

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 371 final - SYN 466 - SYN 467

Brussels, 22 July 1993

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Secondary legislation for the second stage of Economic and Monetary Union

Secondary legislation for the second stage of Economic and Monetary Union

(Communication to the Council and the European Parliament)

The European Council held on 21 and 22 June 1993 at Copenhagen invited the Commission to present proposals on all the necessary implementing measures relating to the second stage of Economic and Monetary Union (EMU), so that they can be adopted by the Council as soon as possible after entry into force of the Treaty and before 1 January 1994. In this perspective, the Commission transmits herewith four draft proposals for legislative acts.

The legal basis for these draft proposals is the Treaty establishing the European Community (EC Treaty) as amended by the Treaty on European Union. As long as the Treaty has not yet entered into force, legislation cannot start formally. The formal preparation of legislation risks running into severe time constraints because the time between the entering into force of the Treaty and the start of the second stage of EMU will be short. In order to comply with the aforementioned mandate of the European Council, it is necessary to prepare legislation in the field of EMU on an informal basis. While the Commission has the intention, after the entry into force of the Treaty, to make formal proposals in line with these draft proposals, it reserves the right to introduce modifications in the light of the circumstances.

The purpose of the draft proposals is to start informally the necessary discussions with the Community bodies involved, such that the formal procedures can be initiated immediately after the entry into force of the EC Treaty and brought to an end within the objective set by the European Council. Two of the four texts call for cooperation with the Parliament according to Article 189c of the EC Treaty, the other two for consultation. One text requires consultation of the Committee of Governors and of the Monetary Committee.

The following draft proposals are annexed to this Communication:

- Regulation aiming at specifying the prohibition of access of the public sector to central bank credit (Article 104 of the EC Treaty). The purpose is to specify definitions, like "overdraft facilities or any other type of credit facility" or "public undertakings". Secondary legislation on Article 104 is not obligatory, but the clarification of a number of questions through legislation is highly desirable, as has also been suggested by the Committee of Governors. Cooperation with the European Parliament is required;
- Regulation aiming at specifying the prohibition of privileged access of the public sector to financial institutions (Article 104a of the EC Treaty). Secondary legislation, which is compulsory, serves to specify definitions as well. This concerns the terms "privileged access", "financial institutions", "prudential considerations" and, as for Article 104, "public undertakings". Cooperation with the European Parliament is required;

- Regulation on the application of the excessive deficit procedure (Article 104c(14) of the EC Treaty). The purpose of this Regulation is to lay down detailed rules and definitions for the application of the provisions of the Protocol on the excessive deficit procedure. Its subject is to provide further details of the definitions to be used including the definition of public debt, and to lay down rules for the reporting of data by the Member States to the Commission. The European Parliament is to be consulted;
- Decision on the establishment of the key for the contributions of central banks to the financial resources of the European Monetary Institute (Article 16.2 of the EMI Statute). The purpose is to specify rules to be applied by the Commission when it provides the data on population and gross domestic product for the establishment of the key. The European Parliament, the Committee of Governors and the Monetary Committee are to be consulted.

A further piece of legislation relating to the European Monetary Institute is under preparation but is not annexed to this Communication. This concerns the consultation of the Institute by the authorities of the Member States on draft legislative provisions in its field of competence. The Commission intends to present the respective draft proposal informally in due course.

Later in the year, the Commission will also propose some slight amendments to existing Community legislation necessary for completing the preparation of the second stage.

Proposal for a
COUNCIL REGULATION (EEC)

SYN 466

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

Explanatory Memorandum

At its meeting in Copenhagen, the European Council invited the Commission to present proposals concerning all measures necessary for the operation of the second stage of Economic and Monetary Union, such that these proposals could be adopted by the Council after the entry into force of the Treaty and before 1 January 1994. Following this request and in the absence of a legal basis on which to adopt a formal proposal, the Commission presents the annexed draft proposal. Its purpose is to start informally the necessary discussions with the Community bodies involved, such that the formal procedures can be initiated immediately after the entry into force of the Treaty and brought to an end within the objective set by the European Council. While the Commission has the intention, after the entry into force of the Treaty, to make a formal proposal in line with this draft proposal, it reserves the right to introduce modifications in the light of the circumstances.

I. Introduction - general considerations

Fiscal policies, in contrast to monetary policy, will not be centralized in Stage Three of Monetary Union; responsibility will remain with Parliaments and Governments of Member States. Notwithstanding this, the Treaty establishing the European Community includes a number of provisions to promote fiscal discipline. Articles 104 and 104b, together with Article 104a, form the set of provisions aiming at enhancing the disciplinary forces of the market mechanism. These provisions already apply from the beginning of Stage Two of Economic and Monetary Union.

The prohibition on direct central bank financing of the public sector is also an important element of central bank independence. Central banks' monetary policy operations shall not be influenced by public financing needs.

Finally, the acquisition and holding by central banks of public sector debt, in so far as this debt is remunerated below market rates, might affect in Stage Three monetary income for the ESCB as a whole, diminishing the monetary income for all central banks of Member States.

The present draft Council Regulation based on Articles 104 and 104b of the Treaty establishing the European Community specifies the meaning of "overdraft facilities and any other form of credit facility" (Article 1 of this draft). It makes clear under which conditions specific forms of credit arising in the performance of fiscal agent functions are not deemed to constitute credits within the meaning of Article 104 (Articles 3 to 6 of this draft). It defines, both for Articles 104 and 104b and in parallel to Article 104a, the term "public undertakings", building upon existing legislation, and makes clear that central banks do not form part of the public sector (Article 7 of this draft).

Portugal and the United Kingdom are authorized to maintain for the time being some specific arrangements which would normally fall under the prohibition of Article 104. These authorizations are laid down in the Protocol on Portugal and paragraph 11 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland.

II. Comments on the Articles

Article 1

Overdraft facilities or any other kind of credit facility

Article 1 explains that debt with a fixed maturity, if acquired before 1 January 1994, is not included in the definition of "overdraft facilities and any other form of credit facility" and therefore may be held until maturity. Outstanding stocks of overdraft facilities and any other kind of credit facility have to be redeemed or converted into fixed-maturity debt before 1 January 1994. As from 1 January 1994, central bank laws and statutes in Member States must no longer contain provisions allowing for the possibility of overdraft facilities or any other form of credit facility; it is not sufficient that such credits in practice are no longer granted.

Article 2

Direct purchases

- 2.1 While Article 104 prohibits overdraft and other credit facilities as well as the direct purchase of public sector debt instruments, it does not explicitly mention **secondary market purchases**. The main reason is that in most countries the large and liquid market in government paper is vital for the conduct of open market operations. The intention is certainly not to introduce a possibility to circumvent the ban on central bank financing of the public sector. The present draft proposal makes this clear by stating that secondary market purchases are compatible with Article 104 only if conducted for monetary policy reasons. The provision stating that Member States undertake to abstain from influencing the decision-making bodies of the national central banks to this effect is limited to the aspect of central bank financing of the public sector; it does not aim at anticipating central bank independence otherwise.
- 2.2 Article 104 does not specify whether the prohibition applies to central banks and governments of the same country only or whether it covers also **cross-border credits**. During Stage Two, direct "cross-country"-purchases of public sector marketable debt instruments by the central bank of another Community country do not have the same implications as if the domestic central bank steps into the market, since there is no creation of central bank money in the debtor country in the former case. Rather, such transactions are of a commercial nature to be seen in the context of foreign exchange reserve management. Furthermore, as long as the debt instruments involved are marketable, such transactions are unlikely to affect the working of the market mechanism on public sector debt.

