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Proposal for a

COUNCIL DECISION

**on the consultation of the European Central Bank by national authorities
on draft legislative provisions**

**Proposal for a Council Decision
on the statistical data to be used for the determination of the key for subscription
of the capital of the European Central Bank**

**Proposal for a Council Regulation (EC, Euratom, ECSC) amending Regulation
(EEC, Euratom, ECSC) No. 260/68 which lays down the conditions
and procedure for applying the tax for the benefit of the European Communities.**

**Proposal for a Council Regulation (Euratom, ECSC, EC) amending Regulation
(Euratom, ECSC, EEC) No. 549/69 determining the categories of officials and
other servants of the European Communities to whom the provisions of Article
12, the second paragraph of Article 13 and Article 14 of the Protocol on the
Privileges and Immunities of the Communities apply**

(presented by the Commission)

Proposal for a Council Decision []
on the consultation of the European Central Bank by national authorities
on draft legislative provisions

EXPLANATORY MEMORANDUM

Stage three of Economic and Monetary Union will begin on 1 January 1999. The European Central Bank will be established following the confirmation by Heads of State or Government according to Article 109 j(4) EC as to which countries fulfil the necessary conditions for the adoption of a single currency. The Commission is presenting draft secondary legislation concerning the practical functioning of the European System of Central Banks and the European Central Bank.

1. General considerations

Article 105(4) of the Treaty (and Article 4(a) of the ESCB Statute) states that the ECB shall be consulted "... *by national authorities regarding any draft legislative provision in its field of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 106(6).*"

The initiative for legislation using Article 106(6) as the legal base can be taken either by the Commission or the ECB. Following consultations between the Commission, the Member States and the EMI, it has been agreed that this Decision will be adopted on the basis of a proposal from the Commission.

The purpose of this draft Council Decision is to set out within which limits and under which conditions the authorities of the Member States shall consult the ECB on any draft legislative provision within its field of competence. The obligations will be similar to those currently applying to national authorities with regard to draft legislative provisions that fall within the field of competence of the EMI (Council Decision 93/717/EC of 22 November 1993)¹. The draft Decision seeks to ensure that the ECB is consulted at an early stage in the decision-making process and that adequate time is provided to the ECB to formulate its views.

Consultation on draft legislation is obligatory. The rationale behind this rule is to ensure that the authority which has been given tasks in the monetary and financial field has an opportunity to give its assessment of measures envisaged by other bodies, either at the level of the Community or in Member States, which have a bearing on its field of competence. National measures are included because, in the perspective of EMU, those measures may have an impact on the single monetary policy. The ECB

¹ OJ L 332 of 31.12.1993, p.14

will assess the envisaged legislative provisions against the compatibility with its tasks: the ECB will also provide expertise. Overall, the consistency of policies will be improved.

Legislation specifying limits and conditions is necessary for national but not Community legislation following from the language of Article 105(4).

The principles governing the present draft Council decision are the following:

- it aims at striking a balance between the need for making the opinion of the ECB known to those who take decisions and the wish to avoid undue burdens on the consulting authority as well as on the ECB.
- the Treaty requires consultation on any draft legislative provision in the ECB's field of competence. The draft decision enumerates a number of fields of consultation which relate to the tasks of the ECB specified in the Treaty. This approach does not free national authorities from the obligation to examine whether draft legislation, while not fitting into one of the enumerated fields, may still be within the ECB's field of competence; however, the enumeration aims at keeping the consultations manageable.
- allowance is made for the particularities of the legal systems of the Member States. In particular, Member States are given flexibility in organising the consultations of their various authorities with the ECB in light of their specific practices.
- the draft decision aims at increasing transparency and legal certainty as to what will be the right of the ECB and the obligations of national authorities.

2 Comments on the Articles

Article 1

Article 1 specifies the definition of "draft legislative provisions" and "participating Member States".

The narrowest definition of "draft legislative provisions" would have restricted the coverage of the article to formal laws which are under preparation for adoption by Parliament. This narrow definition was, however, not retained for three reasons: first, it seems not to correspond to the intention of the authors of the Treaty, who would have chosen another term in this case; second, it would exclude actions of a legislative nature which are of relevance for the ECB; third, it would probably lead to unequal treatment of Member States because a measure taken in one country in the form of a law may be taken elsewhere in the form of a different legal instrument.

Article 100 EC provides some indication. It obliges the Council to "issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market".

