Table of Contents

Acknowledgments vii
List of Abbreviations ix
Detailed Table of Contents xv

PART ONE: PRELIMINARIES
CHAPTER 1 — INTRODUCTION 1
CHAPTER 2 — EMU PROVISIONS: A GENERAL INTRODUCTION 37

PART TWO: INTERNAL ASPECTS
CHAPTER 3 — OBJECTIVES AND TASKS, TO BE PURSUED IN INDEPENDENCE 151
CHAPTER 4 — MONETARY POLICY, PAYMENT SYSTEMS OVERSIGHT AND THEIR INSTRUMENTS 223
CHAPTER 5 — BANKING SUPERVISION AND ITS INSTRUMENTS 319

PART THREE: EXTERNAL ASPECTS
CHAPTER 6 — EXTERNAL POLICIES OF EMU 367
CHAPTER 7 — EXCHANGE RATE ARRANGEMENT WITHIN THE COMMUNITY 455

PART FOUR: FINDINGS
CHAPTER 8 — CONCLUSIONS 485

Bibliography 521
Table and Index of Cases in chronological order 539
Table of Cases in alphabetical order 543
Index 545
Summary 571
Samenvatting 581
Resumé 593
Zusammenfassung 605
Resumen 617
Sintesi 629
### Detailed Table of Contents

**Acknowledgments**  
**List of Abbreviations**  
**Table of Contents**  

**PART ONE: PRELIMINARIES**  

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CHAPTER 1 - INTRODUCTION</strong></td>
<td></td>
</tr>
<tr>
<td>I. Introduction to this book</td>
<td>3</td>
</tr>
<tr>
<td>1. What this book is about</td>
<td>3</td>
</tr>
<tr>
<td>a) Subject matter</td>
<td>3</td>
</tr>
<tr>
<td>b) Method of analysis</td>
<td>5</td>
</tr>
<tr>
<td>2. Structure of this book</td>
<td>6</td>
</tr>
<tr>
<td>a) History and background</td>
<td>6</td>
</tr>
<tr>
<td>b) Objectives, tasks and instruments</td>
<td>7</td>
</tr>
<tr>
<td>c) External aspects</td>
<td>7</td>
</tr>
<tr>
<td>d) Conclusions</td>
<td>7</td>
</tr>
<tr>
<td>3. Limitations of the analysis</td>
<td>8</td>
</tr>
<tr>
<td>4. Terms used in this book</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>II. A brief history of the concept of economic and monetary union</td>
<td></td>
</tr>
<tr>
<td>1. Outline</td>
<td>10</td>
</tr>
<tr>
<td>2. «Bretton Woods» as the monetary order for the Community</td>
<td>10</td>
</tr>
<tr>
<td>3. Emergence of the idea of economic and monetary union</td>
<td>12</td>
</tr>
<tr>
<td>4. The Werner Report</td>
<td>15</td>
</tr>
<tr>
<td>a) Realization of dangers to the common market</td>
<td>15</td>
</tr>
<tr>
<td>b) Decision to move to economic and monetary union</td>
<td>15</td>
</tr>
<tr>
<td>c) Economic policy coordination</td>
<td>16</td>
</tr>
<tr>
<td>d) Monetary policy coordination</td>
<td>17</td>
</tr>
<tr>
<td>5. «Snake» and EMCF</td>
<td>17</td>
</tr>
<tr>
<td>a) The «snake»</td>
<td>19</td>
</tr>
<tr>
<td>b) The European Monetary Cooperation Fund</td>
<td></td>
</tr>
</tbody>
</table>
Detailed Table of Contents

6. The European Monetary System 20
   a) Outline 20
   b) Elements 20
      General 20
      The Exchange Rate Mechanism 21
      The ECU 21
      Credit mechanisms and coordination procedures 24
   c) Legal instruments 24
   d) Further development of the EMS 26
7. The Single European Act 27
8. Delors Committee Report 28
9. Parallel negotiations on EMU and «EPU» 29
10. Documents and discussions at the IGCs 30
11. Maastricht Treaty on European Union 31
    a) Structure 31
    b) Ratification 33

