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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Exchange Control

Motion for a recommendation
tabled by Mr R.W.G. MACKAY and other members of the Assembly

Explanatory Memorandum

The removal of exchange control constitutes one of the most important provisions of the scheme outlined below. It does not necessarily follow from the establishment of a uniform currency. It is essential, however, that the establishment of a uniform currency should be supplemented by ensuring its free circulation over the entire currency area, at any rate for the purposes of current transactions. When it comes to capital transactions there is justification for retaining a certain amount of control in order to avoid unwanted shifting of funds for economic or political reasons. This matter will be dealt with in a separate project concerning the establishment of a European Loans Council.

European notes will circulate freely between participating countries, but it is not proposed that trade deficits should be settled by means of the marge-scale exporting of such notes. To do so might result in drastic deflation in deficit countries and equally inconvenient inflation in surplus countries. Even though this would go a long way towards correcting any existing disequilibrium of prices between them, there are strong objections to the application of such method of automatic adjustment. In many instances a trade surplus or deficit cannot be attributed to disequilibrium between the average price levels or even to disequilibrium between the price levels of goods entering into foreign trade between the countries concerned. In such instances the operation of the automatic system would not correct the cause of the difficulties. Its correction must be undertaken either through the granting of loans under the Loans Council scheme or through the planning of foreign trade under the scheme providing for the removal of trade barriers.

While the ultimate aim should be a complete removal of exchange restrictions, not only between the participating countries but also between the European currency area and other countries, it may take some time before this end could be achieved. In order to prevent an unwanted outflow of capital or excessive imports of luxuries from outside the European currency area it will be necessary to maintain exchange control in relation to outside countries. It is essential that the rules relating to exchange control should be unified. It may take some time before it could be ascertained what rules would meet the requirements of Europe as a whole in the changed circumstances. Pending the elaboration of an ultimate system of exchange control it would be advisable to extend the application of restrictions operating in the United Kindgom and the Sterling area. It is generally admitted that these rules are operating very efficiently and, since they are already applied to a large number of countries, their extension over Europe would be easier than the change of the system in the countries in which the British exchange control is in operation.

Draft Recommendation

The Assembly recommends the Committee of Ministers the adoption and ratification of the following Protocol :

EXCHANGE CONTROL

Article 1

Except with the permission of the European Bank[1]no person other than an authorised dealer shall, in the participating countries, and no person resident in the participating countries other than an authorised dealer shall, outside the participating countries, buy or borrow any gold or foreign currency from, or sell or loan any gold or foreign currency to, any person other than an authorised dealer. Where a person buys or borrows any gold or foreign currency in the participating countries, or being a person resident in the participating countries buys or borrows gold or foreign currency outside the participating countries, he shall comply with such conditions as to the use to which it may be put or the period for which it may be retained as may from time to time be notified by the Bank.

Article 2

In this Protocol the expression " foreign currency " does not include any currency or notes issued by the Governments of the participating countries or under the law of any territories having special relation to one of the participating countries such as the scheduled territories under the Exchange Control Act, 1947, United Kingdom (except as aforesaid). It does include any notes of a class which are or have been legal tender in any territory outside the participating countries.

The expression " the scheduled territories of the participating countries " means the territories specified in the first schedule[2]to this Protocol, it being understood, however, that the Bank may at any time by order amend the said schedule of the Protocol and the said expression shall be construed accordingly.

Article 3

Every person who is a citizen of or resident in, the participating countries who is entitled to sell gold or any foreign currency and is not an authorised dealer shall offer it for sale to an authorised dealer unless the Bank consent to his doing otherwise.

Article 4

Every person in the participating countries by whom any gold or foreign currency is held in the participating countries but who is not entitled to sell it shall notify the Bank in writing that he so holds that gold or currency. The Bank may direct any person in the participating countries by whom any gold or any foreign currency in the form of notes is held in the participating countries, whether or not he is entitled to sell it, to cause that gold or currency to be kept at all times in the custody of such Bank as may be specified in the direction.

Article 5

Except with the permission of the Bank, no person shall do any of the following things in the participating countries, i. e.t

a. make any payment to or for the credit of a person resident outside the scheduled territories of the participating countries, or

b. make any payment to or for the credit of a person resident in the scheduled territories of the participating countries by order or on behalf of a person resident outside the scheduled territories of the participating countries, or

c. place any sum to the credit of any person resident outside the scheduled territories of the participating countries, provided that, where the person resident outside the scheduled territories of the participating countries has paid a sum towards the satisfaction of a debt due from him, paragraph (c) of this Article shall not prohibit the acknowledgement or recording of the payment

Article 6

Except with the permission of the Bank, no person resident in the participating countries shall, subject to the provisions of this Article, make any payment outside the participating countries to or for the credit of a person resident outside the scheduled territories of the participating countries. Nothing in this Article shall prohibit the doing of anything otherwise lawful by any person with any foreign currency obtained by him in accordance with the provisions of this Protocol or retained by him with the consent of the Bank.

