

W.B. Why an EMU?  
Could it not be a bank?  
Would it matter? Pl- seek advice.

## ECONOMIC AND MONETARY UNION- BEYOND STAGE I

### POSSIBLE TREATY PROVISIONS AND STATUTE FOR A EUROPEAN MONETARY FUND

Audlow/ Please Points 1-6 etc.

Thank you. Very impressive.

- ① When is the Ch. X's <sup>press conference?</sup> <sup>Will officials (Nigel W + Terry B) brief selected journalists too.</sup>
- ② Will he have an opening statement?  
What briefing on our intentions is proposed? (for <sup>our</sup> <sup>all</sup> + Ambassador)
- ③ Have we lined up academics/City folk (ie Bill Robinson) to write articles (Richard Fisher) in support?

#### Proposals by the UK Government

- ④ Is Leon being briefed by Chancellor? Or/and Paul Britton?
- ⑤ We'll need a goal O+A on (a) principles + statute  
(b) our target + intentions from now on.  
(c) our starting points
- ⑥ Can we feel to lay Parlt. figures? (A. Howard / W. Cook / T. Hyppis)  
I. Taylor etc.

H M TREASURY

DECEMBER 1990

- ⑦ This launch should be given all we've got. Important we look enthusiastic / well-briefed / well-intentioned. If it goes off half-cock we could easily be side-lined.

**EUROPEAN MONETARY FUND: TREATY ARTICLES AND STATUTE**

**Introduction**

✓ Earlier this year the UK Government put forward proposals for the development of economic and monetary union beyond Stage 1. These involved the creation of a new Community monetary institution, the European Monetary Fund. Its main role would be the management of a common Community currency, tentatively called the hard ecu, designed to help strengthen anti-inflationary convergence throughout the Community.

✓ The proposals were first outlined in the present Prime Minister's speech to the German Industry Forum on 20 June. Further details were provided in subsequent speeches and papers, including an article in the Autumn 1990 Treasury Bulletin.

✓ The recent European Council meeting and the inaugural sessions of the Inter-Governmental Conferences displayed the positive and co-operative approach of the Member States to the important questions now before the Community. It is in this positive spirit that the UK Government is now setting out detailed suggestions for the main legal texts designed to put the scheme it has proposed into effect. These texts are put forward now in order to facilitate early consideration in the Inter-Governmental Conference on Economic and Monetary Union.

✓ In the United Kingdom's view, the first priority for the Inter-Governmental Conference should be to identify the next steps in the process of economic and monetary union and to reach agreement on arrangements which will permit practical progress towards that objective at an early stage. The texts attached provide the basis for such a discussion, by translating into legal form the policy proposal for the early introduction - as soon as possible after the ratification of the necessary provisions - of a new monetary institution and a common Community currency. The legal provisions are divided into proposals for Treaty amendments

and a more detailed Statute (which could be annexed as a Protocol to the Treaty).

These proposals take account of the recent work of the Central Bank Governors on a European System of Central Banks and incorporate similar provisions into the European Monetary Fund where that is appropriate. For example a two-tier structure incorporating a Governing Board and an Executive Board is proposed. The membership structure of the two Boards would also be the same, with both chaired by a President serving an eight-year term.

Treaty Article III provides for the Council to confer additional tasks on the Fund. This could include possibilities identified at an earlier stage such as the management of the exchange rate mechanism. The UK Government is not able to accept the imposition of a single monetary policy and a single currency, and the text does not provide for this.

An important set of considerations for the European Monetary Fund concerns the issues of independence and accountability. The main provisions in these areas are set out in Treaty Articles V and IX. In relation to independence, the UK Government recognises that there are different views within the Community, and Article V therefore put forward two alternative approaches; the first broadly follows the proposals of the Central Bank Governors, while the second provides for the continuation of present arrangements in each Member State. Article IX sets out a range of provisions for the accountability of the Fund.