Scheme A: Provisions on Economic and Monetary Union in the EC Treaty 35

CHAPTER 2 – EMU PROVISIONS: A GENERAL INTRODUCTION 37

I. Introduction 37

II. Economic and monetary union 38
   1. The Delors Committee Report 38
      a) The concept of «EMU» as understood by the Delors Committee Report 38
      b) The three stages of EMU in the Delors Committee Report 38
   2. EMU as outlined in the Maastricht Treaty 40
      a) The three elements of EMU as agreed in Maastricht 40
      b) The three stages of EMU as agreed in Maastricht 41
      c) Stage 1 41
         General 41
         Completion of the internal market 42
         Economic union 42
         Monetary union 43
      d) Stage 2 45
         General 45
         Completion of the internal market 45
         Economic union 46
         Monetary union 47
            — The European Monetary Institute 47
            — Other aspects of monetary union in Stage 2 51
      e) Stage 3 52
         General 52
         The Economic and Financial Committee 53
      f) Legal assessment of the three elements of EMU 54
### Detailed Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>54</td>
</tr>
<tr>
<td>The internal market component</td>
<td>54</td>
</tr>
<tr>
<td>The economic union component</td>
<td>55</td>
</tr>
<tr>
<td>The monetary union component</td>
<td>56</td>
</tr>
<tr>
<td>Constitutional balance</td>
<td>57</td>
</tr>
<tr>
<td>III. Freedom to effect payments and capital transfers</td>
<td>57</td>
</tr>
<tr>
<td>1. Completion of the internal market</td>
<td>57</td>
</tr>
<tr>
<td>2. Previous provisions</td>
<td>58</td>
</tr>
<tr>
<td>3. Treaty provisions with direct effect</td>
<td>59</td>
</tr>
<tr>
<td>4. Exceptions to and qualifications of the complete liberalization</td>
<td>60</td>
</tr>
<tr>
<td>a) General</td>
<td>60</td>
</tr>
<tr>
<td>b) Exceptions to the free movement of capital with third countries</td>
<td>61</td>
</tr>
<tr>
<td>Pre-existing exceptions on capital flows with third countries</td>
<td>61</td>
</tr>
<tr>
<td>Community measures on capital flows with third countries</td>
<td>61</td>
</tr>
<tr>
<td>Temporary measures restricting capital flows with third countries</td>
<td>62</td>
</tr>
<tr>
<td>c) Exceptions to the freedom of capital movements and payments in</td>
<td>62</td>
</tr>
<tr>
<td>respect of third countries: embargoes</td>
<td>63</td>
</tr>
<tr>
<td>d) Qualification of the freedom of financial transfers</td>
<td>64</td>
</tr>
<tr>
<td>IV. Economic union</td>
<td>64</td>
</tr>
<tr>
<td>1. Introduction</td>
<td>64</td>
</tr>
<tr>
<td>a) The need for improved provisions</td>
<td>64</td>
</tr>
<tr>
<td>b) New wording after «Maastricht»</td>
<td>65</td>
</tr>
<tr>
<td>2. Fundamental provisions</td>
<td>66</td>
</tr>
<tr>
<td>a) Definition of economic union</td>
<td>66</td>
</tr>
<tr>
<td>b) Requirement to contribute to Community objectives</td>
<td>67</td>
</tr>
<tr>
<td>c) Obligation of coordination of economic policies</td>
<td>68</td>
</tr>
<tr>
<td>3. Broad economic guidelines and multilateral surveillance</td>
<td>69</td>
</tr>
<tr>
<td>a) Monitoring of economic policies within a common framework</td>
<td>69</td>
</tr>
<tr>
<td>b) Broad economic guidelines</td>
<td>69</td>
</tr>
<tr>
<td>General aspects</td>
<td>70</td>
</tr>
<tr>
<td>Legal status</td>
<td>71</td>
</tr>
<tr>
<td>Quantitative policy prescriptions?</td>
<td>71</td>
</tr>
<tr>
<td>Scope</td>
<td>71</td>
</tr>
<tr>
<td>Procedure for adoption</td>
<td>72</td>
</tr>
<tr>
<td>c) Multilateral surveillance</td>
<td>72</td>
</tr>
<tr>
<td>Commission and Council monitoring</td>
<td>73</td>
</tr>
<tr>
<td>Recommendations</td>
<td>74</td>
</tr>
<tr>
<td>Convergence programmes</td>
<td>74</td>
</tr>
<tr>
<td>Procedural matters</td>
<td>74</td>
</tr>
<tr>
<td>4. Prohibitions</td>
<td>74</td>
</tr>
<tr>
<td>a) Introduction</td>
<td>74</td>
</tr>
<tr>
<td>b) No monetary financing of Governments</td>
<td>75</td>
</tr>
<tr>
<td>c) No privileged access for Governments</td>
<td>77</td>
</tr>
<tr>
<td>d) No ‘bail-out’ of Governments</td>
<td>78</td>
</tr>
<tr>
<td>5. Excessive deficit procedure</td>
<td>78</td>
</tr>
</tbody>
</table>
Detailed Table of Contents

a) The norms
   Introduction 78
   Objective norms and evaluative judgment 78
   Reference criteria and ‘gross errors’ 78
   Elements of assessment 79
   Excessive Deficit Protocol 79

b) Monitoring, assessment and sanctions
   From Commission report to Council recommendations 80
   Further steps in Stage 3: sanctions 81
   Voting 82

6. Community policy measures
   a) Binding Community measures 83
   b) Financial assistance 83

7. A «stability pact»?
   a) Introduction 84
   b) Elements accepted 85
   c) Legal issues 85
   d) Prospects
      General contours of the «stability pact» 86
      Stability programmes and surveillance of national budgets 86
      Speeding up and narrowing down the excessive deficit procedure 88
      Legal assessment of the proposals 89

V. Monetary union 90
1. Introduction 90
   a) Delors Committee Report 90
   b) Maastricht Treaty on European Union 91
   c) Further discussion of monetary union 92

2. The European System of Central Banks 92
   a) Structure of the System
      Status 92
      Governance 94
   b) Decision-making bodies
      Governing Council 95
      Executive Board 96
      General Council 97
      The President 99
   c) Voting
      General 99
      Voting in the Governing Council 99
      Voting in the Executive Board 101
      Voting in the General Council 102
   d) Regulatory power 102
   e) Judicial review 106
   f) Professional secrecy 110
   g) Division of responsibilities between ECB and NCBs 111
   h) Financial provisions 112
### Detailed Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General</strong></td>
<td>112</td>
</tr>
<tr>
<td>Key for each NCB</td>
<td>112</td>
</tr>
<tr>
<td>Allocation of monetary income</td>
<td>113</td>
</tr>
<tr>
<td>Transfer of foreign reserve assets</td>
<td>114</td>
</tr>
<tr>
<td>Annual accounts</td>
<td>114</td>
</tr>
<tr>
<td>i) Simplified amendment procedure</td>
<td>115</td>
</tr>
<tr>
<td>j) Secondary legislation</td>
<td>115</td>
</tr>
<tr>
<td>k) Seat</td>
<td>115</td>
</tr>
<tr>
<td>VI. Transition to Stage 3</td>
<td>116</td>
</tr>
<tr>
<td>1. General</td>
<td>116</td>
</tr>
<tr>
<td>2. Common elements</td>
<td>117</td>
</tr>
<tr>
<td>3. Decision-making procedure on early transition</td>
<td>117</td>
</tr>
<tr>
<td>a) Procedure</td>
<td>118</td>
</tr>
<tr>
<td>b) Timing of the transition to Stage 3</td>
<td>119</td>
</tr>
<tr>
<td>4. Decision-making procedure for transition on 1 January 1999</td>
<td>119</td>
</tr>
<tr>
<td>a) Transition on 1 January 1999 planned</td>
<td>119</td>
</tr>
<tr>
<td>b) Procedure</td>
<td>120</td>
</tr>
<tr>
<td>c) Semi-automatic nature of the transition</td>
<td>120</td>
</tr>
<tr>
<td>d) Qualifications of an implied decision to postpone currency union</td>
<td>121</td>
</tr>
<tr>
<td>5. Convergence criteria</td>
<td>121</td>
</tr>
<tr>
<td>a) General</td>
<td>121</td>
</tr>
<tr>
<td>b) Legislative compatibility</td>
<td>123</td>
</tr>
<tr>
<td>c) Price stability</td>
<td>124</td>
</tr>
<tr>
<td>d) No excessive deficit</td>
<td>124</td>
</tr>
<tr>
<td>e) Participation in the ERM</td>
<td>124</td>
</tr>
<tr>
<td>Background to this criterion</td>
<td>125</td>
</tr>
<tr>
<td>Meaning of 'observance of normal fluctuation margins'</td>
<td>126</td>
</tr>
<tr>
<td>f) Interest rate convergence</td>
<td>127</td>
</tr>
<tr>
<td>g) Amending the convergence criteria</td>
<td>128</td>
</tr>
<tr>
<td>6. Further decisions concerning the start of Stage 3</td>
<td>128</td>
</tr>
<tr>
<td>a) General</td>
<td>128</td>
</tr>
<tr>
<td>b) Establishment of the ESCB and the ECB</td>
<td>129</td>
</tr>
<tr>
<td>c) Measures for the rapid introduction of the single currency</td>
<td>129</td>
</tr>
<tr>
<td>Fixing of exchange rates</td>
<td>129</td>
</tr>
<tr>
<td>Procedure</td>
<td>129</td>
</tr>
<tr>
<td>Other measures for the rapid introduction of the euro</td>
<td>129</td>
</tr>
<tr>
<td>Continuity of contracts</td>
<td>130</td>
</tr>
<tr>
<td>Proposed regulations to be adopted</td>
<td>131</td>
</tr>
<tr>
<td>Scenario for the change-over to the single currency</td>
<td>132</td>
</tr>
<tr>
<td>7. No veto on the transition to the single currency</td>
<td>133</td>
</tr>
<tr>
<td>VII. Position of derogation States, Denmark and the United Kingdom</td>
<td>134</td>
</tr>
<tr>
<td>1. States with a derogation</td>
<td>134</td>
</tr>
<tr>
<td>a) General</td>
<td>134</td>
</tr>
<tr>
<td>b) Inapplicability of EMU provisions</td>
<td>135</td>
</tr>
<tr>
<td>c) Exclusion from voting</td>
<td>135</td>
</tr>
</tbody>
</table>
Detailed Table of Contents