Article 7

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1. The reference is to the Bank suggested in a previous Motion (Doc. 20, 1950).
2. As this schedule exists only in draft form it is not included in the present volume.

Except with the permission of the Bank, no person who is a citizen of any one of the participating countries, and no person resident in the participating countries, shall, outside the participating countries, make any payment to or for the credit of a person resident in the scheduled territories of the participating countries as consideration for or in association with,

a. the receipt by any person of a payment made outside the scheduled territories of the participating countries or the acquisition by any person of property which is outside the scheduled territories of the participating countries, orthe transfer to any person of a right to receive a payment outside the scheduled territories of the participating countries or to acquire property which is outside the scheduled territories of the participating countries.

Article 8

Except with the permission of the Bank, no person shall in the participating countries issue any security unless the following requirements are fulfilled, i. e.,

a. neither the person to whom the security is to be issued, nor the person, if any, for whom he is to be a nominee, is resident outside the scheduled territories of the participating countries,

b. the prescribed evidence is produced to the person issuing the security as to the residence of the person to whom it is to be issued and that of the person, if any, for whom he is to be a nominee.

Article 9

Except with the permission of the Bank, a security registered in the participating countries shall not be transferred and a security not so registered shall not be transferred in the participating countries, unless in either case the following requirements are fulfilled, i. e.,

a. neither the transferor or any person, if any, for whom he is a nominee, is resident outside the scheduled territories of the participating countries, and

b. the transferor delivers to the transferee at or before the time of the transfer the prescribed declarations as to his residence and that of the person, if any, for whom he is a nominee, and

c. neither the transferee nor the person, if any, for whom he is to be a nominee, is resident outside the scheduled territories of the participating countries.

Article 10

Except with the permission of the Bank, a security not registered in the participating countries shall not he transferred outside the participating countries if either the transferor or the transferee, or the person, if any, for whom the transferor or the transferee is to he a nominee, is resident in the participating countries.

Article 11

Except with the permission of the Bank, no coupon shall be transferred :

a. in the participating countries if cither the transferee or the person, if any, for whom he is to be a nominee is resident outside the scheduled territories of the participating countries,

b. outside the participating countries if either the transferor or the transferee or the person, if any, for whom the transferor or transferee is or is to be a nominee is resident in the participating countries.

Article 12

Except with the permission of the Bank, no person shall, in the participating countries, and no person resident in the participating countries, shall, outside the participating countries, issue any bearer certificate or coupon or so alter any document that it becomes a bearer's cer-fitieate or coupon.

Article 13

Except with the permission of the Bank, no person resident in the participating countries shall do any act with intent to secure that capital moneys payable on a security registered in the participating countries is paid outside the participating countries.

Article 14

It shall be the duty of every person by whom a certificate of title is held in the participating countries, and of every person resident in the participating countries by whom a certificate of title is held outside the participating countries, to cause the certificate of title to be kept at all times, except with the permission of the Bank, in the custody of an authorised depository, and nothing in this Protocol shall prohibit the doing of anything for the purpose of complying with the requirements of this Article.

Article 15

Except with the permission of the Bank an authorised depository shall not part with any certificate of title or coupon required under any provisions of this Protocol to be in the custody of an authorised depository, provided that this Article shall not prohibit an authorised depository :

1. rom parting with the certificate of title or coupon to any authorised depository, where the person from whom the other authorised depository is to receive instructions in relation thereto is to be the same as the person from whom he receives instructions.
2. from parting with a certificate of title for the purpose of obtaining payment of capital moneys payable on the security to the person entrusted with payment thereof.
3. from parting with a coupon in the ordinary course for collection.

Article 16

Except with the permission of the Bank, no capital moneys, interest or dividends shall be paid in the participating countries on any security except to an authorised depository having the custody of the certificate of title to that security. However, this sub-section should not be taken as restricting the manner in which any sums lawfully paid on account of the capital moneys, interest or dividends may be dealt with by the person receiving them.

Article 17

The title of any person to a security for which he has given value on a transfer thereof and the title of all persons claiming through or under him shall, notwithstanding that the transfer or any previous transfer or the issue of the security was by reason of the residence of any person concerned other than the first mentioned person prohibited by the proAasions of this Protocol relating to the transfer of issue of securities, be valid unless the first mentioned person had notice of the facts by reason of which it was prohibited.

