

4. PROTOCOL ON THE STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND OF THE EUROPEAN CENTRAL BANK

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European System of Central Banks and of the European Central Bank provided for in Articles I-30 and III-187(2) of the Constitution,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

CHAPTER I

THE EUROPEAN SYSTEM OF CENTRAL BANKS

Article 1

The European System of Central Banks

1. In accordance with Article I-30(1) of the Constitution, the European Central Bank and the national central banks shall constitute the European System of Central Banks. The European Central Bank and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem.
2. The European System of Central Banks and the European Central Bank shall perform their tasks and carry on their activities in accordance with the Constitution and this Statute.

CHAPTER II

OBJECTIVES AND TASKS OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

Article 2

Objectives

In accordance with Articles I-30(2) and III-185(1) of the Constitution, the primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives as laid down in Article I-3 of the Constitution. The European System of Central Banks shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article III-177 of the Constitution.

Article 3

Tasks

1. In accordance with Article III-185(2) of the Constitution, the basic tasks to be carried out through the European System of Central Banks shall be:

- (a) to define and implement the Union's monetary policy;
- (b) to conduct foreign-exchange operations consistent with Article III-326 of the Constitution;
- (c) to hold and manage the official foreign reserves of the Member States;
- (d) to promote the smooth operation of payment systems.

2. In accordance with Article III-185(3) of the Constitution, paragraph 1(c) of this Article shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3. In accordance with Article III-185(5) of the Constitution, the European System of Central Banks shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

Article 4

Advisory functions

In accordance with Article III-185(4) of the Constitution, the European Central Bank shall be consulted:

- (a) on any proposed Union act in areas within its powers;
- (b) by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41.

The European Central Bank may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters within its powers.

Article 5

Collection of statistical information

1. In order to undertake the tasks of the European System of Central Banks, the European Central Bank, 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 Union institutions, bodies, offices or agencies and with the competent authorities of the Member States or third countries and with international organisations.

2. The national central banks shall carry out, to the extent possible, the tasks referred to in paragraph 1.

3. The European Central Bank shall contribute to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its powers.

4. The Council, in accordance with the procedure laid down in Article 41, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6

International cooperation

1. In the field of international cooperation involving the tasks entrusted to the European System of Central Banks, the European Central Bank shall decide how the European System of Central Banks shall be represented.

2. The European Central Bank and, subject to its approval, the national central banks may participate in international monetary institutions.

3. Paragraphs 1 and 2 shall be without prejudice to Article III-196 of the Constitution.

CHAPTER III

ORGANISATION OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

Article 7

Independence

In accordance with Article III-188 of the Constitution, when exercising the powers and carrying out the tasks and duties conferred upon them by the Constitution and this Statute, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices and agencies 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 European Central Bank or of the national central banks in the performance of their tasks.

Article 8

General principle

The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank.

Article 9

The European Central Bank

1. The European Central Bank, which, in accordance with Article I-30(3) of the Constitution, has legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
2. The European Central Bank shall ensure that the tasks conferred upon the European System of Central Banks under Article III-185(2), (3) and (5) of the Constitution are implemented either by itself pursuant to this Statute or through the national central banks pursuant to Article 12(1) and Article 14.
3. In accordance with Article III-187(1) of the Constitution, the decision-making bodies of the European Central Bank shall be the Governing Council and the Executive Board.

Article 10

The Governing Council

1. In accordance with Article III-382(1) of the Constitution, the Governing Council shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States without a derogation as referred to in Article III-197 of the Constitution.
2. Each member of the Governing Council shall have one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors with a voting right shall be 15. The latter voting rights shall be assigned and shall rotate as follows:
 - (a) as from the date on which the number of governors exceeds 15 and until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank's Member State in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights;

- (b) as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the criteria laid down in (a). The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights;
- (c) within each group, the governors shall have their voting rights for equal amounts of time;
- (d) for the calculation of the shares in the aggregate gross domestic product at market prices Article 29(2) shall apply. The total aggregated balance sheet of the monetary financial institutions shall be calculated in accordance with the statistical framework applying in the Union at the time of the calculation;
- (e) whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29(3), or whenever the number of governors increases, the size and/or composition of the groups shall be adjusted in accordance with the principles laid down in this subparagraph;
- (f) the Governing Council, acting by a two-thirds majority of all its members, with and without a voting right, shall take all measures necessary for the implementation of the principles laid down in this subparagraph and may decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.