d) Restricted participation in the ESCB 136
e) Obligation in respect of exchange rates 136
f) Position of the derogation States in EMU policy decisions 136
g) Decisions on admittance to the currency union 136

2. States with an opt-out 137
a) General 137
b) Denmark 137
c) United Kingdom 138

Scheme B: Applicability of the EMU provisions of the EC Treaty 140
Scheme C: Structure of the European System of Central Banks 145
Scheme D: Procedures for entering Stage 3 of EMU 146
Scheme E: Madrid scenario for the introduction of the euro 147

PART TWO: INTERNAL ASPECTS 149

CHAPTER 3 – OBJECTIVES AND TASKS, TO BE PURSUED IN INDEPENDENCE 151

I. Introduction 151

II. Independence 152

1. Theoretical background 152
a) Economic and legal writing 152
b) Independence within the governmental function 154
c) Elements of independence 155
   - Institutional independence 155
   - Personal independence 156
   - Functional independence 157
   - Financial independence 157
   - Further elements of independence 157

2. Political necessity 159
3. Principle of independence 161
4. Elements of independence of the ECB 162
   a) Institutional independence 162
   b) Personal independence 162
      - General 162
      - Executive Board 162
      - NCB Governors 165
      - Other members of the governing bodies of the NCBs 166
      - Personnel 167
   c) Functional independence 167
d) Financial independence 167
   - Own finances 167
   - Scrutiny by the Court of Auditors 168
   - Auditing and reporting 168
e) Amendment of the ECB charter 168
Detailed Table of Contents

5. Dialogue and democratic accountability
   a) General
   b) Inter-institutional cooperation and reporting
   c) Mutual participation in meetings
      General
      Participation of the Ecofin Council President and a member of the Commission in ECB meetings
      Participation of the ECB President in Ecofin Council meetings
   d) Appearance before the European Parliament
   e) Reporting
5. Conclusions concerning independence and accountability

   III. Objectives and basic tasks
   1. Introduction
   2. Place and structure of Article 105 and corresponding provisions
      a) Place of Article 105 in the Treaty
      b) Structure of Article 105
      c) Corresponding provisions in the ESCB Statute
   3. Legislative history
      a) Provisions in the ESCB Statute on objectives and tasks
      b) Article 2: Objectives
      c) Article 3: Tasks
      d) Article 4: Advisory functions
   4. Objectives of the ESCB
      a) Price stability as the primary objective
         General
         Maintenance of price stability
         Internal price stability as the objective
         Acceptable level of inflation
         Checks on the ECB’s auto-interpretation
         The pervasive influence of the overriding objective
      b) Support of general economic policies
         General
         Absence of a single Community economic policy
         Economic policies themselves bound by Community objectives
         Community economic policy measures
         Liberty of criticism of economic policies
      c) Reference to the Community’s objectives
      d) Principle of an open market economy
         General
         Implications for ECB behaviour
      e) Reference to principles underlying Economic and Monetary Union
   5. Basic tasks
      a) Monetary policy
         General
         Phrasing of the task-setting provisions
         Community competence
xxxii

Detailed Table of Contents

Concept of ‘monetary policy’ 196
Free hand in formulating and implementing monetary policy 197
b) Conduct of foreign exchange operations 197
c) Official reserves 198
General 198
Full use of the official reserves 198
Distribution of foreign reserves in the ESCB 199
Ownership of official reserves 199
Scope of the ESCB’s competences for official reserves 200
Governments’ working balances 201
Concluding remark in respect of official reserves 202
d) Oversight of payment systems 202

IV. Other tasks 202
1. General 202
2. Issue of bank notes and coins 203
   a) General 203
   b) Legislative history of the provision 204
   c) Authorization of the issue of bank notes 206
      ECB authorization required 206
      Meaning of ‘issue’ 206
d) Issue of bank notes 207
e) Legal tender status 207
   General 207
   Euro bank notes 208
   Bank notes denominated in national currencies 208
f) Authorization of the issue of coins 209
   Prior ECB authorization required 209
   Further Community competences 209
3. Consultative functions 210
   a) Rationale 210
   b) Threefold consultative function 210
c) Consultation on draft legislation in general 211
   Consultation on draft Community acts 211
   Consultation on draft national legislation 213
   Advice 213
4. Contribution to prudential supervision 213
5. ECB’s own supervisory task 214
6. Statistical task 214
   a) General 214
   b) Place and structure of the provision 214
c) Legislative history of the provision 215
d) Link with other ESCB tasks 215
e) Emphasis on NCBs in the implementation of the statistical task 215
f) Position in respect of the Commission’s statistical task 215
   The statistical functions of Eurostat 215
   Relevant statistical committees 216
Detailed Table of Contents

Proposed regulation on Community action in the field of statistics
Coordination with Eurostat