Article 18

Without prejudice to the provisions of Article 17 the Bank may issue a certificate declaring in relation to a security that any acts done before the issue of the certificate purporting to affect the issue or transfer of the security, being acts which were prohibited by this Protocol, are to be, and are always to have been as valid as if they had been done with the permission of the Bank, and the said acts shall have effect accordingly.

Article 19

The provisions of the Protocol shall apply with such modifications (if any) as may be prescribed in relation to any such document as is mentioned hereafter in this Article, as if the document represented a certificate of title to a security, hereafter in this Protocol referred to as a secondary security. The documents referred to are any letter of allotment which may be reannounced, any letter of rights, any warrant conforming an option to clear a security, any deposit certificate in respect of securities (but not including a receipt by an authorised depository for any certificate of title deposited in pursuance of the provisions of this Protocol) and any such documents conferring or containing or containing evidence of rights as may be described.

Article 20

For the purpose of any provisions of this Protocol prohibiting the transfer of securities a person shall be deemed to transfer a security if he executes any instrument of transfer thereof, whether effective or not, and shall be deemed to transfer it at the place where he executes the instrument.

Article 21

References in this Protocol to the person holding a certificate of title or coupon shall be considered as references to a person having physical custody of the certificate of title or coupon, provided that where the certificate of title or coupon is deposited with any person in a locked or sealed receptacle from which he is not entitled to remove it without the authority of some other person, that other person shall be deemed for the purposes of this Article to have the physical custody thereof.

Article 22

In the provisions of this Protocol the expression " holder "

a. in relation to a security transferable by means of a bearer certificate or to a coupon includes the person holding the certificate or coupon, and

b. in relation to a security which is registered in the name of a deceased person or of a person who by reason of bankruptcy, unsoundness of mind, or any other disability is incapable of transferring the security means the personal representative, trustee in bankruptcy or other person entitled to transfer the security.

Article 23

The holder of a security or coupon shall be deemed for the purposes of this Protocol to be a nominee in respect thereof, if, as respects the exercice of any rights in respect thereof, he is not entitled to exercise those rights except in accordance with instructions given by some other person.

Article 24

The importing into the participating countries of :

a. any notes of a class which are or have been at any time legal tender in the participating countries, and

b. any such other notes as may be specified by order of the Bank, being notes issued by a bank or notes of a class which are or have been at any time legal tender in any territory, and

c. any Treasury Bills, and

d. any certificate of title to any security including any such certificate which has been cancelled and any documents certifying the destruction, loss or cancellation or any certificate of title to a security, is hereby prohibited except with the permission of the Bank. In this Article the expression " note " includes part of a note and the expression " security " includes a secondary security.

Article 25

The exporting from the participating countries of :

a. any notes of a class which are or have been at any time legal tender in any of the participating countries or in any other territory, and

b. any Treasury Bills, and

c. any Postal Orders, and

d. any gold, and

e. any of the following documents, i. e.,

f. tous documents tels que :

1. any certificate of title to a security and any coupon, and
2. any bill of assurance, and
3. any Bill of Exchange or promissory note expressed in terms of a foreign currency, and
4. any document to which the provisions of this Protocol apply, not issued by an authorised dealer or in pursuance of a permission granted by the Bank.

g. any such articles exported on the person of a traveller or in a traveller's luggage as may be described,

is hereby prohibited except with the permission of the Bank. In this Article the expression " note " includes part of a note, the expression " security " includes a secondary security and the expression " coupon " shall be construed, in accordance with the meaning of " security ".

Article 26

The exporting of goods of any class or description from the participating countries to a destination in any such territory as may be prescribed is hereby prohibited except with permission of the Bank unless

a. payment for the goods has been made to a person resident in the participating countries in such manner as may be prescribed in relation to goods of that class or description exported to a destination in that territory or is to be so made not later than six months after the date of exporting, and

b. the amount of the payment that has been made or its to be made is such as to represent a return for the goods which is in the circumstances satisfactory. Any references in this Article to the destination of any goods includes a reference to the utimate destination thereof.

Article 27

Where a person has made any payment which is prohibited by this Protocol or being bound under this Protocol to offer any foreign currency to an authorised dealer, has otherwise disposed of that currency, the Bank may direct him to sell any property which he is entitled to sell, being property which represents that payment or that foreign currency as the case may be, and may specify the manner in which, the persons to whom and terms on which the property is to be sold.