The right to vote shall be exercised in person. By way of derogation from this rule, the Rules of Procedure referred to in Article 12(3) may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These Rules shall also provide that a member of the Governing Council who is prevented from attending meetings of the Governing Council for a prolonged period may appoint an alternate as a member of the Governing Council.

The first and second subparagraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under paragraph 3 and Article 40(2) and (3). Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority of the members having a voting right. 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 having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

3. For any decisions to be taken under Articles 28, 29, 30, 32, 33 and 49, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the European Central Bank. The weighting of the votes of the members of the Executive Board shall be zero. A decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two thirds of the subscribed capital of the European Central Bank and represent at least half of the shareholders. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

4. The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public.
5. The Governing Council shall meet at least ten times a year.

Article 11

The Executive Board

1. In accordance with the first subparagraph of Article III-382(2) of the Constitution, 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.

2. In accordance with Article III-382(2) of the Constitution, the President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council and after consulting the European Parliament and the Governing Council.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

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 European Central Bank and shall be fixed by the Governing Council on a proposal from a Committee comprising three members appointed by the Governing Council and three members appointed by the Council. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.

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.

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 shall be specified in the Rules of Procedure referred to in Article 12(3).

6. The Executive Board shall be responsible for the current business of the European Central Bank.

7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with paragraph 2.

Article 12

Responsibilities of the decision-making bodies

1. The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the European System of Central Banks under the Constitution and this Statute. The Governing Council shall formulate the monetary policy of the Union including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the European System of Central Banks, 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 provisions of this Article, the European Central Bank shall have recourse to the national central banks to carry out operations which form part of the tasks of the European System of Central Banks.

2. The Executive Board shall have responsibility for the preparation of meetings of the Governing Council.
3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the European Central Bank and its decision-making bodies.
4. The Governing Council shall exercise the advisory functions referred to in Article 4.
5. The Governing Council shall take the decisions referred to in Article 6.

Article 13

The President

1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the European Central Bank.
2. Without prejudice to Article 38, the President or his nominee shall represent the European Central Bank externally.

Article 14

National central banks

1. In accordance with Article III-189 of the Constitution, each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with the Constitution and this Statute.
2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than five years.

A 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 on grounds of infringement of the Constitution or of any rule of law relating to its application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

3. The national central banks are an integral part of the European System of Central Banks and shall act in accordance with the guidelines and instructions of the European Central Bank. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the European Central Bank, and shall require that any necessary information be given to it.

4. National central banks may perform 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 European System of Central Banks. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the European System of Central Banks.

Article 15

Reporting commitments

1. The European Central Bank shall draw up and publish reports on the activities of the European System of Central Banks at least quarterly.

2. A consolidated financial statement of the European System of Central Banks shall be published each week.

3. In accordance with Article III-383(3) of the Constitution, the European Central Bank shall address an annual report on the activities of the European System of Central Banks and on the monetary policy of both the previous and the current year to the European Parliament, the European Council, the Council and the Commission.

4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

Article 16

Banknotes

In accordance with Article III-186(1) of the Constitution, the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.

The European Central Bank shall respect as far as possible existing practices regarding the issue and design of banknotes.

CHAPTER IV

MONETARY FUNCTIONS AND OPERATIONS OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

Article 17

Accounts with the European Central Bank and the national central banks

In order to conduct their operations, the European Central Bank 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

1. In order to achieve the objectives of the European System of Central Banks and to carry out its tasks, the European Central Bank and the national central banks may:

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

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

Article 19

Minimum reserves

1. Subject to Article 2, the European Central Bank may require credit institutions established in Member States to hold minimum reserves on accounts with the European Central Bank and national central banks in pursuance of monetary policy objectives. Detailed rules concerning the calculation and determination of the required minimum reserves may be established by the Governing Council. In cases of non-compliance the European Central Bank shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 41, 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 of monetary control

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

The Council shall, in accordance with the procedure laid down in Article 41, define the scope of such methods if they impose obligations on third parties.