## EUROPEAN MONETARY FUND: TREATY ARTICLES

### Article I

A European Monetary Fund is hereby established with legal personality. ✓

The members of the Fund shall be the central banks of the Member States. ✓

The Fund shall be administered by a Governing Board and an Executive Board. ✓

The Statute of the Fund is laid down in a Protocol annexed to this Treaty. ✓

### Commentary

*This article establishes the European Monetary Fund ("the Fund"). Its members will be the central banks of Member States. ✓*

### Article II

1. The overriding objective of the European Monetary Fund shall be to promote and maintain price stability in the Community as part of the progressive realisation of Economic and Monetary Union. ✓

2. Without prejudice to the objective of price stability, the Fund shall support the other economic policy objectives of the Community. ✓

3. In exercising its functions the Fund shall at all times act consistently with free and competitive markets. ✓

### Commentary

*This article sets out the objectives of the Fund. ✓*

### Article III

1. For the purposes set out in Article II the European Monetary Fund shall have responsibility for the issue and management of a common currency which shall be called the [hard ECU]. ✓

2. The Fund shall undertake such additional tasks as the Council, acting unanimously and after consulting the Monetary Committee, may decide. The Commission may recommend to the Council additional tasks to be undertaken by the Fund. ✓

3. Decisions of the Council under paragraph 2 shall lay down any measures necessary to give effect to, or facilitate the achievement of, additional tasks conferred on the Fund. Such measures may confer on the Fund powers for the implementation of rules laid down by the Council. ✓

4. The provisions of this Article are without prejudice to the existing powers of the Member States to issue and manage their national currencies. ✓

### Commentary

This article sets out the tasks of the Fund. It focuses on the primary task of issuing and managing the common currency. Subsidiary tasks, such as managing the ERM and coordinating exchange rate intervention, would be left to subordinate legislation adopted by the Council.

'Hard ecu' is in square brackets in paragraph 1 because it is only one possible name for the common currency.

### Article IV

Without prejudice to the powers of the Commission and the Council with regard to the negotiation and conclusion of agreements between the Community and third countries or international organisations, the European Monetary Fund shall be entitled to establish relations alongside the Member States with central banks and financial institutions in third countries and, where appropriate, with international organisations. ✓

### Commentary

This article confers on the Fund a limited measure of external competence. The Fund establishing "relations" with entities in third countries would not preclude Member States from doing the same. ✓

**ALTERNATIVE 1**

**1. In exercising the powers and performing the duties conferred on them by this Treaty the members of the Governing Board and Executive Board of the European Monetary Fund shall be completely independent and shall neither seek nor take instructions from any Community institution, national government or any other body or person.**

*Alternative texts, embodying different approaches, are offered. ✓*

*Alternative 1 would explicitly establish the independence of the Fund. Alternative 2 would involve minimum change in the existing relationship between the national central bank and the government in each Member State. ✓*

**2. Member States and the institutions of the Community shall respect the independence of the members of the Governing Board and Executive Board of the Fund and not seek to influence them in the performance of their duties. ✓**

**ALTERNATIVE 2**

**The provisions of this Treaty are without prejudice to the existing relationships between national central banks and the governments of the Member States save to the extent that changes are necessary to ensure consistency with the provisions of the Treaty and the Protocol. ✓**

## Article VI

1. The European Monetary Fund shall participate in the European Monetary System and the [hard ECU] shall be a participating currency in the exchange rate mechanism of the System. Any alteration to the rules of operation of the exchange rate mechanism shall require the consent of the Fund. ✓

2. Bilateral central rates for the [hard ECU] against the other currencies participating in the exchange rate mechanism shall be established by mutual agreement between the Fund and the Member States. ✓

3. The Fund shall neither seek nor agree to a reduction in the bilateral central rate for the [hard ECU] against any of the other currencies participating in the exchange rate mechanism. ✓

[4. The Fund shall not issue liabilities, by way of deposit or otherwise, except in exchange for national currencies of the Member States.] ✓

5. The national monetary authorities of the Member States shall be obliged to repurchase excess quantities of their national currencies held by the Fund. ✓

[6. The national monetary authority of each Member State shall guarantee the value, expressed in terms of the [hard ECU], of its national currency held by the Fund.] ✓

7. The Council, acting unanimously after consulting the Monetary Committee and the Committee of Governors of the central banks of the Member States, shall adopt the measures necessary to give effect to this Article. ✓

## Commentary

This article sets out the Fund's obligations in relation to the common currency. Subordinate legislation adopted by the Council under paragraph 7 would:

- enable the Fund to decline to accept excessive quantities of a particularly weak national currency
- provide rules for deciding what quantity of a national currency should be regarded as excess for the purposes of the repurchase obligation (including the possibility of a discretionary grey zone)
- amplify the nature and extent of the guarantee requirement (if included), and
- enable amendments to be made to existing EC legislation on the EMS (currently based on Article 235/EEC) to reflect the participation of the hard ECU in place of the basket ECU.