Article 28

Except with the permission of the Bank no person resident in the participating countries shall transfer to a person resident outside the scheduled territories of the participating countries, or who is to be a nominee for a person resident outside the scheduled territories of the participating countries, any right to the sums assured by any policy of assurance.

Article 29

Except with the permission of the Bank no person resident in the participating countries shall settle any property otherwise than by will so as to confer an interest in the property on a person who at the time of the settlement is resident outside the scheduled territories of the participating countries, or shall exercice otherwise than by will any power of appointment where created by will or otherwise in favour of a person who at the time of the exercise of the power is resident outside the scheduled territories.

Article 30

Where there is served on any person resident in the participating countries a notice in writing that the Bank wish any such requirements as are hereinafter mentioned to he complied with by any body corporate not incorporated in accordance with the law of any of the participating countries as may be specified (hereinafter in this Protocol referred to as a " Foreign company "), and that person can, by doing or refraining from doing any act,

a. cause the foreign company to comply with any of the requirements or

b. remove any obstacle to the foreign company complying with any of the requirements, or

c. render it in more probable that the foreign company will comply with the requirements of the Bank,

then, except so far as permission to the contrary may be given by the Bank, that person shall do or refrain from doing that act.

The requirements with respect to which such a notice shall be are : i. e. the foreign company shall

1. furnish to the Bank such particulars as to its assets and business as may be mentioned in the notice.
2. sell to an authorised dealer any gold or foreign currency mentioned in the notice being gold or foreign currency which it is entitled to sell.
3. declare and pay such dividend as may be mentioned in the notice.
4. release any of its assets mentioned in the notice in such manner as may be so mentioned.
5. refrain from selling, transferring or doing anything which affects its rights or powers in relation to any such Treasury Bills or securities as may be mentioned in the notice.

Article 31

Except with the permission of the Bank no person resident in any of the participating countries shall do any act whereby as a body corporate which is by any means controlled by persons resident in the participating countries ceases to be controlled by a person resident in the participating countries, provided that this Article

shall not prohibit any person from selling any securities, authorised to be dealt in on any recognised stock exchange in the participating countries, if the sale takes place in pursuance of an agreement entered into in the ordinary course of business on that exchange.

Article 32

Except by the permission of the Bank no person resident in the participating countries shall lend any money, Treasury Bills or securities to any body corporate resident in the scheduled territories of the participating countries which is by any means controlled by persons resident outside the scheduled territories of the participating countries.

Article 33

Any provision of this Protocol imposing a prohibition on this or that application shall have effect subject to such exemptions as may be granted by order of the Bank, and any such exemptions may be either absolute or conditional.

Article 34

Where

a. under any provision contained in this Protocol the permission of the Bank is required for the making of a payment or a placing of any sum to the credit of any person resident outside the scheduled territories of the participating countries, or

b. any payment falls to be made by an authorised dealer on the sale of any gold or foreign currency by any foreign company, being a sale made to comply with any requirements notified under Article 25

The Bank may direct that the sum payable or to be credited shall be paid or credited to a blocked account only.

Article 35

It shall be an implied condition in any contract that where, by virtue of this Protocol, permission or consent of the Bank is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission or consent is given.

Article 36

None of the provisions of this Protocol nor any condition, whether expressed or to be implied, having regard to its divisions that any payment shall not be made without the permission of the Bank under this Protocol shall be deemed as applying to a Bill of Exchange or Promissory Note.

Article 37

The provisions of this Protocol shall apply to sums required to be paid by any judgment or order of any court or by any award as they apply in relation to other sums, and it shall be implied in any judgment or order of any court in the participating countries, as also in any award given under the law of any of the participating countries, that any sum required to be paid by the judgment, order or award to which the said provisions apply shall not be paid except with the permission of the Bank.

Article 38

In any proceedings in a prescribed court and in any arbitration proceedings a claim for the recovery of any debt shall not be defeated by reason only of the debt not being payable without permission of the Bank and of that permission not having been granted or having been revoked.

Article 39

Nothing in this Protocol shall be construed as preventing the payment by any person of any sum into any court in the participating countries.

Article 40

Where a person resident in any of the participating countries leaves the scheduled territories of the participating countries the Bank may direct that payments by him or on his behalf or to him or to his credit and transactions in or in relation to Treasury Bills, securities or secondary securities in which he is in any way concerned shall, whether or not he continues to be resident in any of the participating countries, be subject to such restrictions as may be specified in the direction.

Article 41

The Bank may give directions that for all or any of the purposes of this Protocol a person is to be treated as resident or not resident in such territories as may be specified in the directions.

Signed (see overleaf)

Signed[3]*:*

MACKAY R.W.G., United Kingdom, SOC

3. SOC: Socialist Group