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The fact that credits arise as a "by-product" in the context of various transactions with the public sector does not in principle exempt them from the application of Article 104. Articles 3 to 6 specify which transactions are not covered by the definition of "overdraft facilities or any other form of credit facility". These exemptions are based on the principle that the prohibition of Article 104 should not hinder the efficient operation of fiscal agent functions by the central banks of Member States (as mentioned in Article 21 of the ESCB Statute).

Article 3 **Intra-day credits**

In many countries, central banks hold all the major accounts of the central government, and all the central government receipts and payments flow directly, or are channelled indirectly, through these accounts. Intra-day credit to the Government arises when payments are executed by the central bank on behalf of the Government on a real time basis and net debtor positions arise during the day. In a strict sense, such intra-day credit is a form of very short term central bank financing of the public sector.

In the development of modern payments systems there is a trend towards real time gross settlement systems. Article 104 should not hinder an efficient execution of fiscal agent functions, including payments transactions, by central banks. Furthermore, due to its very short term and technical nature there are no implications for the conduct of an independent monetary policy in Stage Three of EMU to be expected. Finally, the existence of intra-day credit does not diminish the working of the market mechanism on government borrowing. To avoid circumvention of Article 104, however, intra-day credit is explicitly defined so as to exclude an extension into overnight credit.

Article 4 **Collection of cheques**

This Article specifies the permissible procedures for the collection of cheques by central banks on behalf of their governments. Such practices may imply (interest-free) short-term central bank financing ("float") if cheques written by the private sector in favour of the Treasury are credited by the central bank to the Treasury account immediately upon, or very soon after, receipt while the corresponding debits to the accounts of the banks of the issuers of the cheques are made one or a few days later.

In principle, a positive float from the collection of cheques is a kind of short-term credit and therefore inconsistent with Article 104. The direct effects of a positive float are relatively minor; the short-term liquidity management may, however, be affected.

Therefore, in principle cheques should not be credited to the Treasury account before the drawee is debited; however, this is difficult to ensure in every individual case. For cost and efficiency reasons, under certain conditions a more pragmatic approach is acceptable. The solution chosen in Article 3 introduces fixed lags between the reception of the cheque by the central bank and the crediting of the public sector account. These lags should correspond to the practices in each Member State and should be such that the operations on average ensure neutrality with respect to credit effects.

Article 5

Holdings of coins

In most Community countries, coins are issued by the Treasury and put into circulation by the central bank. In some cases, the government account is credited by the central bank before coins are put into circulation and is not debited when reflows to the central bank occur.

Such transactions in principle constitute a form of (non-interest bearing) credit. However, in some countries, it would be rather impractical, or even impossible, to apply this principle in a strict sense whereby a central bank would only be allowed to credit the account of the issuer of coins once the coins have been put into circulation and, conversely, would be obliged to debit on the government account immediately the counter-value of any reflows of coins. Instead, the national central banks should be allowed (albeit not be obliged) to hold coins issued by the Treasury up to a certain ceiling. For practical reasons, a ceiling equivalent to 10% of coins in circulation is suggested.

Article 6

Credits in the fulfilment of international monetary obligations

The IMF being an intergovernmental organization, commitments under IMF for balance-of-payments support are to be fulfilled by the member governments with the central bank acting as fiscal agent. In most Member States currently such lending is ultimately financed by the central bank which includes this lending in its balance sheet. Likewise, the Medium-Term Financial Assistance for EC Member States' balance of payments provides for credits by recourse to Member States; in this event, it is current practice in a number of Member States that such loans are not financed out of the budget but through the central bank.

From a strictly formal point of view, these transactions constitute central bank financing of the public sector; from an economic point of view, however, such operations are not in contradiction with the aims of Article 104. The national central banks should thus be allowed (albeit not be obliged) to extend loans to the governments for these purposes.

Article 7

Definition of the public sector

The definition of the public sector entities given in Articles 104 and 104b(1) is considered clear and comprehensive. Two specifications appear useful, however. Paragraph 1 defines the term "public undertakings" using the definition given in Commission Directive 80/723/EEC; the exemptions mentioned in this Directive are, however, not appropriate for the purpose of Articles 104 and 104b(1). Using this definition guarantees consistency with secondary legislation for Article 104a of the Treaty establishing the European Community.

Paragraph 2 makes clear that the ECB and national central banks are exempted from the definition of the public sector in order to make sure, for example, that central banks may grant each other credits.

Proposal for a
COUNCIL REGULATION (EEC)

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community as amended by the Treaty on European Union, and in particular Articles 104, 104b(2) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Whereas Articles 104 and 104b(1) are directly applicable; whereas definitions of terms used in Articles 104 and 104b(1) may be specified if necessary;

Whereas the prohibition on direct central bank financing of the public bodies referred to in Article 104 is an essential element in submitting the public sector in its financing operations to the discipline of the market mechanism, thus helping to avoid excessive deficits;

Whereas clarification of the term "overdraft facilities and any other form of credit facility" will create legal certainty about the treatment of stocks of credit outstanding as of 31 December 1993;

Whereas outright purchases on the secondary market of securities issued by the public bodies addressed in Article 104 are important for the conduct of monetary policy; whereas, however, secondary market purchases, if not conducted for the sole purpose of monetary policy, afford an opportunity to circumvent Article 104 and its objectives;

Whereas during Stage Two of Economic and Monetary Union, direct purchases by the central bank of one Member State of marketable debt instruments issued by the public sector of another Member State do not negatively affect the conduct of monetary policy or the working of the market mechanism on public sector debt; whereas such transactions are rather of a commercial nature to be seen in the context of foreign exchange reserve management;

Whereas credit offered by central banks to the public sector may take varied forms; whereas credits resulting from delays between crediting and debiting for transactions carried out by the European Central Bank or the central banks of the Member States on behalf of the public sector are in principle a form of credit facility; whereas, however, Article 21.2 of the Statute of the European System of Central Banks and the European Central Bank explicitly allows for the provision of fiscal agent functions by central banks of Member States; whereas, therefore, certain qualifications to this general principle for specific transactions are necessary;

Whereas credits of central banks to the public sector which arise during the day may be useful for the smooth operation of payment systems and comply with the objectives of Article 104 as long as they are not extended overnight;

Whereas the prohibition on the direct central bank financing of budget deficits should not hinder the efficient operation of fiscal agent functions; whereas, therefore, the collection of cheques by central banks on behalf of governments should not be forbidden by Article 104 as long as this does not, on the whole, entail central bank credit to the government;

Whereas holdings by central banks of coins issued by the Treasury in principle constitute a form of non-interest bearing credit to the government; whereas, however, in some countries it would be rather impractical or even impossible to prohibit such credit altogether;