Article 21

Operations with public entities

1. In accordance with Article III-181 of the Constitution, overdrafts or any other type of credit facility with the European Central Bank or with the national central banks in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.

2. The European Central Bank and national central banks may act as fiscal agents for the entities referred to in paragraph 1.

3. The provisions of this Article shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

Article 22

Clearing and payment systems

The European Central Bank and national central banks may provide facilities, and the European Central Bank may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries.

*Article 23***External operations**

The European Central Bank and national central banks may:

- (a) establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;
- (b) 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 the currency of any country or units of account and in whatever form held;
- (c) hold and manage the assets referred to in this Article;
- (d) conduct all types of banking transactions in relations with third countries and international organisations, including borrowing and lending operations.

*Article 24***Other operations**

In addition to operations arising from their tasks, the European Central Bank and national central banks may enter into operations for their administrative purposes or for their staff.

CHAPTER V

PRUDENTIAL SUPERVISION*Article 25***Prudential supervision**

1. The European Central Bank may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of legally binding acts of the Union relating to the prudential supervision of credit institutions and to the stability of the financial system.
2. In accordance with any European law adopted under Article III-185(6) of the Constitution, the European Central Bank may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

CHAPTER VI

FINANCIAL PROVISIONS OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

*Article 26***Financial accounts**

1. The financial year of the European Central Bank and national central banks shall begin on the first day of January and end on the last day of December.
2. The annual accounts of the European Central Bank 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.
3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the European System of Central Banks, comprising those assets and liabilities of the national central banks that fall within the European System of Central Banks.
4. For the application 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**

1. The accounts of the European Central Bank and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council. The auditors shall have full power to examine all books and accounts of the European Central Bank and national central banks and obtain full information about their transactions.
2. Article III-384 of the Constitution shall only apply to an examination of the operational efficiency of the management of the European Central Bank.

*Article 28***Capital of the European Central Bank**

1. The capital of the European Central Bank, shall be 5 000 million euro. The capital may be increased by such amounts as stipulated by a European decision 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 under the procedure laid down in Article 41.
2. The national central banks shall be the sole subscribers to and holders of the capital of the European Central Bank. The subscription of capital shall be according to the key established in accordance with Article 29.

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.
4. Subject to paragraph 5, the shares of the national central banks in the subscribed capital of the European Central Bank may not be transferred, pledged or attached.
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

1. The key for subscription of the European Central Bank's capital, fixed for the first time in 1998 when the European System of Central Banks was established, shall be determined by assigning to each national central bank a weighting in this key equal to the sum of:
 - 50 % of the share of its respective Member State in the population of the Union in the penultimate year preceding the establishment of the European System of Central Banks;
 - 50 % of the share of its respective Member State in the Union's gross domestic product at market prices as recorded in the last five years preceding the penultimate year before the establishment of the European System of Central Banks.

The percentages shall be rounded up or down to the nearest multiple of 0,0001 percentage points.

2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules laid down by the Council under the procedure provided for in Article 41.
3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the European System of Central Banks by analogy with paragraph 1. The adjusted key shall apply with effect from the first day of the following year.
4. The Governing Council shall take all other measures necessary for the application of this Article.

Article 30

Transfer of foreign reserve assets to the European Central Bank

1. Without prejudice to Article 28, the European Central Bank shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, euro, International Monetary Fund reserve positions and special drawing rights, up to an amount equivalent to 50 000 million euro. The Governing Council shall decide upon the proportion to be called up by the European Central Bank. The European Central Bank shall have the full right to hold and manage the foreign reserves that are transferred to it and to use them for the purposes set out in this Statute.