216

216

g) Cooperation with other statistical authorities

217

Cooperation with the Commission

217

Cooperation with the authorities of the Member States

217

Cooperation with third countries and international organizations

217

— Cooperation with third countries

217

— Cooperation with international organizations

218

h) Secondary legislation for direct statistical data collection

218

Subject matter of secondary legislation

218

Economic operators subject to reporting requirements

218

— Credit and other financial institutions

218

— Other economic agents

218

— Limits to the imposition of statistical reporting requirements

219

Statistical secrecy

219

Enforcement

220

i) Harmonization of rules and practices

221

CHAPTER 4 – MONETARY POLICY, PAYMENT SYSTEMS OVERSIGHT AND THEIR INSTRUMENTS

223

I. Introduction

223

1. General

223

2. Central bank competences in the area of monetary policy

223

a) A brief look at recent history

224

b) Regulatory instruments of central banks

224

c) Open market operations and discount and lending practices

226

d) Difference between regulatory and market instruments

227

e) Sophisticated instruments

228

f) Declared central bank targets

229

g) Current mixture of instruments

229

3. Central bank instruments in respect of payment systems

229

a) Provision of clearing facilities

230

b) Regulatory instruments

231

c) No clear-cut instruments

231

II. Elements common to the ECB’s monetary and payment instruments

231

1. Principle of attributed competences

231

2. Harmonized operational competences

232

3. Modern catalogue of competences

233

4. Simplified amendment procedure

233

5. Structure of Chapter IV

233

6. Meaning of the term ‘credit institution’

234

a) Frequency of the term in the ESCB Statute

234

b) Question of interpretation

234

c) Views of the Committee of Governors

234
Reference to the First Banking Directive 234
Community banking legislation 234
Limited reference to the First Banking Directive 235
d) Arguments against a reference to secondary legislation 236
   General 236
   Different objectives of the legislation 237
   Category difficult to delimitate 237
   Possible amendment of the definition by Community institutions 238
e) Arguments in favour of a reference to secondary legislation 238
f) Author's preferred interpretation 239
g) Interpretation by the EMI: necessity of amendment 240
7. Legislative history 241
   a) Amendments to the Draft Statute 241
   b) Parallel provisions in the Treaty 242
8. Relationship between specific competences and grant of legal personality 242
9. «Remote access» 242
   a) Introduction 242
   b) The concept of «remote access» 243
   c) «Remote access» in Stage 2 244
      Internal market principles 244
      Payment services 245
      Trade in securities 247
      Rights for central banks to restrict counterparties? 248
      Conclusion 251
d) «Remote access» in Stage 3 251
      Internal market legislation applies 251
      Application of internal market rules to the ESCB 251
      Judicial precedent for restrictions adopted by a Community body? 253
      Organization of ESCB operations in conformity with the internal market 255
      Incidence of the Investment Services Directive 256
      Restriction of operations to banks within the same Member State? 256
      Restriction of operations to banks within the monetary union? 257
      Restriction of operations to banks within the Community? 258
      «Remote access» to NCBs of States with a derogation and the UK? 260

III. Article 17: Accounts with the ECB and NCBs 260
1. Accounts for counterparties 260
   a) Opening of accounts 260
   b) Counterparties 262
2. Acceptance of collateral 263

IV. Article 18: Open market and credit operations 264
1. Main market instrument for monetary policy 264
   a) Indirect regulation of money markets 264
   b) Context of open market and credit operations 264
2. Transactions which the ECB and NCBs are competent to effect 265
   a) Transactions in claims and marketable instruments 264
### Detailed Table of Contents

b) Issuance of central bank paper 265  
c) Outright and repo transactions 267  
d) Lending or borrowing 267  
e) Currency denomination 267  
f) Transactions in precious metals 268  
g) Credit operations 268  
h) Provision of liquidity 268  
i) Lender-of-last-resort function 269  
j) Non-application in States outside the currency union 271  

3. Requirement of collateral 272  
4. General principles 274  

V. Article 19: Minimum reserves 275  
1. Regulation of money supply through obligatory reserves 275  
   a) Obligatory nature of the monetary policy instrument 275  
   b) Market conformity and remuneration of reserves 275  
   c) Combined regulatory intervention by Ecofin Council and ECB 277  
2. Regulatory power of the ECB 277  
   a) Calculation and determination of minimum reserves 277  
   b) Pecuniary and other sanctions in case of non-compliance 278  
   c) Subjects of the reserve requirements 278  
      Credit institutions 278  
      Third-country branches 279  
      Position of banks in States with a derogation and the United Kingdom 280  
3. Framework for minimum reserves in secondary legislation 281  
   a) Subject matter of Ecofin Council Regulation 281  
   b) Procedure and application 283  

VI. Article 20: Other instruments of monetary control 283  
1. Fall-back provision 283  
   a) Applicability 283  
   b) Monetary control of a highly regulatory nature 284  
   c) Other methods not yet provided for 285  
2. Implementation 285  
   a) Voting in the ECB Governing Council 285  
   b) Observance of open market principles 286  
   c) Secondary legislation 286  
   d) Application in the United Kingdom and derogation States 287  

VII. Article 21: Operations with public entities 288  
1. Structure of the provision 288  
   a) Relationship with public authorities 288  
   b) Prohibition - Competence - Principle 288  
2. Prohibition of monetary financing 289  
   a) Parallel provision of Article 104 289  
   b) Legislative history of the prohibition 289  
   c) Rationale of the prohibition 290  