Whereas credits granted by central banks to their respective Member States in the fulfilment of commitments under IMF balance-of-payments support and of medium-term financial assistance granted on the basis of Council Regulation (EEC) No 1969/88⁽¹⁾ serve the purpose of lending abroad for balance of payments support;

Whereas public undertakings fall under the prohibition of Articles 104 and 104b(1); whereas public undertakings are defined in Commission Directive 80/723/EEC⁽²⁾, as amended by Directive 85/413/EEC⁽³⁾; whereas that Directive mentions exemptions to the definition of public undertakings which are not appropriate in the context of Articles 104 and 104b(1);

Whereas a clarification of these issues is advisable;

Whereas the definitions in this Regulation might be revised, where necessary, in the light of experience, and with a view to the establishment of the European System of Central Banks and to the conduct of a common monetary policy in Stage Three,

HAS ADOPTED THIS REGULATION:

Article 1

(Overdraft facilities or any other kind of credit facility)

For the purpose of Article 104, "overdraft facilities or any other kind of credit facility" shall mean the granting or holding of such facilities by the European Central Bank ("ECB") or the central banks of the Member States ("national central banks") in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States (hereinafter referred to as "public sector"). The holding of claims with a fixed maturity, acquired before 1 January 1994, shall not be considered a credit facility.

(1) OJ No L 178, 8.7.1988, p. 1.

(2) OJ No L 195, 29.7.1980, p. 35.

(3) OJ No L 229, 28.8.1985, p. 20.

Article 2
(Direct purchases)

1. For the purpose of Article 104, direct purchases shall include purchases by the ECB or by the national central banks of debt instruments issued by the public sector on the secondary market unless such transactions are conducted solely for the purpose of implementing monetary policy and unless the Member States undertake to abstain from influencing the decision-making bodies of the national central banks in that regard.
2. During Stage Two of Economic and Monetary Union, purchases by the national central bank of one Member State of marketable debt instruments issued by the public sector of another Member State shall not be considered direct purchases within the meaning of Article 104, provided that such purchases are conducted for the sole purpose of managing foreign exchange reserves.

Article 3
(Intra-day credits)

Credits by the ECB or the national central banks to the public sector within the day shall not be considered a credit facility within the meaning of Article 104, provided that they are not extended overnight.

Article 4
(Collection of cheques)

Where the ECB or the national central banks receive from the public sector, for collection, cheques issued by third parties and credit the public sector's account before the issuer has been debited, this shall not be considered a credit facility, provided that a fixed time-lag has expired since the receipt and provided that the time-lag corresponds to the average pattern of cheque collection in each Member State such that any float which might arise would be exceptional and of a small amount and would average out over a short period.

Article 5
(Holdings of coins)

The holdings by the ECB or the national central banks of coins issued by the public sector up to an amount of 10% of coins in circulation shall not be considered a credit facility within the meaning of Article 104.

Article 6
(Credits in the fulfilment of international monetary obligations)

Credits granted by the ECB or the national central banks to the public sector in the fulfilment of commitments under IMF balance-of-payments support and of medium-term financial assistance granted on the basis of Regulation (EEC) No 1969/88 shall not be considered a credit facility within the meaning of Article 104.

Article 7
(Public sector)

1. For the purpose of Articles 104 and 104b(1), "public undertakings" shall mean any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.
2. For the purpose of Articles 104 and 104b(1), the ECB and the national central banks do not form part of the public sector.

Article 8

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels,

For the Council
The President

Proposal for a
COUNCIL REGULATION (EEC)

SYN 467

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

Explanatory Memorandum

At its meeting in Copenhagen, the European Council invited the Commission to present proposals concerning all measures necessary for the operation of the second stage of Economic and Monetary Union, such that these proposals could be adopted by the Council after the entry into force of the Treaty and before 1 January 1994. Following this request and in the absence of a legal basis on which to adopt a formal proposal, the Commission presents the annexed draft proposal. Its purpose is to start informally the necessary discussions with the Community bodies involved, such that the formal procedures can be initiated immediately after the entry into force of the Treaty and brought to an end within the objective set by the European Council. While the Commission has the intention, after the entry into force of the Treaty, to make a formal proposal in line with this draft proposal, it reserves the right to introduce modifications in the light of the circumstances.

I. Introduction - general considerations

The prohibition of privileged access (Article 104a), together with the prohibition of direct central bank financing (Article 104) and the no bail out clause (Article 104b), serve the purpose of submitting the public authorities to market discipline in their financing operations. The respect of the price mechanism should provide an incentive for the authorities to pursue strict budgetary policies and so helps to avoid excessive deficits.

The prohibition of privileged access enters into force on 1 January 1994, when the second phase of the process towards Economic and Monetary Union starts. Four definitions should be provided for the application of the prohibition of privileged access in secondary legislation:

- privileged access
- prudential considerations
- public undertakings
- financial institutions.

In the comments on the Articles more details are given on the content of the definitions.

II. Comments on the Articles

Article 1 Definition of privileged access

The notion of privileged access is concerned with liabilities from the public sector (for example, securities issued by the public sector and loans granted to the public sector) implying that deposits of the public sector cannot form the subject of privileged access.

Not only the measures which directly oblige financial institutions to hold public debt but also the measures which have that effect are prohibited. The wording is similar to the one in Article 85 of the EC Treaty on competition law.

The reference to the compatibility with market conditions, based on the wording of Articles 3a and 102a of the EU Treaty, does not exclude that the public sector can benefit from the good credit standards it normally has. The wording also allows that obligations which are in accordance with the free market principle (for example, the obligation for primary dealers to quote public debt) cannot be considered privileged access. In the same spirit, the obligation imposed on certain financial institutions to finance at special conditions social housing is compatible with the prohibition of privileged access.

With respect to interest subsidies or other transfers from one part of the public sector to another, which de facto lower the borrowing cost, this is not considered privileged access to the extent that the financial institution receives the market price.

Only privileged access to financial institutions is banned leaving privileged access to financial markets outside the scope of the prohibition. This means, for example, that tax advantages available to everybody which favour the holding of public sector liabilities are not covered by the prohibition. By contrast tax advantages for public sector liabilities targeted at financial institutions are forbidden.

In order to facilitate the reading, the entities listed in Article 104a which may not benefit from privileged access are referred to as 'public sector'.

Article 2

Definition of prudential considerations

Prudential measures can lead to privileged access to the extent that they encourage the holding of public debt which, in normal circumstances, represent a low risk. Indeed, public debt paper is usually relatively liquid and the government is, in principle, a good debtor because of its prerogative to raise taxes, so that it is justified to make sure that financial institutions observe certain prudential measures leading to the holding of public debt paper. On the other hand, prudential supervision may not become a way to circumvent the prohibition of privileged access.

The definition of prudential considerations is based on attention for the financial system as a whole, financial institutions and customers. Therefore, national laws, regulations or administrative actions directed at financial institutions, for example in the absence of EC legislation in the field, are recognized as valid references for prudential considerations, as long as they respect EC law.

The formulation implies that EC legislation with a privileged treatment of public debt liabilities, for example in the weighting scheme applied in the calculation of the solvency ratios or in the diversification requirements on UCITS, are compatible with the prohibition of privileged access because they are based on prudential considerations. The same applies for some measures in the life and non-life insurance sector which are only abolished on 1 July 1994 by recently adopted Council Directives, while the prohibition of privileged access enters into force on 1 January 1994.