“Law and regulation” is generally seen as including: formal laws adopted according to national constitutional rules, and provisions which are derived from formal laws. Those provisions are characterised by their general applicability and by the fact that they set rules for an indefinite number of cases and are addressed to an indefinite number of (natural or legal) persons.

“Administrative action” is usually understood as the setting of rules by public bodies for subordinate bodies. Its inclusion in Article 100 is justified by the purpose of this article, which is to implement the internal market. Consultation of the ECB on such “administrative action” seems not to be covered by Article 105(4).

The definition of “draft legislative provisions” in Article 1 thus makes use of the criteria of general applicability, indefinite number of cases and indefinite number of persons.

The second paragraph exempts those draft legislative provisions from consultations which aim at implementing EU directives. This is because before the final adoption of such directives, the ECB will already have been consulted according to Article 105(4), first indent. Furthermore, Member States are obliged to notify the implementation of directives to the Commission.

Article 2

Article 2 defines the range of subjects for consultation. This list is to be seen against the tasks of the ECB set out in Article 105 of the Treaty and Article 3 of the Statute of the ECB. This list is, however, not exhaustive.

Several changes are introduced in the draft Decision compared with Council Decision 93/717/EC applying to the EMI. These reflect the different tasks of the ECB compared with the EMI, and the need to reflect the different obligations of participating Member States and those with a derogation. The ECU will cease to exist as of 1 January 1999, and hence consultation on its status becomes redundant. The reference to cross-border transactions in the indent on clearing and payment systems is dropped: this better reflects the wording of Article 105(2) of the Treaty.

Article 2.2 of the draft Decision specifies the obligation for non-participating countries to consult the ECB on draft legislative provisions concerning monetary policy instruments. In accordance with Article 44 of the Statute of the ECB, the ECB shall takeover those tasks of the EMI which, because of the derogations of one or more Member States, still have to be performed. Council Decision 93/717/EC requires Member States to consult the EMI on draft legislative provisions concerning monetary policy instruments as these fall within the competence of the tasks of the EMI which are specified in Articles 4.1 and 4.2 of the Statute of the EMI. *Inter alia*, these tasks include the preparation of instruments and procedures necessary for carrying out a single monetary policy.

The range of subjects for consultation is not exhaustive. National authorities shall consult the ECB on legislative provisions which affect the tasks of the ESCB in accordance with Article 105(4) of the Treaty. The sixth indent of Article 2 of this Decision requires national authorities to consult the ECB on legislative provisions applicable to financial institutions in so far as they materially influence the stability of financial institutions and markets. However, this requirement is without prejudice to the present assignment of competences for policies relating to the prudential supervision of credit institutions and the stability of the financial system. Such a reference is desirable:

- as regards its application to *participating Member States* so as to assist the ECB in properly fulfilling its competence to conduct monetary policy for the euro area. No specific reference to matters related to the stability of financial markets and institutions was needed in Article 105(2) as the efficient conduct of monetary policy is closely related to aspects of financial market organisation/institutions. Monetary policy instruments impact on the liquidity situation of individual institutions and therefore indirectly touch on areas where supervisory bodies are competent. At the same time, measures taken by competent supervisory authorities on individual institutions influence those institutions' ability to create "book money" and hence indirectly affect liquidity supply to the economy.
- as regards its application to *Member States with a derogation* on the grounds that according to Article 44 of ECB Statute, the ECB shall take over those tasks of the EMI which still have to be performed in stage 3 because of derogations.

Article 3

The consultation of the ECB should not unduly lengthen the national legislative procedure. In order to facilitate their time schedules, national authorities should be allowed to set a time-limit to the ECB for the delivery of its opinion, if they consider it necessary. The time-limit of one month strikes a balance between the interests of national authorities and those of the ECB. Upon expiry of this limit, the absence of an opinion shall not prevent further action in the national legislative procedure.

This article provides that the time limit may be reduced in cases of extreme urgency. It also provides for the ECB to be able to request an extension of the time limit by four weeks.

Article 4

Given the diversity of legal systems, each Member State should be given as much freedom as possible in devising the practical arrangements for the consultation of the ECB. Each Member State shall decide internally on the provisions necessary to ensure compliance with this draft decision.