The detailed arrangements under paragraph 4 are for further technical consideration; hence this paragraph is in square brackets. Paragraph 6 is treated in the same way to reflect its status as an option, not a requirement.

## Article VII

1. If the Executive Board of the European Monetary Fund considers that a Member State or the central bank of a Member State has failed to fulfil an obligation under this Treaty or under the Statute of the Fund, it shall deliver a reasoned opinion on the matter after giving the Member State or the central bank concerned the opportunity to submit its observations.

If the Member State or the central bank concerned does not comply with the opinion within the period laid down by the Executive Board, the latter may bring the matter before the Court of Justice.

2. The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

(a) measures adopted by the Governing Board of the Fund. In this connection, any Member State, the Commission or the Executive Board of the Fund may institute proceedings under the conditions laid down in Article 173;

(b) measures adopted by the Executive Board of the Fund. Proceedings against such measures may be instituted only by Member States or the Commission under the conditions laid down in Article 173.

3. National central banks and the Fund shall be required to take the necessary measures to comply with judgments of the Court of Justice in proceedings instituted pursuant to this Article.

## Article VIII

Article 22 of the Protocol on the Privileges and Immunities of the European Communities shall apply to the European Monetary Fund as it applies to the European Investment Bank.

## Commentary

This article provides for the Fund to be subject to judicial review, and adapts the approach adopted by Article 180/EEC in relation to the EIB. It gives a role, in enforcement matters, to the Governing Board or Executive Board of the Fund and makes national central banks liable to infraction proceedings. Failure on the part of a Member State or a national central bank to perform its obligations under the Treaty or the Statute of the Fund could be challenged by the Executive Board under paragraph 1. In addition, measures adopted by the Governing Board or the Executive Board which failed to comply with the provisions of Articles I to X (or other provisions of the Treaty or general principles of EC law) could be challenged under sub paragraphs (a) and (b) of paragraph 2.

## Commentary

This article deals with the privileges and immunities of the Fund and its staff by putting it on the same footing as the EIB.



## Article IX

1. The President of the Governing Board of the European Monetary Fund shall be invited to participate in meetings of the European Council and the Council when matters relating to the objectives and tasks of the Fund are discussed. ✓

2. The President of the Council and a member of the Commission may attend meetings of the Governing Board of the Fund. They may take part in the deliberations of the Board but shall not be entitled to vote. ✓

3. The Fund shall draw up monthly reports on its activities for presentation to the Council, on which the Monetary Committee may express an opinion. ✓

4. The Fund shall draw up an annual report on its activities. The President of the Governing Board shall present the annual report to the European Council, the Council and the European Parliament. ✓

5. To assist in the implementation of Article II.2, the Council shall each year send to the Fund its annual economic report. ✓

## Article X

[If any member of the Governing Board or the Executive Board of the Fund 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 Council or the Chairman of the Governing Board, compulsorily retire him.]

## Commentary

*This article sets out a framework for accountability.*

*Paragraph 3 provides for a monthly reporting procedure to EcoFin, through the Monetary Committee. This would give the Council a regular opportunity to make its views clear to the head of the Fund. This would be in addition to the system of annual reporting set out in paragraph 4.*

*The Inter-Governmental Conference on Political Union may confer a role under the Treaty on national Parliaments. It may be appropriate to mirror any such development here.*

## Commentary

*The removal procedure in this article adapts for use in this context the procedure laid down in Article 160/EEC for removing individual members of the Commission.*

*This Article will need to be reviewed in the light of decisions on Article V.*

# EUROPEAN MONETARY FUND: STATUTE

## CHAPTER 1 - CONSTITUTION

### Article 1

1.1 The European Monetary Fund established by Article I of this Treaty (hereinafter called "the Fund") is hereby constituted; it shall perform its functions and carry out its activities in accordance with the provisions of this Treaty and of this Statute.

1.2 The seat of the Fund shall be [ ] [determined by common accord of the Governments of the Member States].

### Article 2

The objectives of the Fund shall be those defined in Article II of this Treaty and its tasks shall be those defined in, or conferred on it by decision of the Council under, Article III of this Treaty.