Article 3

Definition of public undertakings

The meaning of the entities listed in Article 104a, which may not benefit from privileged access (the public sector), is considered clear and comprehensive except for public undertakings whose definition is given in paragraph 1. It is the definition of Commission Directive 80/723/EEC⁽¹⁾ on the transparency of financial relations between Member States and public undertakings. It is preferred to have the full wording of the definition rather than a reference to a Commission Directive which can be changed without the Council being involved.

Paragraph 2 makes clear that the central banks of the Member States and the European Central Bank cannot be included in the public sector so that they can oblige financial institutions to hold central bank liabilities for monetary policy purposes (for example, minimum reserve requirements).

However, the monetary policy instruments must not be designed in such a way that the only manner to obtain central bank credit is through the vehicle of public sector liabilities, for example, as collateral or in open market operations. Nevertheless, there is no objection to limit specific operations to particular public sector liabilities satisfying certain characteristics.

Article 4

Definition of financial institutions

In paragraph 1, financial institutions are defined by making reference to existing EC legislation. In addition, there is a catch-all clause. If EC legislation for certain financial institutions is not ready they are covered by the catch-all clause.

In paragraph 2, the central banks of the Member States and the European Central Bank are excluded on the argumentation that their relations with the public sector are dealt with in Article 104. Even if postal financial services are obliged to make available to the public sector the funds they have at their disposal they are excluded from the definition because they are not a financial institution sufficiently separate from the government.

⁽¹⁾ OJ No L 195, 29.7.1980, p. 35.

Proposal for a
COUNCIL REGULATION (EEC)

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community as amended by the Treaty on European Union, and in particular Article 104a(2) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Whereas the prohibition of privileged access forms an essential element of the submission of the public sector in its financing operations to the discipline of the market mechanism and so makes a contribution to the avoidance of excessive deficits;

Whereas prudential considerations are considered a justification for making an exception to the prohibition of privileged access; whereas in so doing, however, any exceptions should in particular be compatible with Community law on the liberalization of capital movements;

Whereas public undertakings fall under the prohibition of Article 104a; whereas public undertakings are defined in Commission Directive 80/723/EEC⁽¹⁾, as amended by Directive 85/413/EEC⁽²⁾; whereas that Directive mentions exemptions to the definition of public undertakings which are not appropriate in the context of the prohibition under Article 104a;

⁽¹⁾ OJ No L 195, 29.7.1980, p. 35.

⁽²⁾ OJ No L 229, 28.8.1985, p. 20.

Whereas privileged access is formulated in terms of access to financial institutions and not financial markets; whereas different definitions of financial institutions are given in Council Directive 89/646/EEC⁽³⁾, as amended by Directive 92/30/EEC⁽⁴⁾, and in Directive 91/308/EEC⁽⁵⁾; whereas neither of the Directives provides a suitable definition of financial institutions in the context of the prohibition of privileged access;

Whereas the central banks of the Member States and the European Central Bank have a special relation to financial institutions, and in particular to credit institutions which for reasons of monetary policy can be obliged to hold liabilities from the central bank of the Member States and/or the European Central Bank; whereas the central banks of the Member States and the European Central Bank must nevertheless take account of the prohibition of privileged access in the design and use of monetary policy instruments which mostly involve liabilities of the public sector and therefore may not take measures which establish privileged access by the public sector to financial institutions; whereas the central banks of the Member States and the European Central Bank have a special relationship with the public sector, with which Article 104 of the Treaty deals;

Whereas the definitions in this Regulation might be revised in the light of experience,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of Article 104a, 'any measure establishing privileged access' shall be defined as any law, regulation or other measure which is not in accordance with the principle of an open market economy with free competition, and which obliges financial institutions to acquire or hold liabilities of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States (hereinafter referred to as 'public sector'), or which has such acquisition or holding as its object or effect.

Article 2

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

⁽³⁾ OJ No L 386, 30.12.1989, p. 1.

⁽⁴⁾ OJ No L 110, 28.4.1992, p. 52.

⁽⁵⁾ OJ No L 166, 28.6.1991, p. 77.

Article 3

1. For the purpose of Article 104a, 'public undertakings' shall be defined as any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.
2. For the purpose of Article 104a, the European Central Bank and the central banks of the Member States do not form part of the public sector.

The exemption shall be without prejudice to compliance with Article 104a by the central banks of the Member States and the European Central Bank.

Article 4

1. For the purpose of Article 104a, 'financial institutions' are:
 - credit institutions as defined in the first indent of Article 1 of Council Directive 77/780/EEC⁽⁶⁾;
 - insurance undertakings as defined in Article 1 of Council Directive 92/49/EEC⁽⁷⁾;
 - assurance undertakings as defined in Article 1(a) of Council Directive 92/96/EEC⁽⁸⁾;
 - UCITS as defined in Article 1(2) of Council Directive 85/611/EEC⁽⁹⁾;
 - investment firms as defined in Article 1(2) of Council Directive 93/22/EEC⁽¹⁰⁾;
 - institutions for retirement provision as defined in Council Directive .../EEC⁽¹¹⁾;
 - other undertakings or institutions the principal activity of which is to acquire holdings of financial assets or to transform financial claims.
2. The following institutions do not form part of the financial institutions whose definition was given in paragraph 1:
 - the central banks of the Member States and the European Central Bank;
 - the postal financial services, if forming part of the government.

⁽⁶⁾ OJ No L 322, 17.12.1977, p. 30.

⁽⁷⁾ OJ No L 228, 11.8.1992, p. 1.

⁽⁸⁾ OJ No L 360, 9.12.1992, p. 1.

⁽⁹⁾ OJ No L 375, 31.12.1985, p. 3.

⁽¹⁰⁾ OJ No L 141, 11.6.1993, p. 27.

⁽¹¹⁾ OJ No L

Article 5

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels,

For the Council
The President

**Proposal for a
COUNCIL REGULATION (EEC)**

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

Explanatory Memorandum

At its meeting in Copenhagen, the European Council invited the Commission to present proposals concerning all the measures necessary for the operation of the second stage of economic and monetary union, such that these proposals could be adopted by the Council after the entry into force of the Treaty and before 1 January 1994. Following this request and in the absence of a legal basis on which to adopt a formal proposal, the Commission presents the annexed draft proposal. Its purpose is to start informally the necessary discussions with the Community bodies involved, such that the formal procedures can be initiated immediately after the entry into force of the Treaty and brought to an end within the objective set by the European Council. While the Commission has the intention, after the entry into force of the Treaty, to make a formal proposal in line with this draft proposal, it reserves the right to introduce modifications in the light of the circumstances.

I. General considerations

From the beginning of the second stage of Economic and Monetary Union (EMU), Article 109e(4) requires the Member States to endeavour to avoid excessive government deficits, without there being yet the legal obligation to avoid excessive deficits which applies to Member States participating in the third stage or to Member States with a derogation. The importance of this 'best endeavour' clause derives from the fact that the achievement of a government budgetary position without a deficit that is excessive as determined in accordance with Article 104c(6) is one of the criteria with reference to the fulfilment of which the Commission and the European Monetary Institute will examine the achievement of a high degree of sustainable convergence in their reports prior to the start of the third stage.