Article 4 also specifies which authority is obliged to consult the ECB when more than one is involved in legislation. Legislative provisions are often prepared by authorities other than the authority which takes the final decision (for instance, the government

proposes and the Parliament adopts formal laws; or a subordinate body prepares a regulation which is put into force by the competent Ministry). Hence, the question is raised at which stage the ECB would have to be consulted.

In these cases, the ECB shall be consulted by the preparing or proposing authority because the ECB should be given the opportunity to express its views at a relatively early stage of the legislative process, so that they can more easily be taken into account. Furthermore, in the case of formal laws this avoids that Parliaments of Member States would have to consult the ECB. Article 4 makes sure that the opinion of the ECB is transmitted, together with the proposal, to the adopting authority.

Article 5

The obligation of national authorities to consult the ECB applies from the beginning of the third stage (see Article 109 e(3), i.e. from 1 January 1999. This Decision will therefore enter into force on 1 January 1999. The EMI, which currently is to be consulted according to Council Decision 93/717/EC, will go into liquidation upon the establishment of the ECB, i.e. several months before the beginning of the third stage. Therefore Council Decision 93/717/EC has to be applied beyond the date of the establishment of the ECB until the beginning of the third stage, with the proviso that the body to be consulted is the ECB. To give opinions on draft legislation is a task which the ECB shall take over from the EMI according to Article 109 l(2). This clarification is made in recital No 8. The second paragraph of Article 5 provides that Council Decision 93/717/EC will only be repealed at the beginning of the third stage.

**Proposal for a Council Decision []
on the consultation of the European Central Bank by national authorities
on draft legislative provisions**

98/0056 (CNS)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Articles 105(4) and 106(6) thereof, and Articles 4 and 42 of the Statute of the ESCB and of the ECB,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³,

Having regard to the opinion of the [European Central Bank] [European Monetary Institute]⁴,

- (1) Whereas the European Central Bank, hereafter referred to as 'the ECB', will be established as soon as its Executive Board is appointed;
- (2) Whereas the Treaty stipulates that national authorities shall consult the ECB on any draft legislative provision in its field of competence; whereas it is for the Council to set out the limits and the conditions of such consultation;
- (3) Whereas this obligation on the authorities of the Member States to consult the ECB shall not prejudice the responsibility of these authorities for the matters which are the subject of such provision; whereas Member States shall consult the ECB on any draft legislation in its field of competence in accordance with Article 105(4) of the Treaty; whereas the list of particular areas included in Article 2 of this Decision is not exhaustive; whereas the sixth indent of Article 2 of this Decision is without prejudice to the present assignment of competences for policies relating to the prudential supervision of credit institutions and the stability of the financial system.
- (4) Whereas the monetary functions and operations of the ESCB are defined in the Statute of the ESCB and of the ECB; whereas central banks of participating Member States are an integral part of the ESCB and shall act in accordance with

² OJ No ...

³ OJ No ...

⁴ If the consultation takes place before the creation of the ECB, the EMI would be consulted in accordance with Article 109f(8) of the EC Treaty.

the guidelines and instructions of the ECB; whereas in stage 3 of EMU, the authorities of non-participating Member States must consult the ECB on draft legislative provisions on the instruments of monetary policy;

- (5) Whereas as long as Member States do not participate in the monetary policy of the ESCB, this Decision does not concern decisions taken by authorities of these Member States in the context of the implementation of their monetary policy;
- (6) Whereas consultation of the ECB must not unduly lengthen procedures for adopting legislative provisions in the Member States; whereas the time limits within which the ECB must deliver its opinion must, nevertheless, enable it to examine the texts referred to it with the required care; whereas, in duly justified cases of extreme urgency, for example on account of market sensitivity, Member States may set a time limit of less than one month; whereas in these cases particularly, dialogue between the national authorities and the ECB should enable the interests of both to be taken into account;
- (7) Whereas in accordance with paragraphs 5 and 8 of Protocol No 11 this decision shall not apply to the United Kingdom of Great Britain and Northern Ireland if and so long as it does not move to the third stage;
- (8) Whereas from the date of the establishment of the ECB until the start of the third stage, national authorities have to consult the ECB, pursuant to Council Decision 93/717/EC and Article 109l(2) of the Treaty;

HAS ADOPTED THIS DECISION

Article 1

1. For the purpose of this decision:

participating Member State shall mean a Member State which has adopted the single currency in accordance with the Treaty;

draft legislative provisions shall mean any such provisions which once they become legally binding and of general applicability in the territory of a Member State, lay down rules for an indefinite number of cases and are addressed to an indefinite number of natural or legal persons.