### Article 3

In accordance with Article I of this Treaty the following shall be members of the Fund:

[List of central banks and Institut Monétaire Luxembourgeois]

### Commentary

*These three articles provide the principal link between the Treaty and the Statute (which would take the form of a Protocol annexed to the Treaty).*

## CHAPTER II - ORGANISATION

### Article 4

The decision-making bodies of the Fund shall be the Governing Board and the Executive Board.

### Commentary

*This article sets out a two-tier structure for the Fund, with a Governing Board and an Executive Board.*

### Article 5 - The Governing Board

5.1 The Governing Board shall comprise the President, the Vice-President, the other members of the Executive Board and the Governors of the national central banks. The President of the Council of Ministers and a representative of the Commission may take part in the deliberations of the Council of the Fund but they may not vote.

### Commentary

*This Article prescribes the membership and main procedural rules of the Governing Board. Each member has one vote except that weighted voting (Article 5.3) would apply to decisions concerning capital and the allocation of profits and losses, for which members of the Executive Board would have no votes (see also Article 23 below). Since proxy voting is provided for in such matters, no quorum is set.*

5.2 Subject to Article 5.3 of this Statute, only members of the Governing Board present in person shall have the right to vote. Each member shall have one vote. Save as otherwise provided in the Statute, the Governing Board shall act by a simple majority. In the event of a tie, the President shall have the casting vote. In order for the Governing Board to vote, there shall be a quorum of two-thirds of the members.

5.3 Weighted voting shall apply in accordance with the provisions of Article 23 of this Statute. If a Governor is unable to be present, he may nominate an Alternate to cast his weighted vote.

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

5.5 The Governing Board shall meet at least ten times a year.

## **Article 6 - The Executive Board**

**6.1 The Executive Board shall comprise the President, the Vice-President, and 4 other members.**

**The members of the Executive Board shall be selected among persons of recognised standing and professional experience in monetary or banking matters.**

**No member shall, without approval of the Governing Board, receive a salary or other form of compensation from any source other than the Fund or occupy any other office or employment, whether remunerated or not, except as a nominee of the Fund.**

**6.2 The President shall be appointed for a period of 8 years by common accord of the Member States, after the Governing Board has given its opinion, and after consultation with the European Parliament.**

**6.3 The Vice-President and the other members of the Executive Board shall be appointed, for a period of 8 years, by common accord of the Member States after consultation with the Governing Board.**

**6.4 [With the exception of the President,] no member of the Executive Board shall hold office beyond the age of 65.**

**6.5 All members of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. The Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements will be specified in the Rules of Procedure.**

**6.6 The Executive Board shall administer the Fund.**

## **Commentary**

*This Article provides for the membership and main procedural rules of the Executive Board.*

*Articles 6.2 and 6.3 provide for the appointment of all members of the Executive Board by common accord of the Member States. The President (but not other Executive Board members) would be appointed only after consultation with the European Parliament.*

*The passage in square brackets in Article 6.4 would make provision for the President alone to hold office beyond the age of 65.*

**Article 7 - Responsibilities of the decision-making bodies**

**7.1 The Governing Board shall take the decisions necessary to ensure the performance of the tasks entrusted to the Fund under this Treaty and this Statute. The Governing Board shall formulate the policy of the Fund in respect of the [hard ECU] including, as appropriate, decisions relating to intermediate objectives, key interest rates and overall liquidity, and shall establish the necessary guidelines for their implementation.**

**7.2 The Executive Board shall implement the policy of the Fund in accordance with the decisions and guidelines established by the Governing Board.**

**7.3 The Executive Board shall, to the extent possible and appropriate, seek the assistance of the national central banks in the execution of the operations of the Fund.**

**7.4 The Executive Board shall have responsibility for the preparation of the meetings of the Governing Board.**

**7.5 The Governing Board shall adopt Rules of Procedure which determine the internal organisation of the Fund and its decision-making bodies.**

**Commentary**

*This Article subordinates the Executive Board to the authority of the Governing Board.*

*Article 7.3 requires the Executive Board of the Fund to seek (as appropriate) the assistance of national central banks, thus reflecting the existence of national monetary policies side by side with the common currency.*

**Article 8 - The President**

**8.1 The President or, in his absence, the Vice-President shall chair the Governing Board and the Executive Board of the Fund.**

