

CONFERENCE  
OF THE REPRESENTATIVES OF THE GOVERNMENTS  
OF THE MEMBER STATES  
- ECONOMIC AND MONETARY UNION -

27. SEP. 1991

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Brussels, 26 September 1991

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Subject: Draft Treaty texts concerning all articles from the ESCB-  
statute

- PAPER FOR EMU WORKING GROUP (no discussion on articles 16,  
19, 25, 28, 29, 30 and 34) -

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ANNEX

PROTOCOL

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

Chapter I - CONSTITUTION OF THE ESCB

Article 1 - The European System of Central Banks

The "European System of Central Banks" (hereinafter the "ESCB"), set up pursuant to Article 4 A of the Treaty shall be composed of a central institution to be known as "The European Central Bank" (hereinafter "the ECB") and of the central banks of the Member States (hereinafter "national central banks") as is stated in Article 106 (1) of the Treaty.

Chapter II - OBJECTIVES AND TASKS OF THE ESCB

Article 2 - Objectives

As is stated in Article 105, paragraph 1 of the Treaty, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the

general economic policy in the Community. It shall act consistently with the principle of free and competitive markets.

Article 3 - Tasks

As set out in Article 105, paragraph 2 of the Treaty, the basic tasks of the ESCB are to:

- define and implement the monetary policy of the Community with a view to contributing to the realization of the objectives of economic and monetary union, as laid down in [Article 2 A] of the Treaty, in accordance with the principles set out in [Article 3 A] of the Treaty;
- conduct foreign exchange operations consistent with the provisions of Article 109;
- hold and manage the official foreign reserves of the Member States;
- ensure the smooth operation of the systems of payment;
- 11 2 - carry out the duties, and avail itself of the instruments, provided for in this Statute.

Article 4 - Advisory functions

4.1 In accordance with Article 108 para. 1 of the Treaty, the ECB shall be consulted regarding any proposed Community act within its field of competence. Within the limits and under the conditions set out by the Council of Ministers under the procedure laid down in Article 106 para. 6 of the Treaty, the ECB shall be consulted by national authorities regarding any draft legislative provision within its field of competence.

del 4.2 > 4.2 In accordance with Article 109 of the Treaty, the Governing Council shall be consulted by the Council of Ministers [in conformity with Article 109 9 (to be drafted)..]

4.3 In accordance with Article 108 para. 1 of the Treaty, the ECB may publish its opinions.

Article 5 - Collection of statistical information

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

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

5.3 The ECB shall promote the harmonisation, where necessary, of the conditions governing the collection, compilation and distribution of statistics in the areas within its field of competence. The Council of Ministers in accordance with the procedure laid down in Article 42 shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6 - International co-operation

6.1 In the field of international co-operation involving the tasks entrusted to the ESCB, the ECB shall decide whether the ESCB shall be represented by the ECB and/or the national central banks.

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

## CHAPTER III - ORGANISATIONS OF THE ESCB

Article 7 - Independence

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

Article 8 - General principle

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

Article 9 - The European Central Bank

9.1 The ECB which, pursuant to Article 106 para. 2 of the Treaty, is endowed with legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

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9.2 The function of the ECB shall be to ensure that the tasks conferred upon the ESCB under Article 3 shall be implemented either by the ECB's activities pursuant to this Statute or through the national central banks pursuant to Article 14.

9.3 As stated in Article 106 para. 3 of the Treaty, the decision-making bodies of the ECB shall be the Governing Council and the Executive Board.

Article 10 - The Governing Council

10.1 The Governing Council shall comprise the President, the Vice President, the other members of the Executive Board and the Governors of the national central banks.

10.2 Subject to Article 10.3, only members of the Governing Council present in person shall have the right to vote. The Rules of Procedure referred to in Article 12.3 shall provide that a member of the Governing Council who is prevented from voting for a prolonged period may appoint an alternate as a member of the Governing Council.