2. Draft legislative provisions within the meaning of paragraph 1 shall not include draft provisions the exclusive purpose of which is the transposition or continuing implementation of Community directives into the law of Member States. *Article 2*

1. The authorities of the Member States shall consult the ECB on any draft legislative provision within its field of competence pursuant to the Treaty and in particular on :
 - currency matters,
 - means of payment,
 - national central banks,
 - the collection, compilation and dissemination of monetary, financial, banking, payment systems and balance of payments statistics,
 - payment and settlement systems,
 - rules applicable to financial institutions in so far as they materially influence the stability of financial institutions and markets
2. In addition to the above paragraph, the authorities of Member States other than participating Member States shall consult the ECB on any draft legislative provisions on the instruments of monetary policy.
3. The ECB shall, immediately on receipt of any draft legislative provision, notify the consulting authority whether, in its opinion, such provision is within its field of competence.

Article 3

1. The authorities of the Member States preparing a legislative provision may, if they consider it necessary, set the ECB a time limit for the submission of its opinion which may not be less than one month from the date on which the President of the ECB receives notification to this effect.
2. In case of extreme urgency, the time limit may be reduced. In this case the consulting authority shall state the reasons for the urgency.
3. The ECB may request in due time to extend the time limit for up to an additional four weeks. This request shall not be unreasonably declined by the consulting authority.
4. Upon expiry of the time limit, the absence of an opinion shall not prevent further action by the consulting national authority. Should the opinion of the ECB be received after the time limit, the Member States shall, nevertheless, ensure that it is brought to the knowledge of the authorities referred to in Article 4.

Article 4

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

Article 5

1. This Decision shall apply as from 1 January 1999.
2. Council Decision 93/717/EC shall be repealed with effect from 1 January 1999.

Article 6

This Decision is addressed to the Member States.

Proposal for a Council Decision []
on the statistical data to be used for the determination of the key for subscription
of the capital of the European Central Bank

EXPLANATORY MEMORANDUM

Stage three of Economic and Monetary Union will begin on 1 January 1999. The European Central Bank will be established following the confirmation by Heads of State or Government according to Article 109 j(4) EC as to which countries fulfil the necessary conditions for the adoption of a single currency. The Commission is presenting draft secondary legislation concerning the practical functioning of the European System of Central Banks and the European Central Bank.

1. General considerations

The key for subscription of the capital of the European Central Bank (ECB) also 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 among national central banks.

The initiative for legislation using Article 106(6) as the legal base can be taken either by the Commission or the ECB. Following consultations between the Commission, the Member States and the EMI, it has been agreed that this Decision will be adopted on the basis of a proposal from the Commission.

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 the 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 the 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.

The national central banks have already contributed to the financial resources of the European Monetary Institute (EMI) in accordance with the key for subscription of the ECB's capital (Article 16.2 of the EMI statute). The rules on the statistical data for the EMI resources were adopted by the Council in 1993.⁵

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

⁵ Council Decision No 93/716/EC of 22.11.1993, O.J. No L332/12 of 31.12.1993.

are largely based upon the provisions applying to the EMI as set out in Council Decision 93/716/EC.

When the ECB is established, it will have to establish the key by rounding up the percentages which result from the present Decision to the nearest multiple of 0.05 percentage points, as required by the last sentence of Article 29(1) of the ESCB Statute. The data should be provided to the EMI before the day the establishment of the ECB becomes effective. The key will have to be adjusted every five years.

2. Comments on the articles

Article 1

Article 1 defines what is covered by this Decision. In a narrow interpretation, the rules for the supply of the statistical data would just specify the concept and the 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 calculation of percentages; these methodological questions are also covered by this Decision for the sake of consistency and accuracy.

Article 2

The appropriate definitions of population and GDP are those of the European System of Integrated Economic Accounts (ESA). In order to clarify which version of the ESA - ESA 79 or ESA 95 - is to be used, it is specified that the relevant version is that which is used for the application of Directive 89/130/EEC (GNP Directive). In 1998, this will be ESA 79.

Article 3

Since the data on GDP represent a flow over 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.

Article 4

This article defines the data on GDP. The last five years preceding the penultimate year before the establishment of the ECB are 1991, 1992, 1993, 1994 and 1995.