**8.2 The President or, if he is prevented, the Vice-President shall represent the Fund in judicial and other matters.**

Commentary

*Article 8.2 draws on Article 13.6 of the Protocol on the Statute of the EIB.*

**Article 9 - National central banks**

**9.1 At the request of the Executive Board, the national central banks shall assist the Fund in the execution of its tasks.**

**9.2 National central banks shall continue to carry out their responsibilities under national law provided that these do not interfere with their obligations under this Statute. In particular, the Member States shall ensure that the statutes of national central banks are compatible with this Statute and this Treaty.**

Commentary

*This Article recognises the continuing responsibilities of national central banks for national monetary policies.*

**CHAPTER III - MONETARY FUNCTIONS  
AND OPERATIONS OF THE SYSTEM**

**Article 10 - Accounts with and held by the  
EMF**

✓ In order to carry out its tasks, the Fund may open accounts for, and hold accounts with, national central banks, other public entities, credit institutions and other market participants.

*Commentary*

*This Article specifies the capacity to open accounts not only for but with national central banks and other market participants, which would be essential for the Fund to issue and manage the hard ECU.*

**Article 11 - Open market and credit operations**

*Commentary*

11.1 In order, and to the extent necessary, to carry out its tasks, the Fund may:

*This Article provides for the Fund to carry out open market and credit operations. It might need to be reviewed in the light of decisions in relation to Article VI.4*

✓ - operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement, and at its discretion, claims and marketable instruments such as Treasury bills and other securities, denominated in [hard ECUs] and other Community currencies.

*Article 11.2 is intended to provide for the possibility that the Fund might carry out its operations through the agency of national central banks.*

- conduct credit operations with credit institutions and other market participants.

*Article 11.3 has been added to govern market operations in hard ECUs by national monetary authorities on their own account.*

✓ 11.2 The Fund shall establish general principles for open market and credit operations in [hard ECUs] carried out by itself or the national central banks on its behalf including the announcement of conditions under which it stands ready to enter into such transactions.

✓ 11.3 Open market and credit operations in [hard ECUs] carried out by the national monetary authorities on their own behalf shall be in accordance with principles agreed with the Fund.

### Article 12 - Notes and coin

The Fund shall have the exclusive right to authorise the issue of notes and coins denominated in [hard ECU] which shall have the status of legal tender in any particular Member State if the authorities in that Member State so decide.

### Commentary

This Article gives the Fund the exclusive right to authorise the issue of hard ECU notes and coin. Actual issue would be made by national central banks or monetary authorities.

### Article 13 - Other instruments

The Governing Board may decide [unanimously] upon such other methods or instruments for the implementation of monetary policy in relation to the [hard ECU], subject to the requirement of Article II.3 of the Treaty, as it sees fit.

### Commentary

This Article provides the means by which the Fund can adopt new methods and instruments of monetary policy.

### Article 14 - Operations with public entities

14.1 The Fund shall not grant overdrafts or any other type of credit facilities to Community institutions, governments or other public entities of Member States or purchase debt instruments directly from them.

14.2 The provisions of this Article shall not apply to publicly-owned credit institutions.

### Commentary

Article 14.1 prevents Community institutions and Member States from using the Fund's power to issue hard ECUs as a source of monetary financing.

The purpose of Article 14.2 is to enable the Fund to have dealings with publicly-owned commercial banks.

### Article 15 - Clearing and payment systems

The Fund may provide facilities and establish provisions to ensure efficient and sound clearing and payment systems across the Community and with third countries.

### Commentary

It is clear that some responsibility for hard ECU clearing and payment systems should reside with the Fund. This Article should also enable the Fund to play its part in such systems for Community currencies and between the Community and third countries.



### [Article 16 - Operations with third countries]

✓ [In order, and to the extent necessary, to carry out its tasks, the EMF shall be entitled to conduct all types of banking transactions [denominated in hard ECUs] in relation to third countries and international organisations, including borrowing and lending operations.]

### Commentary

*This Article provides the Fund with external operational powers should the hard ECU come to acquire an international role. It might need to be reviewed in the light of decisions taken in relation to Article VI.4.*

### Article 17 - Collection of statistical information

✓ The Member States and the Community institutions shall cooperate with the Fund in providing, or collecting, on its behalf, such statistical or other information as may be necessary to enable it to perform its functions.