Even though there is thus no legal obligation to avoid excessive deficits in the second stage, it is clear that the excessive deficit procedure as described in Article 104c and the Protocol on the excessive deficit procedure annexed to the Treaty (hereinafter called "the Protocol") should not make a distinction between the second stage or the third stage in determining whether a deficit is excessive. This holds in particular for the tasks assigned to the Commission in paragraphs 2 and 3 of Article 104c of the Treaty.

According to Article 104c(2), the Commission should "...monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular, it shall examine compliance ...". From this assignment it is clear that the monitoring of the Commission should not be restricted to the two criteria mentioned in Article 104c(2), but should pertain to the development of the budgetary situation in general. This interpretation is confirmed by two facts. Firstly, the Commission may make a report if, notwithstanding the fulfilment of the requirements under the two criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State and thus acts on the basis of data other than those for the two criteria. Secondly, in its report, the Commission should take account of "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". Consequently, it follows that in order to execute the tasks assigned to it, the Commission has to monitor a wide range of information, not only in the budgetary field but also in the economic field.

In the Protocol, the Treaty lays down the reference values for the two criteria on government deficit and debt (Article 1), a number of definitions of variables used for the excessive deficit procedure (Article 2), a number of obligations for the Member States (Article 3) and the obligation for the Commission to provide the statistical data to be used (Article 4). Article 104c(14) of the Treaty, which is the legal basis for this Regulation, requires the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, to lay down detailed rules and definitions for the application of the provisions of the Protocol. Consequently, the subject of this Regulation is to provide further details of the definitions to be used for the application of the Protocol and to lay down rules for the reporting by the Member States.

Several definitions in the Protocol are given with reference to the European System of Integrated Economic Accounts (ESA). The Regulation provides a more precise definition by giving the classification codes used in ESA, second edition⁽¹⁾. For public debt, where no reference to ESA is given in the Protocol, a more detailed definition, partly in terms of classification codes from ESA, is provided. Although ESA was established in close collaboration with the Member States, the final responsibility has always been taken by the Statistical Office of the European Communities (SOEC). This division of responsibility will remain valid for new editions of ESA as well as for questions regarding its interpretation. The Commission will have to change the classification codes in the Regulation if these change in new editions of ESA.

The Member States are required to report their data "promptly and regularly" to the Commission. This poses the problem of the transition between public accounts used for national purposes and the harmonised definitions required for the excessive deficit procedure. Since Member States have to report their data (in accordance with the Treaty definitions) promptly to the Commission and since they have to ensure, in accordance with the Protocol, that national procedures in the budgetary area enable them to meet their obligations in this area, the presumption is that Member States will report their data in accordance with the Treaty definitions at the same time as new data in national definitions becomes available. However, in order to take account of the delay which may be needed for the transposition between national and Protocol definitions, it is proposed to establish a system of twice-yearly reporting which would provide the minimum requirements to be met by the Member States, in terms of the timing of their reporting.

Given the fact that the Commission has to monitor more than the data strictly required for the deficit and debt criteria of Article 104c(2), the Regulation contains a limited set of other data, the transmission of which to the Commission is considered to be in the interest of the Member States. The alternative, that these data would be collected by the Commission, would imply that the Commission would take politically sensitive decisions on the basis of data for which Member States have not taken the responsibility. Consequently, this limited set of data has been included among the definitions and among the data to be provided to the Commission.

⁽¹⁾ Statistical Office of the European Communities, European System of Integrated Accounts - ESA, second edition, November 1978.

II. Comments on the Articles

Article 1

This Article defines the terms 'government', 'government deficit', 'government primary balance', 'government investment' and 'government debt'. For the first four terms, the definitions are given with reference to their classification codes in ESA, second edition.

The definition of government debt is more precise than in the Protocol. First of all, references to ESA have been introduced explicitly for clarity. Secondly, the issue of nominal valuation of liabilities has been addressed, notably for the case in which the face value of a liability differs considerably from the present value. Finally, a rule is given for the valuation of liabilities denominated in foreign currencies.

Article 2

This Article gives the definition for Gross Domestic Product at market prices (GDPmp). Reference has been made to the definition given in the Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices (GNP Directive)⁽²⁾, where GDP is defined with reference to ESA in an intermediate step towards the definition of GNP. For the years for which they are available, GDPmp data established in accordance with the GNP Directive will be used.

Article 3

This Article provides a definition for the terms 'actual' and 'planned' used in the Protocol. A difference is introduced between the definition of these terms, in this article, and the reporting requirements for particular years, in Chapter 2 of the Regulation. For instance, if a government were to decide on a deficit for two years ahead, this deficit would be defined as a 'planned' deficit, whereas the planned deficit asked for in the reporting requirements is that of the current year.

Paragraph 1 of this Article refers to Article 3 of the Protocol, which gives the governments of the Member States the responsibility for the deficits of general government. It therefore assigns the responsibility for the reporting of general government data to the governments of the Member States. This paragraph mentions "current and subsequent years" to take account of the point in time at which the data are reported. For instance, a budget for the coming year adopted in October and reported in December would refer to a 'subsequent' year, whereas it would refer to a 'current' year if reported in January. The requirement that the figures be consistent with the most recent decisions of the budgetary authorities means, inter alia, that governments should take account of amendments voted by parliaments to their proposed budgets or of any other decisions affecting the budget which have been taken after they have made their budget proposal.

⁽²⁾ OJ No L 49, 21.2.1989, p. 26.

Paragraph 2 defines the term 'actual', recognizing that historical statistics may undergo several revisions before they become final. It is rendered clear, in particular, that even first estimates for a past year are considered to be actual data, such that there is no gap between actual and planned data.

Article 4

This Article describes the reporting procedure which the Member States have to respect and the content of what has to be reported.

Paragraph 1 lays down the general principle that Member States should report their data promptly to the Commission. In order to take account of possible delays due to transposition of data from national definitions to Protocol definitions, the Member States are given extra time in the form of deadlines twice a year which they could use if needed. It is however assumed that between these dates, Member States would transmit all relevant supplementary information for current and subsequent years. This would allow the Commission to have the most up-to-date picture of the situation in the Member States, even if only on the basis of data in national definitions. The two dates before which certain data have to be provided according to the Protocol definitions by the Member States have been fixed, after consulting the Member States, as 1 February and 1 July of any particular year. The Commission is aware that this requires adaptations of national procedures in some cases. The proposed deadlines are however needed in view of the timing of the subsequent steps of the excessive deficit procedure.

Paragraphs 2 and 3 lay down the reporting requirements in terms of particular years to be reported before the deadlines of 1 February and 1 July. The Member States should report in particular the elements explaining the transition between national government accounts and the Protocol definitions, as well as the correspondence between changes in levels of public debt and the government deficit. It is to be noted that, although not strictly required according to the Protocol, the Member States are asked to report their planned debt. This is considered to be of particular importance in assessing whether the debt-to-GDP ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace and therefore in the interest of the Member States.

Paragraph 4 allows those Member States where the budget year is different from the calendar year to report their planned data for budget years, on the condition that actual data for the last two years are also presented for budget years.