Article 5

The Commission (Eurostat) will collect the data on population according to the established procedures. The Commission will draw on the Statistical Programme Committee in order to have the data validated.

Article 6

GDP mp data for the years 1991 to 1995 are the data resulting from the application of the Council Directive on the harmonisation of the compilation of GNP mp. These data are validated by the committee referred to in Article 6 of that Directive.

Article 7

This article provides rules for the calculation of the shares of individual Member States in the population and GDP of the Community.

Article 8

This article provides the rule for the calculation of the weighting of a Member State in the key.

Article 9

This article provides rules on rounding.

Article 10

This article obliges the Commission to communicate the data to the EMI before the establishment of the ECB.

**Proposal for a Council Decision | |
on the statistical data to be used for the determination of the key for subscription
of the capital of the European Central Bank**

98/0057(CNS)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 106(6) thereof, and Articles 29.2 and 42 of the Protocol on the Statute of the European Central Bank and the European System of Central Banks annexed thereto,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Monetary Institute,

- (1) Whereas the European Central Bank, hereafter referred to as 'the ECB', will be established as soon as its Executive Board is appointed;
- (2) Whereas the initial capital of the ECB, which shall become operational upon its establishment, is ECU 5000 million;
- (3) Whereas the national central banks will be the sole subscribers to and holders of the capital of the ECB;
- (4) Whereas the key for the subscription of the ECB's capital will be determined when the ECB is established;
- (5) Whereas the statistical data to be used for the establishment of the key will be provided by the Commission in accordance with the rules adopted by the Council;
- (6) Whereas the nature of and sources for the data to be used and the method of calculation of the weighting of national central banks in the key must be defined;
- (7) Whereas Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices introduces a procedure for the adoption by Member States of data on the gross domestic product at market prices; whereas the Member States must take all the necessary steps to ensure that these data are transmitted to the Commission;

HAS DECIDED AS FOLLOWS:

Article 1

The statistical data to be used for the determination of the key for subscription of the capital of the European Central Bank shall be provided by the Commission in accordance with the rules laid down in the following Articles.

Article 2

Population and gross domestic product at market prices, hereinafter referred to as "GDP mp", shall be defined according to the European System of Integrated Economic Accounts (ESA) in the version which is used for the application of Directive 89/130/EEC, Euratom. 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 1996. The mean of the total population over the course of the year shall be used in accordance with the ESA recommendation.

Article 4

The data on GDP mp shall be taken for each of the years 1991 to 1995. The data on GDP mp for each Member State shall be expressed in the national currency at current prices.

Article 5

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

Article 6

The data on GDP mp for the years 1991 to 1995 shall result from the application of Directive 89/130/EEC, Euratom.

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 as a percentage.
2. The GDP mp data for each year and each Member State expressed in national currencies shall be converted into figures expressed in ECUs. The exchange rate used for this purpose shall be the average of the exchange rates for all working days in a year. The daily exchange rate shall be the rate calculated by

the Commission and published in the "C" series 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 five years, expressed as a percentage.

Article 8

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

Article 9

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

Article 10

The data referred to in this Decision shall be communicated by the Commission to the European Monetary Institute before the day the establishment of the ECB becomes effective.

Done at Brussels,

**Proposal for a Council Regulation (EC, Euratom, ECSC) amending Regulation
(EEC, Euratom, ECSC) No. 260/68 which lays down the conditions
and procedure for applying the tax for
the benefit of the European Communities.**

EXPLANATORY MEMORANDUM

Stage three of Economic and Monetary Union will begin on 1 January 1999. The European Central Bank will be established following the confirmation by Heads of State or Government according to Article 109 j(4) EC as to which countries fulfil the necessary conditions for the adoption of a single currency. The Commission is presenting draft secondary legislation concerning the practical functioning of the European System of Central Banks and the European Central Bank.

General considerations

According to Article 40 of the Statute of the European System of Central Banks and the European Central Bank (ESCB Statute), the ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Communities.

According to Article 23 of the Protocol on the privileges and immunities,⁶ the Protocol on Privileges and Immunities is applicable to :

- the ECB as a body;
- the members of the Governing Council of the ECB;
- the members of the General Council of the ECB;
- the members of the ECB staff.

This means that all Articles in the Protocol on the privileges and immunities are directly applicable to the ECB, with the exception of Article 15 which stipulates that the Council (of Ministers) determines the scheme of social security benefits. As part of the employment conditions, the scheme of social security benefits is to be laid down by the Governing Council of the ECB.