2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the European Central Bank.
3. Each national central bank shall be credited by the European Central Bank with a claim equivalent to its contribution. The Governing Council shall determine the denomination and remuneration of such claims.
4. Further calls of foreign reserve assets beyond the limit set in paragraph 1 may be effected by the European Central Bank, in accordance with paragraph 2, within the limits and under the conditions laid down by the Council in accordance with the procedure laid down in Article 41.
5. The European Central Bank may hold and manage International Monetary Fund reserve positions and special drawing rights and provide for the pooling of such assets.
6. The Governing Council shall take all other measures necessary for the application of this Article.

Article 31

Foreign reserve assets held by national central banks

1. The national central banks shall be allowed to perform transactions in fulfilment of their obligations towards international organisations in accordance with Article 23.
2. All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30, and Member States' transactions with their foreign exchange working balances shall, above a certain limit to be established within the framework of paragraph 3, be subject to approval by the European Central Bank in order to ensure consistency with the exchange rate and monetary policies of the Union.
3. The Governing Council shall issue guidelines with a view to facilitating such operations.

Article 32

Allocation of monetary income of national central banks

1. The income accruing to the national central banks in the performance of the monetary policy function of the European System of Central Banks (hereinafter referred to as 'monetary income') shall be allocated at the end of each financial year in accordance with the provisions of this Article.
2. 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 to credit institutions. These assets shall be earmarked by national central banks in accordance with guidelines to be established by the Governing Council.

3. If, after the start of the third stage, the balance sheet structures of the national central banks do not, in the judgment of the Governing Council, permit the application of paragraph 2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from paragraph 2, monetary income shall be measured according to an alternative method for a period of not more than five years.

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 to credit institutions in accordance with Article 19.

The Governing Council may decide that national central banks shall be indemnified against costs incurred in connection with the issue of banknotes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the European System of Central Banks. Indemnification shall be in a form deemed appropriate in the judgment of the Governing Council. These amounts may be offset against the national central banks' monetary income.

5. The sum of the national central banks' monetary income shall be allocated to the national central banks in proportion to their paid-up shares in the capital of the European Central Bank, subject to any decision taken by the Governing Council pursuant to Article 33(2).

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

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 European Central Bank

1. The net profit of the European Central Bank 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 subject to a limit equal to 100 % of the capital;
- (b) the remaining net profit shall be distributed to the shareholders of the European Central Bank in proportion to their paid-up shares.

2. In the event of a loss incurred by the European Central Bank, the shortfall may be offset against the general reserve fund of the European Central Bank and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32(5).

CHAPTER VII

GENERAL PROVISIONS

Article 34

Legal acts

1. In accordance with Article III-190 of the Constitution, the European Central Bank shall adopt:
 - (a) European regulations to the extent necessary to implement the tasks defined in Article 3(1)(a), Article 19(1), Article 22 or Article 25(2) of this Statute and in cases which shall be laid down in the European regulations and decisions referred to in Article 41;
 - (b) the European decisions necessary for carrying out the tasks entrusted to the European System of Central Banks under the Constitution and this Statute;
 - (c) recommendations and opinions.
2. The European Central Bank may decide to publish its European decisions, recommendations and opinions.
3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 41, the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its European regulations and decisions.

Article 35

Judicial control and related matters

1. The acts or omissions of the European Central Bank shall be open to review or interpretation by the Court of Justice of the European Union in the cases and under the conditions laid down in the Constitution. The European Central Bank may institute proceedings in the cases and under the conditions laid down in the Constitution.
2. Disputes between the European Central Bank, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred upon the Court of Justice of the European Union.
3. The European Central Bank shall be subject to the liability regime provided for in Article III-431 of the Constitution. The national central banks shall be liable according to their respective national laws.
4. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the European Central Bank, whether that contract be governed by public or private law.

5. A decision of the European Central Bank to bring an action before the Court of Justice of the European Union shall be taken by the Governing Council.

6. The Court of Justice of the European Union shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under the Constitution and this Statute. If the European Central Bank considers that a national central bank has failed to fulfil an obligation under the Constitution and this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the European Central Bank, the latter may bring the matter before the Court of Justice of the European Union.