Articles 5 and 6

These Articles define the limited set of data of which the Commission considers that it is in the interest of the Member States that they report them simultaneously with their actual and planned deficit and debt data. It concerns data which the Commission would take into account for its monitoring of the budgetary situation and as relevant factor for its report in accordance with Article 104c(3). In particular, Article 5 refers to data on government investment and the government primary balance. Defaults on loans with a government guarantee or the take-over by the government of debt of other sectors is of particular relevance for the Commission's assessment on the risk of an excessive deficit. Consequently, Article 6 requires that the Member States provide the Commission with data on current and foreseeable payments in fulfilment of government guarantees as well as current and foreseeable debt take-overs.

Article 7

This Article given the reporting requirements for Gross Domestic Product at market prices (GDPmp). The reporting procedure is somewhat different from that for the deficit and debt data because, after a certain cut-off date, the actual data for GDPmp established under the procedure for the GNP Directive are available and should be used.

Article 8

This Article empowers the Commission to change the classification codes of ESA referred to in the Regulation should the codes be changed in future editions of ESA. This would only be a technical adjustment of the Regulation.

ANNEX TO THE EXPLANATORY MEMORANDUM

Some definitions of classification codes in ESA

This Annex provides some definitions of classification codes from the European System of Integrated Economic Account, second edition (ESA)⁽³⁾ to which reference is made in the draft proposal for the Regulation. The definitions are only given for illustrative purposes. ESA provides the complete definitions, which are more detailed than can be reproduced here.

Institutional sectors

S60 - General government

The sector general government includes all institutional units which are principally engaged in the production of non-market services intended for collective consumption and/or in the redistribution of national income and wealth. The principal resources of these units are derived directly or indirectly from compulsory payments made by units belonging to other sectors.

S61 - Sub-sector: Central government

The sub-sector central government includes all administrative departments of the State and other central agencies whose competence extends over the whole economic territory, except for the administration of the social security funds.

S62 - Sub-sector: Local government

The sub-sector local government includes those types of public administration whose competence extends to only part of the economic territory, apart from local agencies of the social security funds.

S63 - Sub-sector: Social security funds

The sub-sector security funds include all central and local institutional units whose principal activity is to provide social benefits and whose main resources are derived from compulsory social contributions paid by other units.

⁽³⁾ Statistical Office of the European Communities, European System for Integrated Economic Accounts - ESA, second edition, November 1978.

Transactions in goods and services

P41 - Gross fixed capital formation

Gross fixed capital formation represents the value of durable goods intended for non-military purposes, which are acquired by resident producer units in order to be used for a period of more than one year in their process of production, including the value of any services embodied in fixed capital goods.

Redistributive transactions

R41 - Actual interest

Actual interest is the form of remuneration in respect of certain financial assets (deposits, bills, bonds and credits) characterised by the payment at predetermined dates of a fixed percentage of the nominal value of the asset.

Aggregates

N1 - Gross domestic product at market prices

Gross domestic product at market prices represents the final result of the production activity of resident producer units. It corresponds to the economy's total output of goods and services less intermediate consumption, plus VAT on products and net taxes on imports excluding VAT.

Gross domestic product at market prices is equal to the sum of gross value added at market prices of all the different branches, plus VAT on products and net taxes on imports excluding VAT.

It is also equal to the sum of gross value added at market prices of all the different sectors plus VAT on products and net taxes on imports excluding VAT and less the intermediate consumption of banking services which is not allocated by sector.

N5 - Net lending (borrowing)

Net lending (borrowing) is defined for the sector general government (S60) as the balancing item of gross saving and capital transfers received minus gross fixed capital formation, the change in stocks, net purchases of land and intangible assets and capital transfers paid.

Financial transactions

F20 - Currency and transferable sight deposits

The heading currency and transferable sight deposits includes the notes and coin and sight deposits which are immediately convertible into the legal tender of the country without any kind of restriction, and which are transferable by cheque, banker's order or the like.

F30 - Other deposits

The heading other deposits covers all deposits other than transferable sight deposits; that is, deposits which cannot be utilised at any moment, without restriction or without first being converted into notes and coin or transferable sight deposits. These assets are instruments of financing.

F40 - Bills and short term bonds

The heading bills and short term bonds groups together assets with a short maturity, usually up to 12 months, but with a maximum of 2 years, represented by securities intended to circulate, whose nominal value, determined on issue, is expressed as some round figure, and which bear interest, generally paid in advance. They are repayable at their nominal value at a date, or starting from a date, fixed at the time of issue. These securities are instruments of investment.

F50 - Long term bonds

The heading long term bonds groups together securities which at the time of issue have a maturity of several years, which bear fixed or index-linked rates of interest (the interest frequently being payable by coupons) and which are redeemable starting from a date fixed at the time of issue. Long term bonds are negotiable instruments of investment generally quoted on the stock exchange.

F79 - Other short term loans

The sub-heading other short term loans covers all short-term loans other than those which are classified as short term trade credit or as accounts receivable and payable.

F89 - Other medium and long term loans

The subheading other medium and long term loans covers all medium and long term loans other than those classified as medium and long-term trade credit.

Proposal for a
COUNCIL REGULATION (EEC)

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community as amended by the Treaty on European Union, and in particular the third subparagraph of Article 104c, paragraph 14, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas the definitions of government, deficit and investment are laid down in the Protocol on the excessive deficit procedure by reference to the European System of Integrated Economic Accounts (ESA)⁽²⁾ ; whereas ESA provides commonly accepted definitions which may undergo revision; whereas precise definitions referring to the classification codes of ESA are required;

Whereas the definition of debt laid down in the Protocol on the excessive deficit procedure needs to be amplified by reference to the classification codes of ESA; whereas certain aspects concerning the valuation of debt need further clarification; whereas the definition and recording of interest laid down in ESA have to be adjusted to take account of new financial instruments;

Whereas Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices⁽³⁾ provides an adequate, detailed definition of gross domestic product at market prices;

Whereas the Commission is required to provide the statistical data to be used in the excessive deficit procedure;

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

(1)

(2) Statistical Office of the European Communities, European System of Integrated Accounts ESA, second edition, November 1978.

(3) OJ No L 49, 21.2.1989, p. 26.

Whereas pursuant to Article 104c, paragraphs 2 and 3, the Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States and shall examine compliance with budgetary discipline on the basis of government deficit and debt criteria; whereas the Commission shall, where a Member State does not fulfil the requirements under one or both criteria, take into account all relevant factors; whereas the Commission has to assess whether there is a risk of an excessive deficit in a Member State; whereas the Commission should therefore be provided by the Member States with information complementary to the reported deficit and debt figures;

Whereas the definitions and rules in this Regulation may be revised in the light of experience,

HAS ADOPTED THIS REGULATION :

CHAPTER I: DEFINITIONS

Article 1

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

1. Government is the sector general government (S60) subdivided into the sub-sectors central government (S61), local government (S62), and social security funds (S63).
2. Government deficit (surplus) is the net borrowing (net lending) (N5) of the sector general government (S60). The interest comprised in the government deficit is the sum of actual interest (R41) and capitalized interest. Interest relating to several accounting periods shall be distributed among the different periods.
3. Government primary balance is the government deficit or surplus as defined in the preceding paragraph excluding actual interest (R41) paid by government, and capitalized interest.
4. Government investment is the gross fixed capital formation (P41) of the sector general government (S60).
5. Government debt is the total nominal value of all liabilities outstanding at 31 December of the sector general government (S60), with the exception of those liabilities of which the corresponding financial assets are held by the sector general government (S60).