### Detailed Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>d) Effect of the prohibition</td>
<td>291</td>
</tr>
<tr>
<td>1. Temporal effect</td>
<td>291</td>
</tr>
<tr>
<td>2. Monitoring of compliance</td>
<td>291</td>
</tr>
<tr>
<td>3. Nullity of operations contravening the prohibition?</td>
<td>292</td>
</tr>
<tr>
<td>e) Secondary legislation</td>
<td>293</td>
</tr>
<tr>
<td>1. Definitions</td>
<td>293</td>
</tr>
<tr>
<td>2. Exemptions</td>
<td>293</td>
</tr>
<tr>
<td>3. Special cases</td>
<td>295</td>
</tr>
<tr>
<td>3. Acting as fiscal agent</td>
<td>296</td>
</tr>
<tr>
<td>a) Traditional services</td>
<td>296</td>
</tr>
<tr>
<td>b) Observance of Community law</td>
<td>296</td>
</tr>
<tr>
<td>c) Additional proposed paragraphs not adopted</td>
<td>296</td>
</tr>
<tr>
<td>VIII. Article 22: Clearing and payment systems</td>
<td>297</td>
</tr>
<tr>
<td>1. Introduction</td>
<td>297</td>
</tr>
<tr>
<td>2. Place and structure of the provision</td>
<td>297</td>
</tr>
<tr>
<td>a) Powers in respect of payment systems</td>
<td>297</td>
</tr>
<tr>
<td>b) Regulatory powers and private-law competences</td>
<td>298</td>
</tr>
<tr>
<td>3. Reasons behind integration of payment systems</td>
<td>299</td>
</tr>
<tr>
<td>4. Minimum Common Features for domestic payment systems</td>
<td>299</td>
</tr>
<tr>
<td>5. Competences in respect of clearing and payment systems</td>
<td>301</td>
</tr>
<tr>
<td>a) Provision of facilities</td>
<td>301</td>
</tr>
<tr>
<td>1. General</td>
<td>301</td>
</tr>
<tr>
<td>TARGET System</td>
<td>301</td>
</tr>
<tr>
<td>Counterparties in payment systems</td>
<td>301</td>
</tr>
<tr>
<td>Payment systems with third countries</td>
<td>302</td>
</tr>
<tr>
<td>Applicability of the provision</td>
<td>302</td>
</tr>
<tr>
<td>b) Regulatory power of the ECB</td>
<td>304</td>
</tr>
<tr>
<td>No involvement of political institutions</td>
<td>304</td>
</tr>
<tr>
<td>Scope of the regulatory power</td>
<td>304</td>
</tr>
<tr>
<td>Difference with other powers of regulation</td>
<td>305</td>
</tr>
<tr>
<td>Regulation by NCBs</td>
<td>305</td>
</tr>
<tr>
<td>Enforcement measures</td>
<td>306</td>
</tr>
<tr>
<td>International context of the regulatory power</td>
<td>306</td>
</tr>
<tr>
<td>Applicability of the provision</td>
<td>306</td>
</tr>
<tr>
<td>IX. Article 23: External operations</td>
<td>307</td>
</tr>
<tr>
<td>1. Place of the provision in the external competences</td>
<td>307</td>
</tr>
<tr>
<td>a) Relationship with other provisions of the Statute</td>
<td>307</td>
</tr>
<tr>
<td>1. Relevance of Articles 17 and 18</td>
<td>307</td>
</tr>
<tr>
<td>2. Relevance of Article 6</td>
<td>308</td>
</tr>
<tr>
<td>3. Relevance of Article 3.1</td>
<td>308</td>
</tr>
<tr>
<td>b) Relationship with Treaty provisions</td>
<td>308</td>
</tr>
<tr>
<td>1. Relevance of Article 109</td>
<td>308</td>
</tr>
<tr>
<td>2. Relevance of Article 109 M</td>
<td>309</td>
</tr>
<tr>
<td>3. Relevance of Article 105</td>
<td>309</td>
</tr>
<tr>
<td>2. Legislative history</td>
<td>309</td>
</tr>
</tbody>
</table>
Detailed Table of Contents

3. Scope of the external operations
   a) Relations with third countries and international organizations
      Third-country central banks and financial institutions
      International organizations
   b) Purchase and sale of foreign exchange assets and precious metals
   c) Holding and managing foreign exchange assets and precious metals
   d) Conduct of all types of banking transactions
      Residual competences in respect of external operations
      Relevance of this competence at the internal level?
      Meaning of ‘international organizations’
      Borrowing and lending
   310

4. Applicability of Article 23
   312

X. Article 24: Other operations
1. Residual clause of competence
   313
2. Absence of a direct connection with the System’s tasks
   314
3. Relevance of legal capacity resulting from legal personality
   314

XI. Evaluation of competences
1. General
   314
2. Exhaustive enumeration of widely-drawn powers
   314
3. Possible requirement of amendment
   315
4. Market conformity
   315
5. Political involvement
   316
6. «Remote access»
   316

CHAPTER 5 – BANKING SUPERVISION AND ITS INSTRUMENTS

1. Prudential supervision
   319
1. Introduction
   319
2. Reasons underlying prudential supervision
   319
3. Brief history of prudential supervision
   a) Origins
   319
   b) From moral suasion to a panoply of instruments
   c) Coordination among supervisors
   d) Standards based on international and European norms
   e) No assumption of liability by supervisory agencies
   320
4. Issues of banking supervision
   a) Necessity of banking supervision
   b) Scope of banking supervision
   322
5. Separation or combination of monetary and prudential functions
   a) On-going debate
   b) Conflict of interests
   c) Efficiency of decision-making and détournement de pouvoir
   d) Impact on independence and standing of the central bank
   e) Preference and practice
   323
II. Prudential supervision in the EC Treaty 327  
1. Internal market legislation 327  
   a) Treaty basis for harmonization 327  
   b) Concept of 'credit institution' 328  
2. Home State control and mutual recognition 328  
   a) Home State competences 328  
   b) Exceptions for liquidity and monetary supervision 329  
3. Supervisory cooperation 330  
   a) Multilateral and bilateral cooperation 330  
      *Cooperation within the Community* 330  
      *International cooperation* 331  
   b) Banking supervisory fora 331  
      *Banking Advisory Committee* 331  
      *Groupe de Contact* 333  
      *Banking Supervisory Subcommittee* 333  

III. Legislative history 334  
1. Introduction 334  
2. Proposal by the Committee of Governors 335  
3. Outcome of the Intergovernmental Conference 336  
   a) Intensive discussions on the ESCB's role in banking supervision 336  
   b) Comparison of adopted with proposed texts 337  

IV. Interpretation of Articles 3.3 and 25.1 338  
1. Scope of Articles 3.3 and 25.1 338  
   a) No role as 'competent authority' 338  
   b) Historical background 339  
   c) Textual arguments for a wider interpretation 339  
   d) Systematic arguments for a wider interpretation 340  
      *Monetary policy-related task* 340  
      *Contribution of market knowledge to supervision* 341  
      *Additional systematic arguments* 342  
   e) Author's interpretation 343  
2. Use of instruments for supervisory task 343  
   a) Advice under Article 25.1 343  
      *General remarks* 343  
      *Addressees of advice* 343  
      *Subject matter of advice* 344  
      *Meaning of 'credit institutions'* 345  
      *Meaning of 'scope and implementation'* 345  
      *Legal form of the advice* 346  
      *Prior consultation* 346  
      *Publication of advice* 346  
   b) Advice under Article 4 347  
   c) Use of other instruments 348  
      *Operations under Chapter IV of the Statute* 348  
      *Statistical functions* 349
### Detailed Table of Contents

#### Participation in supervisory fora
- d) International cooperation 349
- 3. Confidentiality restraints 350
- 4. Banking Supervisory Subcommittee 352
- 5. Applicability of Articles 3.3 and 25.1 352
  - a) States with a derogation 352
  - b) United Kingdom 353
  - c) General Council 353