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

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

10.3 For any decisions to be taken under Articles 28, 29, 30, 32 and 33, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. A decision by a qualified majority shall be approved if the votes cast in favour represent at least 70 % of the subscribed capital of the ECB. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

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

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

Article 11 - The Executive Board

11.1 The Executive Board shall comprise the President, the Vice President and four other members.

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

11.2 According to Article 109 A para. 4 of the Treaty, the President, the Vice-President and the other Members of the Executive Board shall be appointed by common accord by the Governments of the Member States, on a proposal from the Council of Ministers, after consulting the European Parliament and the Governing Council, from among persons of recognised standing and professional experience in the monetary and banking sectors.

Their term of office shall be 8 years. [The mandate shall not be renewable.]

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

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

11.5 Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall

have the casting vote. The voting arrangements will be specified in the Rules of Procedure referred to in Article 12.3.

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

Article 12 - Responsibilities of the decision-making bodies

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

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

To the extent deemed possible and appropriate and without prejudice to the provision of the previous paragraph, the ECB shall have recourse to the national central banks to carry out operations which form part of the ESCB's tasks.

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

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

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

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

Article 13 - The President

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

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

Article 14 - National central banks

14.1 As is stated in Article 108 para. 2 of the Treaty, the Member States shall ensure, before the transition to stage three, that their national legislation including the Statutes of the national central banks is compatible with this Statute and the Treaty.

14.2 As is stated in Article 108 para. 2 of the Treaty, the Statutes of the national central banks shall in particular provide that the Governor of a national central bank is appointed by the national authorities of the Member States after consultation with the Governing Council. The term of office shall be no less than 5 years. The Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council.

14.3 Subject to Article 14.5, the national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB.

The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4 National central banks may perform on their responsibility and liability functions other than those specified in this Statute unless the Governing Council finds, by a majority of two-thirds of the



votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall not be regarded as being part of the ESCB.

14.5 For the purpose of this Statute, the Institut Monétaire Luxembourgeois shall be regarded as a national central bank.

Article 15 - Inter-institutional co-operation and reporting commitments

15.1 As is set out in Article 109 A para. 1 of the Treaty, the President of the Council of Ministers and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the ECB.

15.2 As is set out in Article 109 A para. 2 of the Treaty, the President of the ECB shall be invited to participate in meetings of the Council of Ministers when the Council of Ministers is discussing matters relating to the objectives and tasks of the ESCB.

15.3 As is set out in Article 109 A para. 3 of the Treaty, 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 of Ministers and the Commission at a date to be established in the Rules of Procedure. The President of the ECB shall present this report to the Council of Ministers and to the European Parliament; the latter may hold a general debate on that basis.

Furthermore, 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.

15.4 The ECB shall draw up and publish reports on the activities of the ESCB at regular intervals.

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

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15.6 The reports and statements referred to above shall be made available to interested parties free of charge.

Article 16 - Notes

In conformity with Article 105 para. 2 of the Treaty, the Governing Council shall have the exclusive right to authorise the issue of notes within the Member States. The notes issued by the ECB and the national central banks shall be the only notes to have legal tender status.

→ volume + denomination

CHAPTER IV - MONETARY FUNCTIONS AND OPERATIONS OF THE ESCB

Article 17 - Accounts with the ECB and the national central banks

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

Article 18 - Open market and credit operations

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

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

18.2 The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks including the announcement of conditions under which they stand ready to enter into such transactions.

Article 19 - Minimum reserves

The ECB may require credit institutions to hold minimum reserves on accounts with the ECB and national central banks in pursuance of monetary policy objectives. [Regulations concerning the calculation and determination of the required minimum reserves may be established by the Governing Council.] In cases of non-compliance the ECB shall be entitled to levy penalty interest and to take other sanctions with comparable impact. For the application of this Article, the Council of Ministers shall, in accordance with the procedure laid down in Article 42, define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of non-compliance.

Article 20 - Other instruments

The Governing Council may decide, by a majority of two-thirds of the votes cast, upon the use of such other operational methods of monetary control as it sees fit respecting Articles 2 and 34.

Article 21 - Operations with public entities

21.1 As set out in Article 104 of the Treaty, the granting of overdraft or any other type of credit facility by the ECB or by the national central banks to Community institutions or bodies, Member States, public authorities or other bodies governed by public law of Member States and the purchase directly from them of debt instruments shall be prohibited.