Government debt is subdivided into the headings: Currency and Deposits; Securities; Loans; and all Debt not elsewhere classified. The heading Currency and Deposits includes the headings Currency and transferable Sight Deposits (F20) and Other Deposits (F30). The heading Securities includes the headings Bills and Short-term Bonds (F40) and Long-term Bonds (F50). The heading Loans includes Other Short-term Loans (F79) and Other Medium and Long-term Loans (F89).

The nominal value of a liability outstanding at 31 December is the face value. Where the present value of a liability at the date of issue differs considerably from the face value, the nominal value is the present value. The present value is calculated on the basis of an appropriate interest rate fixed for the day the liability is incurred.

The nominal value of an index-linked liability corresponds to its face value adjusted by the index-related capital uplift accrued to 31 December.

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

Article 2

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

Article 3

1. Planned deficit and debt-level figures shall mean the figures established for the current and subsequent years by Member States consistent with the most recent decisions of their budgetary authorities and reported to the Commission under the responsibility provisions of the first sentence of Article 3 of the Protocol on the excessive deficit procedure.
2. Actual deficit and debt-level figures shall mean estimated, semi-final, or final outcomes for a past year.

CHAPTER 2 : REPORTING

Article 4

1. As from the beginning of 1994, Member States shall report to the Commission their planned and actual government deficits and levels of government debt promptly but at least twice a year, the first time before February 1 of the current year ("year n") and the second time before July 1 of year n.

Between their reporting twice a year, Member States shall provide the Commission with any relevant supplementary information for the current and subsequent years.

2. Before February 1 of year n, Member States:

- shall report to the Commission their planned government deficit for the year n, their up-to-date estimate of actual government deficit for the year n-1 and their actual government deficits for the years n-2, n-3 and n-4;
- shall simultaneously provide the Commission for the years n, n-1 and n-2 with their corresponding public-account budget deficits according to the public account definition which is given most prominence nationally, and with the figures which explain the transition between this public-account budget deficit and their government deficit. The figures explaining this transition which are provided to the Commission shall include in particular the figures for net borrowing of the sub-sectors (S61), (S62) and (S63);
- shall report to the Commission their planned level of government debt for the year n, their up-to-date estimate of the actual level of government debt for the year n-1 and their actual levels of government debt for the years n-2, n-3 and n-4;
- shall simultaneously provide the Commission for the years n, n-1 and n-2 with the figures which explain the contributions of their government deficit and the other relevant factors contributing to the variation of the level of their government debt.

3. Before July 1 of year n, Member States:

- shall report to the Commission their updated planned government deficit for the year n and their actual government deficits for the years n-1, n-2 and n-3, and shall fulfil the requirements of the second indent of paragraph 2;
- shall report to the Commission their updated planned level of government debt for the year n and their actual levels of government debt for the years n-1, n-2 and n-3, and shall fulfil the requirements of the fourth indent of paragraph 2.

4. The planned government deficit and government debt-level figures reported to the Commission along the provisions of paragraphs 2 and 3 shall be expressed in national currency and in budget years.

The actual government deficit and government debt-level figures reported to the Commission in accordance with paragraphs 2 and 3 shall be expressed in national currency and in calendar years.

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

Article 5

Member States shall, under the same conditions as to timing and year coverage as those laid down in Article 4(1), (2) and (3), provide the Commission with the figures for their government investment and their government primary balances.

Article 6

Member States shall, under the same conditions as to timing as those laid down in Article 4(1), provide the Commission with figures for the current and subsequent years of the amount of government expenditure and of government debt due to the payments made or foreseeable in fulfilment of government guarantees, and of the amount of debt of entities outside the general government sector which is taken over or foreseeably to be taken over.

Article 7

Member States shall provide the Commission with a forecast for the year n and an estimated figure for the year n-1 of their GDP mp under the same conditions as to timing as those in Article 4(1). Those GDP mp figures shall be updated for the preceding years by those forwarded to the Commission in accordance with the provisions of Directive 89/130/EEC, Euratom.

Article 8

Where appropriate, the Commission shall adjust the classification codes of ESA in Articles 1 and 4 in accordance with any revisions of ESA.

Article 9

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels,

For the Council
The President

Proposal for a
COUNCIL DECISION

on the establishment of the key for the financial resources of the
European Monetary Institute

EXPLANATORY MEMORANDUM

At its meeting in Copenhagen, the European Council invited the Commission to present proposals concerning all measures necessary for the operation of the second stage of economic and monetary union, such that these proposals could be adopted by the Council after the entry into force of the Treaty and before 1 January 1994. Following this request and in the absence of a legal basis on which to adopt a formal proposal, the Commission presents the annexed draft proposal. Its purpose is to start informally the necessary discussions with the Community bodies involved, such that the formal procedures can be initiated immediately after the entry into force of the Treaty and brought to an end within the objective set by the European Council. While the Commission has the intention, after the entry into force of the Treaty, to make a formal proposal in line with this draft proposal, it reserves the right to introduce modifications in the light of the circumstances.

I. General considerations

The political will to make the financial structure of the European Monetary Institute (EMI) similar to that of the European Central Bank (ECB) is reflected in the rules which determine the share of each central bank in the financial resources, which are the same as those of the ECB.

The key for the ECB capital is of great importance. Apart from the contributions to the capital, it determines the share of each central bank in the pooling of external reserves, the weights in voting in the ECB Council on financial matters and in particular, the distribution of the monetary income of the European System of Central Banks (ESCB) as a whole. This explains why the rules on how to provide the data for the establishment of the key of the ECB have to be specified by the Council. Although for the EMI, the significance of the key is limited to the contributions to the financial resources, the distribution of any surpluses (or losses) and the distribution of any proceeds of the liquidation of the EMI to the national central banks; the legislation to be prepared now for the EMI will be helpful for the legislation on the key of the ECB which will be adopted immediately after the decision on the start of Stage Three.

According to Article 29.1 of the Statute of the ESCB and the ECB, each national central bank shall be assigned a weighting in the key equal to the sum of 50% of the share of its respective Member State in the population of the Community in the penultimate year preceding the establishment of the ESCB and of 50% of the share of its respective Member State in the gross domestic product at market prices of the Community as recorded in the last five years preceding the penultimate year before the establishment of the ESCB. Concerning the key for the financial resources of the EMI, the relevant years will be the same but by reference to the establishment of the EMI.

The subject of this Council Decision are the rules which the Commission shall respect when it provides the statistical data for the establishment of the key as defined above. The rules include the definition and sources for the statistical data on GDP and population to be used, and the determination of the method of calculation.

The EMI will be established on 1 January 1994; its Council will decide on the size of the resources and will apply the key for determining the individual contributions at the beginning of 1994. The data to be used for the establishment of the key therefore must be provided before that date.