#### V. Interpretation of Article 25.2
- 1. Parallel provision in the Treaty 355
- 2. Legislative history 355
- 3. Outcome of the Intergovernmental Conference 356
- 4. Procedure for activating the ECB’s own supervisory task 357
  - a) Involvement of the Community’s political institutions 357
  - b) Form of the empowering act 357
- 5. Scope of the ECB’s own supervisory task 358
  - a) No overall supervision of all financial institutions 358
  - b) Operational tasks 358
  - c) Subjects of the ECB’s own supervisory task 358
- 6. Applicability to States with a derogation and the United Kingdom 359
  - a) Applicability in the entire Community 359
  - b) Competences of the General Council 359

#### VI. Assessment of the supervisory functions of the ESCB
- 1. Involvement in prudential supervision 360
- 2. Coordinating role 361
- 3. Limitation of further financial market integration 361
- 4. Differences between «ins» and outs» 361

#### Scheme F: Applicability of supervision-related provisions of the EC Treaty and the ESCB Statute 363

### PART THREE: EXTERNAL ASPECTS 365

#### CHAPTER 6 - EXTERNAL POLICIES OF EMU 367

- 1. Introduction 367
- 1. Focus of this chapter 367
- 2. Background to external competences in the area of EMU 367
- 3. External competences in EMU matters 368
- 4. Case law on external competences 369
  - a) Implied external competences 369
  - b) Exclusive nature of the external competences 370
  - c) Obligation to cooperate in case of concurrent powers 372
  - d) External competences in the area of the internal market 373
Detailed Table of Contents

- External competences in the area of the economic union
- External competences in the area of the monetary union

II. Legislative history of Article 109

III. Place and structure of Article 109

1. Place of the provision
2. Structure of Article 109
   a) Distinction between third currencies and Community currencies
   b) Distinction between exchange rate agreements and floating
   c) Procedural matters
   d) External competences in cases other than exchange rate agreements
3. Relationship with other Treaty provisions
4. Relationship with Protocols and Declarations
   a) General
   b) Position of the Ecofin Council
   c) Status of international agreements and respect for case law
   d) Relations with third countries and overseas territories
      Overview
      Specific territories and third countries
      Monetary cooperation with third countries in general
   e) Incidence on the ECB

IV. Exchange rate arrangements in respect of third currencies

1. Derogation from Article 228
   a) Usual procedure for concluding agreements
   b) Procedure pursuant to Article 109
   c) No ex ante opinion of the Court of Justice
2. Responsibility of the Ecofin Council
3. ‘Formal’ exchange rate agreements
   a) Meaning of the word ‘formal’
   b) Status of a ‘formal’ exchange rate agreement
   c) Distinction between conclusion of agreement and decisions thereunder
4. Procedure for conclusion of exchange rate agreements
   a) Reference to paragraph 3
   b) Parallel competences of the Commission and the ECB
   c) Consultation of the ECB
      - Tied consultation requirement
      Measure of agreement necessary
      Decision-making at the ECB
   d) Role of the Commission
   e) Pre-eminence of price stability
   f) Consultation of the European Parliament
   g) Unanimity in the Council
5. Procedure for adopting, changing and abolishing ‘central rates’
   a) Scope of the procedure
   b) The concept of ‘central rate’