Article 36

Staff

1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the European Central Bank.

2. The Court of Justice of the European Union shall have jurisdiction in any dispute between the European Central Bank and its servants within the limits and under the conditions laid down in the conditions of employment.

Article 37

Professional secrecy

1. Members of the governing bodies and the staff of the European Central Bank 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.

2. Persons having access to data covered by a legally binding Union act imposing an obligation of secrecy shall be subject to that obligation.

Article 38

Signatories

The European Central Bank shall be legally committed to third parties by the President or by two members of the Executive Board or by the signatures of two members of the staff of the European Central Bank who have been duly authorised by the President to sign on behalf of the European Central Bank.

Article 39

Privileges and immunities

The European Central Bank 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 Union.

CHAPTER VIII

AMENDMENT OF THE STATUTE AND COMPLEMENTARY RULES

*Article 40***Simplified amendment procedures**

1. In accordance with Article III-187(3) of the Constitution, Articles 5(1), (2) and (3), 17, 18, 19(1), 22, 23, 24, 26, 32(2), (3), (4) and (6), 33(1)(a) and 36 of this Statute may be amended by European laws:

(a) on a proposal from the Commission and after consulting the European Central Bank, or

(b) on a recommendation from the European Central Bank and after consulting the Commission.

2. Article 10(2) may be amended by a European decision of the European Council, acting unanimously, either on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the European Central Bank. These amendments shall not enter into force until they are approved by the Member States in accordance with their respective constitutional requirements.

3. A recommendation made by the European Central Bank under this Article shall require a unanimous decision by the Governing Council.

*Article 41***Complementary rules**

In accordance with Article III-187(4) of the Constitution, the Council shall adopt European regulations and decisions establishing the measures referred to in Articles 4, 5(4), 19(2), 20, 28(1), 29(2), 30(4) and 34(3) of this Statute. It shall act after consulting the European Parliament either:

(a) on a proposal from the Commission and after consulting the European Central Bank or

(b) on a recommendation from the European Central Bank and after consulting the Commission.

CHAPTER IX

TRANSITIONAL AND OTHER PROVISIONS FOR THE EUROPEAN SYSTEM OF CENTRAL BANKS*Article 42***General provisions**

1. A derogation as referred to in Article III-197(1) of the Constitution shall entail that the following Articles of this Statute shall not confer any rights or impose any obligations on the Member State concerned: 3, 6, 9(2), 12(1), 14(3), 16, 18, 19, 20, 22, 23, 26(2), 27, 30, 31, 32, 33, 34 and 50.
2. The central banks of Member States with a derogation as specified in Article III-197(1) of the Constitution shall retain their powers in the field of monetary policy according to national law.
3. In accordance with the second subparagraph of Article III-197(2) of the Constitution, in Articles 3, 11(2) and 19 of this Statute 'Member States' shall mean Member States whose currency is the euro.
4. In Articles 9(2), 10(2) and (3), 12(1), 16, 17, 18, 22, 23, 27, 30, 31, 32, 33(2) and 50 of this Statute, 'national central banks' shall mean central banks of Member States whose currency is the euro.
5. In Articles 10(3) and 33(1), 'shareholders' shall mean national central banks of Member States whose currency is the euro.
6. In Articles 10(3) and 30(2), 'subscribed capital' shall mean capital of the European Central Bank subscribed by the national central banks of Member States whose currency is the euro.

*Article 43***Transitional tasks of the European Central Bank**

The European Central Bank shall take over the former functions of the European Monetary Institute referred to in Article III-199(2) of the Constitution which, because of the derogations of one or more Member States, still have to be performed after the introduction of the euro.

The European Central Bank shall give advice in the preparations for the abrogation of the derogations referred to in Article III-198 of the Constitution.

*Article 44***The General Council of the European Central Bank**

1. Without prejudice to Article III-187(1) of the Constitution, the General Council shall be constituted as a third decision-making body of the European Central Bank.
2. The General Council shall comprise the President and Vice-President of the European Central Bank and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.
3. The responsibilities of the General Council are listed in full in Article 46.

