73h have since lapsed.

⁵ Articles 73b(1) and 73b(2).

⁶ Article 73a.

⁷ Articles 73c, 73d, 73f and 73g.

The direct applicability of the general prohibition in Article 73b has thus expressly established the competence of the Community as regards the free movement of capital and payments between the Member States and between the Member States and third countries. In particular, the modifications represent an overt shift from a system which was incomplete in itself (basically limited to capital movements between the Member States) and which - always within given limits - depended on implementing legislation to give it substance⁸.

The basic principle enshrined in Articles 73b et seq. as regards capital movements involving third countries by definition assigns the Community external competence. This is supported by the text, subject-matter and purpose of Article 73b. The provisions of Article 73c(2) serve to complement this competence by enabling the Community, in a limited number of areas which are listed exhaustively, to take measures on the movement of capital to or from third countries. To be sure, these provisions do not provide for implementing legislation for the purposes of Article 73b. There is, therefore, no scope for arguing that, until a specific Community act has been adopted, the external competence of the Community is not established. If that were the case, Articles 73b et seq., compared to Articles 67-73, would have constituted a step backwards.

It, nevertheless, remains the case that, in certain circumstances set out in the Treaty, the Member States do retain the power to act themselves, their actions, however, being subject to control at Community level. The competence of the Community, although wide-ranging and clearly established, is, therefore, not exclusive.

5. Follow Up

As any amendment to the Articles of Agreement of the IMF would have to respect Community prerogatives, arrangements will have to be made to ensure that the Community is appropriately involved and that a common position is taken. The Commission considers that a preliminary discussion of this issue in the Council should be held before the Interim Committee and the Board of Governors meet in September 1997. In view of ensuring the respect of the prerogatives of the Community, the Commission reserves the right to take further initiatives as it considers appropriate in the light of developments and whenever the occasion arises. To this end, it asks the Member States to keep it fully informed of all developments on a timely basis, in accordance with Article 5 of the Treaty.

⁸ In particular, Council Directive 88/361/EEC of 24 June 1988 for the Implementation of Article 67 of the Treaty, OJ 1988, L178/5.