**Detailed Table of Contents**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>c)</td>
<td>Adoption, adjustment, abandonment</td>
<td>395</td>
</tr>
<tr>
<td>d)</td>
<td>Parallel competences of the Commission and the ECB</td>
<td>395</td>
</tr>
<tr>
<td>e)</td>
<td>Consultation of the ECB</td>
<td>396</td>
</tr>
<tr>
<td>f)</td>
<td>Pre-eminence of price stability</td>
<td>396</td>
</tr>
<tr>
<td>g)</td>
<td>Consistency with international monetary stability</td>
<td>396</td>
</tr>
<tr>
<td>h)</td>
<td>Qualified majority in the Council</td>
<td>396</td>
</tr>
<tr>
<td>i)</td>
<td>Information of the European Parliament</td>
<td>397</td>
</tr>
<tr>
<td>V.</td>
<td>Absence of exchange rate arrangements: general orientations</td>
<td>397</td>
</tr>
<tr>
<td>1.</td>
<td>Applicability of Article 109 (2)</td>
<td>397</td>
</tr>
<tr>
<td>2.</td>
<td>Freedom of action for the ECB</td>
<td>397</td>
</tr>
<tr>
<td>3.</td>
<td>Framework formed by Council orientations</td>
<td>398</td>
</tr>
<tr>
<td>a)</td>
<td>Nature of the general orientations</td>
<td>398</td>
</tr>
<tr>
<td>b)</td>
<td>Legal form of the general orientations</td>
<td>400</td>
</tr>
<tr>
<td>c)</td>
<td>Publication of the general orientations</td>
<td>400</td>
</tr>
<tr>
<td>4.</td>
<td>Pre-eminence of price stability</td>
<td>401</td>
</tr>
<tr>
<td>5.</td>
<td>Procedure for adoption of general orientations</td>
<td>401</td>
</tr>
<tr>
<td>a)</td>
<td>Parallel competences of the Commission and the ECB</td>
<td>401</td>
</tr>
<tr>
<td>b)</td>
<td>Qualified majority in the Council</td>
<td>402</td>
</tr>
<tr>
<td>VI.</td>
<td>Procedure for deciding on agreements</td>
<td>402</td>
</tr>
<tr>
<td>1.</td>
<td>Applicability of Article 109 (3)</td>
<td>402</td>
</tr>
<tr>
<td>2.</td>
<td>Agreements concerning monetary and foreign exchange regime matters</td>
<td>403</td>
</tr>
<tr>
<td>3.</td>
<td>Derogation from Article 228</td>
<td>403</td>
</tr>
<tr>
<td>4.</td>
<td>Concept of ‘Community’</td>
<td>403</td>
</tr>
<tr>
<td>5.</td>
<td>Third countries or international organizations</td>
<td>403</td>
</tr>
<tr>
<td>6.</td>
<td>Purpose of the arrangements</td>
<td>404</td>
</tr>
<tr>
<td>a)</td>
<td>A single position for the Community</td>
<td>404</td>
</tr>
<tr>
<td>b)</td>
<td>Consistency of external relations and economic policies</td>
<td>404</td>
</tr>
<tr>
<td>c)</td>
<td>Involvement of States outside monetary union</td>
<td>406</td>
</tr>
<tr>
<td>7.</td>
<td>Procedure for negotiation of arrangements</td>
<td>406</td>
</tr>
<tr>
<td>a)</td>
<td>Recommendation from the Commission</td>
<td>406</td>
</tr>
<tr>
<td>b)</td>
<td>Consultation of the ECB</td>
<td>407</td>
</tr>
<tr>
<td>c)</td>
<td>Decision by qualified majority in the Council</td>
<td>407</td>
</tr>
<tr>
<td>d)</td>
<td>Association of the Commission</td>
<td>407</td>
</tr>
<tr>
<td>8.</td>
<td>Binding nature of the agreements</td>
<td>408</td>
</tr>
<tr>
<td>VII.</td>
<td>External competences in cases other than agreements</td>
<td>409</td>
</tr>
<tr>
<td>1.</td>
<td>Relevant provisions</td>
<td>409</td>
</tr>
<tr>
<td>a)</td>
<td>General</td>
<td>409</td>
</tr>
<tr>
<td>b)</td>
<td>Apparent inconsistencies</td>
<td>409</td>
</tr>
<tr>
<td>2.</td>
<td>Different approaches</td>
<td>410</td>
</tr>
<tr>
<td>a)</td>
<td>General</td>
<td>410</td>
</tr>
<tr>
<td>b)</td>
<td>Article 109 (4) not including the Member States?</td>
<td>410</td>
</tr>
<tr>
<td>&quot;Minimalist&quot; approach</td>
<td>410</td>
<td></td>
</tr>
<tr>
<td>Relevance of additional Treaty provisions</td>
<td>411</td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td>Article 109 (4) as a prevailing provision?</td>
<td>412</td>
</tr>
<tr>
<td>Topic</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Reference to ‘Community’ including ‘ESCB’?</td>
<td>412</td>
<td></td>
</tr>
<tr>
<td>Affirmative answer</td>
<td>412</td>
<td></td>
</tr>
<tr>
<td>No implied impingement of ESCB’s freedom to act</td>
<td>412</td>
<td></td>
</tr>
<tr>
<td>«Tied» decisions</td>
<td>412</td>
<td></td>
</tr>
<tr>
<td>Free decisions</td>
<td>413</td>
<td></td>
</tr>
<tr>
<td>d) Article 109 (4) as a supplementary provision?</td>
<td>414</td>
<td></td>
</tr>
<tr>
<td>e) Author’s preferred interpretation</td>
<td>414</td>
<td></td>
</tr>
<tr>
<td>3. Division of competences</td>
<td>415</td>
<td></td>
</tr>
<tr>
<td>a) Issues of particular relevance to Economic and Monetary Union</td>
<td>415</td>
<td></td>
</tr>
<tr>
<td>b) Fundamental distinction: economic versus monetary union</td>
<td>415</td>
<td></td>
</tr>
<tr>
<td>4. Procedure for decision-making</td>
<td>415</td>
<td></td>
</tr>
<tr>
<td>a) Proposal from the Commission</td>
<td>415</td>
<td></td>
</tr>
<tr>
<td>b) Consultation of the ECB</td>
<td>415</td>
<td></td>
</tr>
<tr>
<td>c) Decision-making in the Council</td>
<td>416</td>
<td></td>
</tr>
<tr>
<td>Representation</td>
<td>416</td>
<td></td>
</tr>
<tr>
<td>Position</td>
<td>416</td>
<td></td>
</tr>
<tr>
<td>d) Position of States with a derogation and the United Kingdom</td>
<td>416</td>
<td></td>
</tr>
<tr>
<td>5. Competence of the Member States</td>
<td>417</td>
<td></td>
</tr>
<tr>
<td>a) Significance of paragraph 5</td>
<td>417</td>
<td></td>
</tr>
<tr>
<td>b) Meaning of Declaration (No. 10)</td>
<td>418</td>
<td></td>
</tr>
<tr>
<td>c) Establishment of competences on a case-by-case basis</td>
<td>418</td>
<td></td>
</tr>
<tr>
<td>d) Representation of a common standpoint in international bodies</td>
<td>418</td>
<td></td>
</tr>
<tr>
<td>e) Discontinuation of separate action by Member States</td>
<td>419</td>
<td></td>
</tr>
<tr>
<td>Externally</td>
<td>419</td>
<td></td>
</tr>
<tr>
<td>Internally</td>
<td>419</td>
<td></td>
</tr>
<tr>
<td>VIII. The ESCB: external representation and international cooperation</td>
<td>420</td>
<td></td>
</tr>
<tr>
<td>1. Introduction</td>
<td>420</td>
<td></td>
</tr>
<tr>
<td>2. Place and structure of the provision</td>
<td>420</td>
<td></td>
</tr>
<tr>
<td>a) Final provision of the chapter on Objectives and tasks</td>
<td>420</td>
<td></td>
</tr>
<tr>
<td>b) Structure of Article 6</td>
<td>420</td>
<td></td>
</tr>
<tr>
<td>c) Relationship with other provisions</td>
<td>421</td>
<td></td>
</tr>
<tr>
<td>Relationship with Article 109 (4) EC Treaty</td>
<td>421</td>
<td></td>
</tr>
<tr>
<td>Relationship with Article 23 ESCB Statute</td>
<td>421</td>
<td></td>
</tr>
<tr>
<td>3. Legislative history of Article 6</td>
<td>421</td>
<td></td>
</tr>
<tr>
<td>4. International representation of the System</td>
<td>421</td>
<td></td>
</tr>
<tr>
<td>a) Decision-making by the Governing Council of the ECB</td>
<td>421</td>
<td></td>
</tr>
<tr>
<td>b) Participation in international institutions</td>
<td>422</td>
<td></td>
</tr>
<tr>
<td>International monetary institutions</td>
<td>422</td>
<td></td>
</tr>
<tr>
<td>Bank for International Settlements</td>
<td>422</td>
<td></td>
</tr>
<tr>
<td>International Monetary Fund</td>
<td>425</td>
<td></td>
</tr>
<tr>
<td>Informal bodies</td>
<td>425</td>
<td></td>
</tr>
<tr>
<td>— G-10 cooperation</td>
<td>425</td>
<td></td>
</tr>
<tr>
<td>— G-7 cooperation</td>
<td>426</td>
<td></td>
</tr>
<tr>
<td>Non-monetary institutions in the ESCB’s fields of competence</td>
<td>426</td>
<td></td>
</tr>
<tr>
<td>5. Applicability of the provision</td>
<td>428</td>
<td></td>
</tr>
<tr>
<td>a) In respect of States with a derogation</td>
<td>428</td>
<td></td>
</tr>
</tbody>
</table>
b) In respect of the United Kingdom