*Article 45***Functioning of the General Council**

1. The President or, in his absence, the Vice-President of the European Central Bank shall chair the General Council of the European Central Bank.
2. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the General Council.
3. The President shall prepare the meetings of the General Council.
4. By way of derogation from Article 12(3), the General Council shall adopt its Rules of Procedure.
5. The Secretariat of the General Council shall be provided by the European Central Bank.

*Article 46***Responsibilities of the General Council**

1. The General Council shall:
 - (a) perform the tasks referred to in Article 43;
 - (b) contribute to the advisory functions referred to in Articles 4 and 25(1).
2. The General Council shall contribute to:
 - (a) the collection of statistical information as referred to in Article 5;
 - (b) the reporting activities of the European Central Bank as referred to in Article 15;
 - (c) the establishment of the necessary rules for the application of Article 26 as referred to in Article 26(4);
 - (d) the taking of all other measures necessary for the application of Article 29 as referred to in Article 29(4);

(e) the laying down of the Conditions of employment of the staff of the European Central Bank as referred to in Article 36.

3. The General Council shall contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the euro as referred to in Article III-198(3) of the Constitution.

4. The General Council shall be informed by the President of the European Central Bank of decisions of the Governing Council.

Article 47

Transitional provisions for the capital of the European Central Bank

In accordance with Article 29, each national central bank shall be assigned a weighting in the key for subscription of the European Central Bank's capital. By way of derogation from Article 28(3), central banks of Member States with a derogation shall not pay up their subscribed capital unless the General Council, acting by a majority representing at least two thirds of the subscribed capital of the European Central Bank and at least half of the shareholders, decides that a minimal percentage has to be paid up as a contribution to the operational costs of the European Central Bank.

Article 48

Deferred payment of capital, reserves and provisions of the European Central Bank

1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the European Central Bank to the same extent as the central banks of other Member States whose currency is the euro, and shall transfer to the European Central Bank foreign reserve assets in accordance with Article 30(1). The sum to be transferred shall be determined by multiplying the euro value at current exchange rates of the foreign reserve assets which have already been transferred to the European Central Bank in accordance with Article 30(1), by the ratio between the number of shares subscribed by the national central bank concerned and the number of shares already paid up by the other national central banks.

2. In addition to the payment to be made in accordance with paragraph 1, the national central bank concerned shall contribute to the reserves of the European Central Bank, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December of the year prior to the abrogation of the derogation. The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the European Central Bank, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already paid up by the other central banks.

3. Upon one or more countries becoming Member States and their respective national central banks becoming part of the European System of Central Banks, the subscribed capital of the European Central Bank and the limit on the amount of foreign reserve assets that may be transferred to the European Central Bank shall be automatically increased. The increase shall be determined by multiplying the respective amounts then prevailing by the ratio, within the expanded capital key,

between the weighting of the entering national central banks concerned and the weighting of the national central banks already members of the European System of Central Banks. Each national central bank's weighting in the capital key shall be calculated by analogy with Article 29(1) and in compliance with Article 29(2). The reference periods to be used for the statistical data shall be identical to those applied for the latest quinquennial adjustment of the weightings under Article 29 (3).

Article 49

Derogation from Article 32

1. If, after the start of the third stage, the Governing Council decides that the application of Article 32 results in significant changes in national central banks' relative income positions, the amount of income to be allocated pursuant to Article 32 shall be reduced by a uniform percentage which shall not exceed 60 % in the first financial year after the start of the third stage and which shall decrease by at least 12 percentage points in each subsequent financial year.
2. Paragraph 1 shall be applicable for not more than five financial years after the start of the third stage.

Article 50

Exchange of banknotes in Member States' currencies

Following the irrevocable fixing of exchange rates in accordance with Article III-198(3) of the Constitution, the Governing Council shall take the necessary measures to ensure that banknotes denominated in the currencies of Member States with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

Article 51

Applicability of the transitional provisions

If and as long as there are Member States with a derogation Articles 42 to 47 shall be applicable.