### Article 18 - Other operations

✓ In addition to operations arising from its tasks, the Fund may enter into operations that serve its administrative purposes or for its staff.

### Article 19 - Reporting and financial statement

✓ 19.1 In addition to the reporting obligations laid down in Article IX of this Treaty, the Fund shall report on its activities at regular intervals. These reports are to be published and to be made available to interested parties free of charge.

19.2 A financial statement of the Fund shall be published each week. Copies shall be sent to the Council and to the European Parliament.

### Commentary

*Article IX of the Treaty obliges the Fund to present a monthly report to EcoFin and an annual report to the European Council, the Council and the European Parliament.*

**CHAPTER IV - PRUDENTIAL  
SUPERVISION**

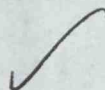
**Article 20 - Supervisory questions**

**20.1 The Fund shall be entitled to offer advice and to be consulted on the interpretation and implementation of Community legislation relating to the prudential supervision of credit and other financial institutions and financial markets insofar as such legislation may affect the management of the [hard ECU], for which the Fund has responsibility, or such other tasks as it may acquire, in accordance with Article III of this Treaty.**

**20.2 The Fund shall be entitled to offer advice to Community bodies and national authorities on measures relating to the [hard ECU] which it considers desirable for the purpose of maintaining the stability of the banking and financial systems.**

**Commentary**

*This Article provides the Fund with a locus in supervisory questions affecting the hard ECU.*



## CHAPTER V - FINANCIAL PROVISIONS

### Article 21 - Financial accounts

21.1 The financial year of the Fund shall begin on the first day of January and end on the last day of December.

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

### Article 22 - Auditing

The accounts of the Fund shall be audited by independent external auditors recommended by the Governing Board and approved by the Council of Ministers. The auditors shall have full power to examine all books and accounts of the Fund and to require full information about its transactions.

### Article 23 - Voting on financial matters

For the purposes of Articles 24 and 25 of this Statute decisions of the Governing Board shall be adopted by qualified majority, that is to say, the votes in the Governing Board shall be weighted according to the key attached to and forming part of this Statute and a decision shall be deemed to be approved if it carries [ ... ] votes out of the total of [ ... ].

### Commentary

*It is intended that the key, which would also be used for the provision of capital and the allocation of profits and losses, should correspond to the relative size of national GNP.*

*Because of the important financial implications, it is envisaged that modification of the key would entail a procedure requiring a Treaty amendment.*

**Article 24 - Capital of the Fund**

Commentary

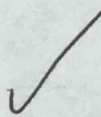
24.1 The capital of the Fund shall, upon its establishment, be [hard ECU] [x] million. The capital may be increased from time to time by such amounts as may be decided by the Governing Board.

*This Article sets out the rules relating to the capital of the Fund.*

24.2 The national central banks shall be the sole subscribers to and holders of the capital of the Fund. The distribution of capital shall be according to the key attached to this Statute.

24.3 The Governing Board shall determine the extent to which and the form in which capital shall be paid-up.

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



**Article 25 - Allocation of income, losses and profits**

25.1 The net profits of the Fund to be distributed shall be determined by the Governing Board on the basis of the balance sheet and the profit and loss account of the Fund. The Governing Board shall establish the accounting rules and procedures in this respect.

25.2 The Fund shall establish a General Reserve.

25.3 Following transfers to the General Reserve, the remaining net profits of the Fund shall be distributed to its shareholders according to the key which is attached to and forms part of this Statute.

25.4 In the event of a loss incurred by the Fund, the shortfall shall be offset, in order of priority:

- against the General Reserve;

- and, if necessary, following a decision by the Governing Board, by means of transfers of assets to the Fund by the national central banks according to the key which is attached to and forms part of this Statute.

Commentary

*Profits and losses would be distributed or borne by national central banks in proportion to their capital subscriptions.*

## CHAPTER VI - GENERAL PROVISIONS

### Article 26 - Staff

26.1 The Governing Board, on a proposal from the Executive Board, shall lay down the Staff Regulations of officials and the conditions of employment of other servants of the Fund.

26.2 The Court of Justice shall have jurisdiction in any dispute between the Fund and its servants within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment.

### Article 27 - Professional secrecy

Members of the Governing Board and of the Executive Board, officials and other servants of the Fund shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

### Commentary

*This Article is consistent with Article 214 of the Treaty.*

### Article 28 - Signatories

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