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

21.3 The provisions under this Article shall not apply to publicly-owned credit institutions.

Article 22 - Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may issue regulations to ensure efficient and sound clearing and payment systems inside the Community and with third countries.

Article 23 - External operations

The ECB and the national central banks may:

- establish relations with central banks and financial institutions in third countries and, where appropriate, with international and supranational organisations;
- acquire and sell spot and forward all types of foreign exchange assets and precious metals. The term "foreign exchange asset" shall include securities and all other assets in currency of any country or units of account and in whatever form held;
- hold and manage the assets defined above;
- conduct all types of banking transactions in relations to third countries and international and supranational organisations, including borrowing and lending operations.

Article 24 - Other operations

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

**Chapter V - PRUDENTIAL SUPERVISION**

Article 25 - Prudential supervision

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

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25.2 Subject to Article 108, paragraph 4 of the Treaty the ECB may coordinate, formulate and implement policies relating to the prudential supervision of credit and other financial institutions.

## CHAPTER VI - FINANCIAL PROVISIONS OF THE ESCB

### Article 26 - Financial accounts

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

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

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

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

### Article 27 - Auditing

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

27.2 The provisions of Articles 199 up to and including 209 of the Treaty shall not apply to the ECB or to the national central banks.

Article 28 - Capital of the ECB

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28.1 The capital of the ECB shall, on becoming operational, be ECU 5.000 million. The capital may be increased by such amounts as may be decided by the Governing Council acting by the qualified majority provided for in Article 10.3, within the limits and under the conditions set by the Council of Ministers under the procedure laid down in Art. 42.

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

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

28.4 The shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached other than in accordance with a decision taken by the Governing Council.

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

Article 29 - Key for capital subscription

29.1 On the entry into force of this Statute, the key for subscription of the ECB's capital shall be established. Each national central bank shall be assigned a weighting in this key which shall be based on:

- the share of its respective country in the population of the Community in the penultimate year preceding the implementation of the Statute;
- the share of its respective country in the gross domestic product at market prices of the Community as recorded in the last five years preceding the penultimate year before the implementation of the Statute;
- [- the share of its respective country in the relative extra-EC exports of the Community as recorded in the last five years preceding the penultimate year before the implementation of the Statute. ]

The weightings shall be established by the Council of Ministers acting by unanimity of the Member States on a proposal from the Commission.

29.2 The statistical data to be used for the application of this Article shall be calculated by the Statistical Office of the European Communities in accordance with the rules adopted by the Council of Ministers under the procedure provided for in Article 42.

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

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

Article 30 - Transfer of foreign reserve assets to the ECB

30.1 Without prejudice to the provisions of Article 28, the ECB shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies and ECUs, up to an amount equivalent to ECU 50.000 million. The Governing Council shall decide upon the proportion to be called up by the ECB at the implementation of this Statute and the amounts called up at later dates.

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years.

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

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

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

30.5 The ECB shall be entitled to accept the pooling of IMF reserve positions and SDRs.

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

Article 31 - Foreign reserve assets held by national central banks

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

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

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

Article 32 - Allocation of monetary income of national central banks



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

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

32.3 If on the entry into force of this Statute, in the judgement of the Governing Council, the balance sheet structures of the national central banks do not permit the application of Article 32.2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation to Article 32.2, the monetary income shall be measured according to an alternative method for a period of not more than five years.

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

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

32.5 The sum of the national banks' monetary income shall be allocated to the national central banks in proportion to their

subscribed shares in the capital of the ECB, subject to any decision taken by the Governing Council pursuant to Article 33.2.

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

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

Article 33 - Allocation of net profits and losses of the ECB

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

- (a) an amount to be determined by the Governing Council, which may not exceed 20% of the net profit, shall be transferred to the general reserve fund within the limit of 100% of the capital;
- (b) the remaining net profit shall be distributed to the holders of ECB in shares in proportion to their subscribed shares.

33.2 In the event of a loss incurred by the ECB, the shortfall may be offset against the own funds of the ECB and, if necessary, following a decision by the Governing Council, against a further contribution decided on in accordance with the procedure laid down in Article 28.1 and 28.2.