The establishment of the key for the EMI is a once-and-for-all operation. The key will be applicable for the whole life-time of the EMI. The five-yearly review which is envisaged for the key of the ECB is irrelevant for the EMI because Stage Three will start at the latest five years after the establishment of the EMI.

II. Comments on the Articles

Article 1

Article 1 defines what is covered by this decision: the statistical data and the calculation method to be used for the establishment of the key. In a narrow interpretation, these rules would just specify the concept and sources of population and GDP to be used. However, methodological questions inevitably arise between the supply of the data for the individual countries and the establishment of the key, which must also be covered by this decision for the sake of consistency and accuracy.

Articles 2, 3, 4, 5, 6

These Articles specify the definitions and sources for the population and GDP data. The appropriate definitions are those of the European System of Integrated Economic Accounts (ESA).

Since the data on the aggregates in national accounts refer to a period of one year, the population figures to which they are related must represent the mean of the total population over the course of the year.

GDP mp data for the years 1988 to 1991 are the data resulting from the application of the Council Directive on the harmonization of the compilation of GNP mp. The Directive does not cover 1987; thus for 1987 GDP mp data are those collected by the Commission (EUROSTAT) from Member States according to the established procedure. 1987 data are made consistent with 1988-1991 data resulting from the application of the GNP mp Directive. This Directive is applied once a year and the resulting data are formally accepted by all Member States. The Commission (EUROSTAT) adjusts, where necessary, the data for the previous years not covered by the Directive to ensure the consistency of the series.

At present, the data resulting from the application of the GNP Directive for Germany include the new Länder from October 1990. Since the period for which the key is applied covers the European Community including the new German Länder, it seems reasonable to include the GDP mp of the new Länder in the period 1987-1991. Data for total Germany prior to 1991 are not available. For the purpose of the present decision, GDP of total Germany for 1987-1990 has been estimated by assuming that the share of GDP of the old Länder in total Germany was the same in this period as in 1991.

In the case of Portugal, at present the data resulting from the application of the GNP mp Directive, GDP mp include continental GDP for the years 1988 to 1990 and total GDP for 1991. However, total GDP for 1988-1990 is expected to be included in the next application of the GNP mp Directive in Autumn 1993, in which case GDP covering the whole territory will be used.

Articles 7, 8, 9

GDP data are established in national currencies. The common denominator will be the ecu exchange rate. The alternative of using Purchasing Power Standards has not been retained. Compared to PPS, exchange rates are unambiguously defined, thus making the calculation easier and more transparent; besides they correspond better to the notion of market prices which is attached to GDP. Furthermore, the current Community practice concerning financial flows from Member States to the Community is to use exchange rates as common denominator.

Article 10

The EMI will be established on 1 January 1994. The Council of the EMI would then decide at the beginning of 1994 on the size of the resources and apply the key to determine the individual contributions of Member States' Central Banks. The Commission shall thus communicate the key before the date of the establishment of the EMI to the Committee of Governors.

The rounding up to the nearest multiple of 0.05 percentage points of the weighting, which is referred to in Article 29 of the Statute of the ESCB and the ECB, is outside the scope of the present decision. It will be up to the Council of the EMI to establish the rounded key.

Proposal for a
COUNCIL DECISION

on the establishment of the key for the financial resources of the European Monetary Institute

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community as amended by the Treaty on European Union, and in particular Article 16.2 of the Protocol on the Statute of the European Monetary Institute annexed to this Treaty, and Article 29.1 and 29.2 of the Protocol on the Statute of the European System of Central Banks and the European Central Bank annexed to this Treaty,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Committee of Governors of the central banks of the Member States⁽²⁾,

Having regard to the opinion of the Monetary Committee⁽³⁾,

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

Whereas the EMI shall be endowed with its own resources in order to ensure that it will be able to perform its tasks and functions with effect from its establishment;

Whereas the resources of the EMI shall be established by the Council of the EMI;

Whereas the resources of the EMI will be provided out of contributions by national central banks in accordance with the key referred to in Article 29.1 of the Statute of the European System of Central Banks and the European Central Bank (ESCB and ECB);

Whereas the key for the financial resources of the EMI will be determined before the start of Stage Two,

Whereas the statistical data to be used for the determination of the key will be provided by the Commission in accordance with the rules adopted by the Council,

(1)

(2)

(3)

Whereas the definition and sources for the data to be used and the method of calculation for the establishment of the key should be given;

Whereas Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices⁽⁴⁾, provides for gross domestic product at market prices ("GDP mp") data approved by Member States,

HAS DECIDED AS FOLLOWS:

Article 1

The statistical data and the method of calculation to be used for the establishment of the key for the contributions by the national central banks to the financial resources of the EMI shall be provided by the Commission according to the rules specified in the following Articles.

Article 2

Population and Gross Domestic Product at market prices, hereafter referred to as "GDP mp", shall be defined according to the European System of Integrated Economic Accounts (ESA) in force. GDP mp shall mean GDP mp as defined in Article 2 of Directive 89/130/EEC, Euratom.

Article 3

The data on population shall be taken for the year 1992. The mean of the total population over the course of the year shall be used, according to the ESA definition.

Article 4

The data on GDP mp shall be taken for each of the years 1987 to 1991. The data on GDP mp of a Member State shall be expressed in the relevant national currency at current prices.

Article 5

The data on population shall be those collected by the Commission (EUROSTAT) from Member States.

⁽⁴⁾ OJ No L 49, 21.2.1989, p. 26.

Article 6

1. The data for the years 1988 to 1991 shall be those resulting from the application of Directive 89/130/EEC, Euratom. The data on GDP mp for 1987 shall be the data collected by the Commission (EUROSTAT) from Member States and made consistent with the 1988 to 1991 data on GDP mp.
2. For Germany, data on GDP mp for the years 1987-1990 shall be estimated as follows: the GDP mp of the old Länder shall be multiplied by the ratio of GDP mp of the whole of Germany to GDP mp of the old Länder in 1991.

Article 7

1. The share of a Member State in the population of the Community shall be its share in the sum of the population of the Member States, expressed in per cent.
2. The GDP mp data of each year and each Member State expressed in national currencies shall be transformed into data at the ecu exchange rate. The exchange rate used for this purpose shall be the average of the exchange rates of all working days in a year. The daily exchange rate shall be the rate calculated by the Commission and published in the 'C' edition of the Official Journal of the European Communities.
3. The share of a Member State in GDP mp of the Community shall be its share in the sum of GDP mp of the Member States over the five years, expressed in per cent.

Article 8

The weighting of a national central bank in the key shall be the arithmetic mean of the shares of the corresponding Member State in the population and in GDP mp of the Community.

Article 9

The successive steps of calculation shall use sufficient decimal places to ensure their accuracy. The weighting of national central banks in the key shall be calculated to four decimal places.

Article 10

The key shall be communicated by the Commission to the Committee of Governors of the central banks of the Member States before 1 January 1994.

Done at Brussels,

For the Council
The President

ISSN 0254-1475

COM(93) 371 final

DOCUMENTS

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Catalogue number : CB-CO-93-411-EN-C

ISBN 92-77-58348-7

Office for Official Publications of the European Communities
L-2985 Luxembourg