Some Articles of the Protocol on the privileges and immunities apply without the need for further action, e.g. Article 1 (inviolability of premises), Article 6 (diplomatic status for official communications), Article 7 (laissez-passer). Several provisions of the protocol require secondary legislation in order to define their applicability.

⁶ Article 23 was inserted by Protocol (No 7) annexed to the EC Treaty amending the Protocol on the privileges and immunities of the European Communities.

One of these provisions is Article 13, according to which officials and other servants of the respective institutions and bodies are liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by their employer, in accordance with the conditions and procedures laid down by the Council, acting on a proposal from the Commission.

The purpose of this draft Proposal is to include the ECB instead of the EMI in the list of institutions and bodies whose officials are liable to a Community tax according to the conditions and procedures laid down by the Council. The legislative action to be undertaken is to replace Article 12a of Regulation N° 260/68 by a new provision. The amended Regulation shall enter into force on the day on which the establishment of the ECB becomes effective.

Comments on Article 1

This Article extends the coverage of the Council Regulation which determines the conditions and procedures for applying the Community tax (of the staff of the European Communities, the European Investment Bank, the European Investment Fund and, until the date when it goes into liquidation, the European Monetary Institute) so that the Regulation includes members of the Governing Council and the General Council of the ECB as well as its staff and the recipients of pensions.

The situation of the ECB is similar to that of the EMI. Neither are Community institutions in the sense of Article 4 of the Treaty establishing the European Community, but both enjoy the privileges and immunities of the European Communities. Therefore the provisions for the EMI have served as a model for the inclusion of the ECB in the Community tax scheme.

According to Article 109 I(2) EC, the EMI will go into liquidation upon the establishment of the ECB. According to Article 23 of the EMI Statute, all assets and liabilities of the EMI will then pass automatically to the ECB. Therefore the provision on the EMI in Council Regulation No 260/68 can be replaced by the provision on the ECB.

Proposal for a Council Regulation (EC, Euratom, ECSC) amending Regulation (EEC, Euratom, ECSC) No. 260/68 which lays down the conditions and procedure for applying the tax for the benefit of the European Communities.

THE COUNCIL OF THE EUROPEAN UNION,

98 10058 (CNS)

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Articles 13 and 23 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Monetary Institute,

- (1) Whereas the European Central Bank, hereafter referred to as 'the ECB', will be established as soon as its Executive Board is appointed;
- (2) Whereas it is appropriate to extend the application of the tax for the benefit of the European Communities, on the terms and in accordance with the procedure laid down in Regulation (EEC, Euratom, ECSC) No. 260/68,⁷ to the salaries, wages and emoluments of the members of the Governing Council and the General Council of the European Central Bank and the staff of that Bank; whereas the application of this tax to the European Monetary Institute becomes irrelevant when the Institute goes into liquidation,

HAS ADOPTED THE FOLLOWING REGULATION

Article 1

Article 12a of Regulation (EEC, Euratom, ECSC) No. 260/68 is replaced by the following text:

'Article 12a

This Regulation shall apply to the members of the Governing Council and of the General Council of the European Central Bank, to members of its staff and to recipients of the pensions paid by the Bank who are included in the categories determined by the Council pursuant to the first paragraph of Article 16 of the Protocol on Privileges and Immunities, with regard to salaries, wages and emoluments and to disability, retirement and survivors' pensions paid by the Bank.'

⁷ OJ L 56 of 4.3.1968, pp 8-10

Article 2

This Regulation shall enter into force on the day on which the establishment of the European Central Bank becomes effective.

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 (Euratom, ECSC, EC) amending Regulation
(Euratom, ECSC, EEC) No. 549/69 determining the
categories of officials and other servants of the European Communities
to whom the provisions of Article 12, the second paragraph
of Article 13 and Article 14 of the Protocol on the
Privileges and Immunities of the Communities apply**

EXPLANATORY MEMORANDUM

Stage three of Economic and Monetary Union will begin on 1 January 1999. The European Central Bank will be established following the confirmation by Heads of State or Government according to Article 109 j(4) EC as to which countries fulfil the necessary conditions for the adoption of a single currency. The Commission is presenting draft secondary legislation concerning the practical functioning of the European System of Central Banks and the European Central Bank.