Chapter VII - GENERAL PROVISIONS

Article 34 - Regulatory power

34.1 As is set out in Article 106 para. 7 of the Treaty, the ECB shall:

- draw up ECB recommendations and ECB opinions;
- take, under the conditions laid down in this Statute, ECB decisions necessary for carrying out the tasks entrusted to the ESCB under the Treaty and this Statute;

- adopt, under the conditions laid down in this Statute, ECB regulations to the extent necessary to implement the tasks defined in Articles 3, first indent and 22 and in cases which shall be laid down in the acts of the Council of Ministers referred to in Art. 42.

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

2 e/ An ECB regulation shall have general application. It shall be binding in its entirety and directly applicable in all participating Member States, subject to derogations which may be adopted under [Article 109 G (2)] of the Treaty. Recommendations and opinions shall have no binding force.

Articles 190 to 192 of the Treaty shall apply in all respects to ECB regulations adopted and decisions taken by the ECB.

34.3 Within the limits and under the conditions adopted by the Council of Ministers under the procedure laid down in Article 42, the ECB and the national central banks shall be entitled to impose sanctions for failures to comply with obligations with respect to ECB regulations adopted and decisions taken on the basis of this Statute.

#### Article 35 - Judicial control and related matters

35.1 The acts of the ECB shall be open to review and interpretation by the Court of Justice under the conditions laid down for the legal control of the acts of Community institutions. The ECB may, within its field of competence, institute proceedings under the same conditions as the Council of Ministers and the Commission. Articles 173 to 178, 183 and 184 of the Treaty shall be applicable accordingly.

35.2 The ECB shall be subject to the liability regime as provided for in Article 215 of the Treaty.

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

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

35.5 The national central banks shall be liable according to their respective national laws.

35.6 By way of derogation from Article 169 of the Treaty, the Court of Justice shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under this Statute. If the ECB considers that a national central bank has failed to fulfil an obligations under this Statute, it may bring the matter before the Court of Justice.

#### Article 36 - Staff

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

36.2 Disputes between the ECB and its staff may be brought<sup>4</sup> before the Court of First Instance provided for in Article 168 A of the Treaty which shall have jurisdiction.

#### Article 37 - Seat

The seat of the ECB shall be established at (.....)

#### Article 38 - Professional secrecy

38.1 Members of the governing bodies and the staff of the ECB and the national central banks shall be required, even after their duties

have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

38.2 Persons having access to data covered by specific secrecy Community legislation shall be subject to such legislation.

Article 39 - Signatories

The ECB shall be legally committed vis-à-vis third parties by the signature of the President or by the signature of two members of the Executive Board or by those of two members of the staff of the ECB who have been duly authorised by the President to sign on behalf of the ECB.

Articles 40 - Privileges and immunities

The Protocol on the privileges and immunities of the European Community shall apply to the ECB, the members of its decision-making bodies and its staff to the extent necessary for the performance of the ECB's tasks.

CHAPTER VIII - AMENDMENT OF THE STATUTE AND COMPLEMENTARY LEGISLATION

Article 41 - Simplified amendment procedure

41.1 As is set out in Article 106 para. 5 of the Treaty, and by way of derogation from Article 236 of the Treaty, Articles 5, 17, 18, 19, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6 and 36 of the Statute may be amended by the Council of Ministers, acting by a qualified majority at the request of the ECB, and following consultation by the Commission and the European Parliament and having heard the advice of the Committee referred to in Article 109 B of the Treaty.

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

Article 42 - Complementary legislation

As is set out in Article 106 para. 6 of the Treaty, the Council of Ministers shall:

- acting by a qualified majority on a proposal from the Commission, after consulting the ECB and [in co-operation with] the European Parliament, adopt the provisions referred to in Articles 4.1, 5.3, 19, 28.1, 29,2 and 34.4 of the Statute;
- acting unanimously on a proposal from the Commission, after consulting the ECB and the European Parliament, adopt the provisions referred to in Article 30.4.

CHAPTER IX - TRANSITIONAL PROVISIONS FOR THE ESCB  
to be drafted.

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