IX. Relations with the International Monetary Fund

1. Introduction

2. Obligations resulting from IMF membership
   a) Objectives of the IMF
   b) Obligations under the IMF’s Articles of Agreement
      In respect of exchange rate arrangements
      In respect of current payments
      In respect of collection of statistical information
   c) Assumption of obligations by the Community
      In respect of exchange rate arrangements
      In respect of current payments
      In respect of collection of statistical information

3. Operations with the IMF
   a) General
   b) Appointment of the ECB as the Community’s agent at the IMF
   c) Provision of freely convertible currency
      A member’s obligation to buy balances of its own currency
      A member’s obligation to provide its own currency
   d) Use of the Fund’s resources
   e) SDR-related functions

4. Other IMF activities
   a) Crisis management
   b) Support mechanisms not for the IMF’s account
   c) Technical assistance

5. Structure and management of the IMF

6. Common position of the Community in the IMF
   a) IMF membership
   b) Common approach pursuant to case law
   c) Forms of joint action in respect of IMF decision-making
   d) Decision-making within the Community

7. Accession of the Community to IMF membership
   a) Introduction
   b) Competence to become a member of an international organization
   c) Questions concerning IMF membership of the Community
      The Community as a ‘country’ in terms of the IMF’s Articles of Agreement
      Reshuffle of quotas
      Discussion of economic policies
      Conclusion
   d) Continued membership of the Member States?
      Possibilities of continued membership
      Overseas territories
      Reserves of the Member States
      Economic policy discussions and systemic crisis management
      Incidence of Article 109 (3)
Equal-treatment argument? 449

e) Internal Community competences for IMF membership 449
f) Necessity of amending the IMF’s Articles of Agreement 450

8. The situation in respect of States with a derogation and the United Kingdom 452

CHAPTER 7– EXCHANGE RATE ARRANGEMENT WITHIN THE COMMUNITY 455

I. Introduction 455

II. Place and history of Article 109 M 457
1. Temporary constraint in respect of exchange rate policy 457
2. Combination of Articles 107 and 102 A EEC Treaty 457
3. Absence of the escape clause of Article 107 (2) EEC Treaty 458
   a) Simple deletion of the escape clause 458
   b) Exchange rate turbulence and claims for countermeasures 459

III. Applicability and application 461
1. Applicability 461
   a) In Stages 1 and 2 of EMU 461
   b) In Stage 3 of EMU 461
      To States with a derogation 461
      To States without a derogation? 462
      To the Community? 462
      To the United Kingdom 463

2. Application 463
   a) Coordination in the General Council of the ECB 463
   b) Ecofin Council, Commission and Ecofin Committee 464

IV. Exchange Rate Mechanism between the euro and other Community currencies 465
1. Requirement that an ERM exists 465
2. Requirement of participation in the ERM 465
3. Competences under the EC Treaty 466
   a) Absence of clear authority 466
   b) Continuation of informal arrangements 466
      Possible explanations for the absence of clear authority 466
      No room for informal arrangements or mixed competences 467
      No room for involvement of the European Council 467
   c) Exclusive competence of the ECB? 469
      General 469
      Article 109 not applicable 469
      ERM competences shared between ECB and «outside» States? 470
      Counterarguments 470
      Importance of ECB independence in framing the ERM 470
d) Application of Article 109 by analogy? 470
      Copying of external division of competences 470
      International law applied? 471
Detailed Table of Contents

Unacceptable method of interpretation 471
Further counterarguments 471
e) Application of Article 235? 472
   General 472
   Conditions for invoking Article 235 472
   Procedure 473
   Counterarguments 473

4. A sui generis solution? 475
   a) Appreciation of the various possibilities 475
   b) Elements to be observed in any solution 476

5. The emerging features of the ERM in Stage 3 478
   a) EMI thinking on the institutional arrangements 478
      General 478
      Continuing the present-day institutional framework 478
      Common features and an element of bilateralism 479
      Decision-making 479
      Initiating realignments and suspension of interventions 479
   b) An alternative construction 480
      Involvement of Community institutions and bodies 480
      The Ecofin Council 480
      The Governing Council of the ECB 482
      The General Council of the ECB 482
      The Commission 482
      Compatibility with the Treaty 483
   c) Necessity of compliance with the Treaty 483

PART FOUR: FINDINGS 485

CHAPTER 8 - CONCLUSIONS 487

I. Introduction 487

II. Problems of interpretation 487
1. Community competence in area of monetary union 487
2. Naming of the single currency 490
3. Meaning of the term ‘credit institution’ 492
4. Requirement of collateral 493
5. Market conformity 493
6. Regulatory power and enforcement 494
   a) Consistency issues 494
   b) Sanctions - an overview 494
   c) Different wording 495
      Apparent lacunae 495
      Extent of enforcement powers 495
      Sanctions in respect of minimum reserve requirements 496
      Sanctions in respect of payment systems, prudential supervision and
### Detailed Table of Contents

**other methods of monetary control** 496

**Concluding remarks** 497
d) Two bases for the ECB’s regulatory power 497

7. Powers in the area of prudential supervision 498
8. Secrecy and confidentiality regime 499
9. «Remote access» 499

III. Compatibility with democracy and transparency 500
1. Independence and accountability 500
2. Involvement of the European Parliament in legislation 501
3. Judicial review 501

IV. Structural issues 502
1. Unbalanced structure of economic and monetary union 502
2. Two-speed monetary union 504
   a) Derogations and opt-outs 504
   b) Difficulties of management 504
      *For the ESCB* 504
      *For the Ecofin Council* 505
      *For the Commission* 508
      *For the European Parliament* 509
      *For the Court of Justice* 510
      *For the Court of Auditors* 512
   c) Operation of an Exchange Rate Mechanism 512
   d) The exclusion of London as a financial centre 513
   e) Accession of new Member States 514

V. Concluding remarks 514
1. Original objective: one Community, one currency 514
2. Transparency 515
3. *Anomie* or integration? 515
4. Political involvement and intergovernmental impulse 516
5. Alternative structure 516
   a) Clear and transparent structures required 516
   b) A true political union 517
   c) Restructuring the European enterprise 517

Bibliography 521
Table and Index of Cases in chronological order 539
Table of Cases in alphabetical order 543
Index 545
Summary 571
Samenvatting 581
Resumé 593
Zusammenfassung 605
Resumen 617
Sintesi 629