General considerations

According to Article 40 of the Statute of the European System of Central Banks and the European Central Bank (ESCB Statute), the ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Communities.

According to Article 23 of the Protocol on the privileges and immunities,⁸ the Protocol on Privileges and Immunities is applicable to :

- the ECB as a body;
- the members of the Governing Council of the ECB;
- the members of the General Council of the ECB;
- the members of the ECB staff.

This means that all Articles in the Protocol on the privileges and immunities are directly applicable to the ECB, with the exception of Article 15 which stipulates that the Council (of Ministers) determines the scheme of social security benefits. As part of the employment conditions, the scheme of social security benefits is to be laid down by the Governing Council of the ECB.

Some Articles of the Protocol on the privileges and immunities apply without the need for further action, e.g. Article 1 (inviolability of premises), Article 6 (diplomatic

⁸ Article 23 was inserted by Protocol (No 7) annexed to the EC Treaty amending the Protocol on the privileges and immunities of the European Communities.

status for official communications), Article 7 (laissez-passer). Several provisions of the protocol require secondary legislation in order to define their applicability.

Among such provisions are Articles 12, 13 (2) and 14 which stipulate that officials and other servants are in certain respects immune from legal proceedings, are not subject to formalities for the registration of aliens, have the right to import free of duty certain personal equipment, and which specify rules for the national tax regime to which they are subject (for taxes other than those on salaries). According to Article 16, the Council shall determine the categories of officials and other servants to whom these provisions shall apply.

The purpose of this draft Proposal is to include the ECB instead of the EMI in the list of institutions or bodies to whom Council Regulation No 549/69 applies. The amended Regulation shall enter into force on the day on which the establishment of the ECB becomes effective.

Comments on Article 1

This Article extends the coverage of the Council Regulation which determines categories of officials and other servants to whom certain privileges and immunities apply (staff of the European Communities, the European Investment Bank, the European Investment Fund and, until the date when it goes into liquidation, the European Monetary Institute) so that the Regulation includes the staff and the recipients of pensions of the ECB.

The situation of the ECB is similar to that of the EMI. Neither are Community institutions in the sense of Article 4 of the Treaty establishing the European Community but both enjoy the privileges and immunities of the European Communities. Therefore the provisions for the EMI have served as a model for the inclusion of the ECB in Regulation No 549/69.

According to Article 109 1(2) EC, the EMI will go into liquidation upon the establishment of the ECB. According to Article 23 of the EMI Statute, all assets and liabilities of the EMI will then pass automatically to the ECB. Therefore the provision on the EMI in Council Regulation No 549/69 can be replaced by the provision on the ECB.

Proposal for a Council Regulation (Euratom, ECSC, EC) amending Regulation (Euratom, ECSC, EEC) No. 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply

THE COUNCIL OF THE EUROPEAN UNION,

9810059(CNS)

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Article 16 and Article 23 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Monetary Institute,

Having regard to the opinion of the Court of Justice,

Having regard to the opinion of the Court of Auditors,

- (1) Whereas the European Central Bank, hereafter referred to as 'the ECB', will be established as soon as its Executive Board is appointed;
- (2) Whereas it is appropriate to extend to the European Central Bank the application of Council Regulation (Euratom, ECSC, EEC) No. 549/69 determining the categories of officials and other servants of the European Communities to whom certain provisions of the Protocol on the Privileges and Immunities of the Communities apply, in order to ensure that the members of the staff of the European Central Bank, in view of their duties and responsibilities and of their particular situation, benefit from the same privileges, immunities and facilities,

HAS ADOPTED THE FOLLOWING REGULATION

Article 1

Article 4a of Regulation (Euratom, ECSC, EEC) No. 549/69 is replaced by the following text:

*Article 4a

Without prejudice to Article 23 of the Protocol on Privileges and Immunities of the European Communities with regard to the members of the Governing Council and of the General Council of the European Central Bank, the privileges and immunities provided for in Article 12, in the second paragraph of Article 13 and in Article 14 of

the Protocol shall apply under the same conditions and within the same limits as those laid down in Articles 1, 2 and 3 of this Regulation to :

- staff of the European Central Bank;
- persons receiving disability, retirement or survivors' pensions paid by the European Central Bank.

Article 2

This Regulation shall enter into force on the day on which the establishment of the European Central Bank becomes effective.

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

Done at Brussels,

For the Council
The President

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