

**FOR
AGENDA**

SM/03/386

November 26, 2003

To: Members of the Executive Board

From: The Secretary

Subject: **Strengthening the Effectiveness of Article VIII, Section 5—Proposed Decisions**

Attached for consideration by the Executive Directors is a paper on strengthening the effectiveness of Article VIII, Section 5—proposed decisions. On the assumption that Executive Directors would wish to discuss the timeline proposals in the proposed procedural framework, it is suggested that this paper be brought to the agenda for discussion **on a date to be announced**, rather than considered on a lapse of time basis. Draft decisions appear on pages 4–12.

The staff proposes the publication of this paper after the Executive Board completes its discussion together with the staff paper for the June discussion (SM/03/166, 5/5/03) and a PIN summarizing the Executive Board's discussion.

Questions may be referred to Mr. Leckow (ext. 34799) and Ms. Mouysset (ext. 38210) in LEG; and Mr. Fetherston (ext. 38761), Mr. Desruelle (ext. 34373), and Mr. T. Lane (ext. 37668) in PDR.

This document will shortly be posted on the extranet, a secure website for Executive Directors and member country authorities.

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INTERNATIONAL MONETARY FUND

Strengthening the Effectiveness of Article VIII, Section 5—Proposed Decisions

Prepared by the Legal and Policy Development and Review Departments

In consultation with the Statistics Department

Approved by François Gianviti and Mark Allen

November 26, 2003

I. INTRODUCTION

1. In the June 9, 2003 discussion of Strengthening the Effectiveness of Article VIII, Section 5, the Executive Board agreed, *inter alia*, (i) to expand the categories of information that member countries are required to report to the Fund under Article VIII, Section 5 and (ii) to establish a new framework of procedures and remedial actions to address cases in which members have breached their obligation under Article VIII, Section 5.¹ This paper proposes the necessary draft decisions for the approval of the Executive Board.

II. REQUIRED CATEGORIES OF INFORMATION

2. Staff had proposed in SM/03/166 that the Board require under Article VIII, Section 5 additional categories of information that comprise the core indicators for surveillance as well as some additional information, viz. the general government balance, revenue, expenditure, debt, and financial assets, and the consolidated balance sheet of the banking system.² In the Board discussion, however, many Directors favored modifying this proposal to exclude elements that go beyond the requirements of the Special Data Dissemination Standard (SDDS).³ Accordingly, the proposal incorporated in the first draft decision takes this

¹ See SM/03/166, May 5, 2003; and BUFF/03/89, June 16, 2003.

² See SM/03/166, Box 4. The core indicators for surveillance are discussed in the periodic papers on Data Provision to the Fund; the next such paper is planned for early 2004.

³ The SDDS was established following the Mexican crisis as a voluntary standard to strengthen the dissemination of key data by countries with access to international capital markets. It specifies coverage of data categories and the periodicity and timeliness of data dissemination. The proposals in SM/03/166 and the present paper to strengthen the reporting obligations of all members relate only to issues of coverage.

approach. If adopted, the draft decision would, as compared with the original staff proposal, require information on central government and central government guaranteed debt, rather than the corresponding information for the general government; moreover, it would not require information on external debt service or domestic or external public financial assets.⁴ Likewise, the required information on government operations would cover the general government and the central government (as in the SDDS), rather than the general government and all its subsectors as in the original proposal (SM/03/166, paragraph 31).

III. PROCEDURAL FRAMEWORK

3. The second draft decision establishes a framework of procedures to be followed and remedies to be applied. In light of the Board discussion, this framework follows the proposals in SM/03/166, but incorporates additional specificity on the timeframe while preserving an appropriate degree of flexibility. This decision also establishes, as agreed at EBM/03/54, (i) the limitations on the circumstances under which a member may be found in breach of its obligation under Article VIII, Section 5 in the context of use of Fund resources in the General Resources Account and (ii) procedures for making public Board actions relating to breaches of obligation under Article VIII, Section 5.

4. The procedural framework involves a number of steps, which may be summarized as follows:

- When faced with an apparent breach of obligation under Article VIII, Section 5, the Managing Director will contact the member, enlisting the cooperation of the Executive Director.⁵
- Before reporting on the breach of obligation to the Executive Board under Rule K-1 the Managing Director will notify the member of his intention to make this report unless within a specified period of not less than one month the member provides the required information or demonstrates that it was unable to provide the information.⁶

⁴ External public financial assets form part of the international investment position, which is one of the required categories of information listed in Article VIII, Section 5.

⁵ This step is envisaged in the graduated approach adopted in 1995 for cases in which the member is reluctant to provide data to the Fund, and also reflects current practice for cases in which the member has provided inaccurate information (SM/03/166, paragraph 57).

⁶ In cases where the apparent breach of obligation involves the provision of inaccurate data, this period would allow time for the member to demonstrate that it was unable to provide more accurate information. As discussed in SM/03/166, assessments of whether a country has breached its obligations under Article VIII, Section 5 will involve an element of judgment

(continued...)

- Within 90 days of issuance of the Managing Director's report on a possible breach of obligation under Article VIII, Section 5, the Board will decide on a course of action. If the Board agrees with the Managing Director's finding, it would then normally specify remedial actions and a timetable for their implementation. In the staff's view, it would be appropriate, given the range of possible remedial actions and the varying times in which they could be reasonably implemented, that the timeframe for the implementation of remedial measures by the member be established on a case-by-case basis rather than specified under a standard timeline.
- If the specified actions are not implemented before the established deadline, the Managing Director may then recommend the adoption of a declaration of censure. Before adopting this declaration, the Executive Board would issue a statement to the member setting out its concerns.
- The indicative timeline for the imposition of sanctions envisages an interval of six months between a decision on a sanction and initiation of procedures for the next sanction, in line with the procedures under the arrears strategy. However, and in contrast with the arrears strategy, it is proposed that the issuance of a complaint by the Managing Director for the imposition of sanctions under Article XXVI be optional under this framework. The optional nature of the complaint would be in keeping with the normal regime of complaints in Fund practice. The mandatory nature of the Managing Director's complaint in the context of the arrears strategy is an exception to this normal regime, reflecting the gravity of a breach of financial obligation addressed under the arrears strategy; in the staff's view, such an exceptional regime would not be warranted in the case of breach of obligation under Article VIII, Section 5. In addition, the optional nature of the Managing Director's complaint would introduce additional flexibility in the Fund's approach to information reporting problems.

IV. EFFECTIVENESS OF DECISIONS

5. Each decision may be adopted by a majority of votes cast. The obligation to provide additional information pursuant to the first decision will commence one year after Board approval of the decision. The decision also specifies that the obligation to provide the additional information will apply to data for the relevant periods commencing six months from the date of adoption of this decision. Absent this provision, the obligation would apply retrospectively to all data periods commencing the date on which the member joined the Fund, which in staff's judgment was not the Board's intent. The second decision will take effect immediately upon Board approval.

based on best statistical practice and experience, with the benefit of any doubt given to the member.

Proposed Decisions

The following draft decisions are proposed for adoption by the Executive Board. Both may be adopted by a majority of the votes cast:

Decision No. 1—Provision of Information under Article VIII, Section 5

1. Pursuant to Article VIII, Section 5, and in addition to the information specified in that Article, members are hereby required to provide the Fund with national data on the following matters:

- (i) reserve, or base money;
- (ii) broad money;
- (iii) interest rates, both market-based and officially-determined, including discount rates, money market rates, rates on treasury bills, notes and bonds;
- (iv) revenue, expenditure, balance and composition of financing (i.e., foreign, domestic bank, and domestic nonbank financing) for the general and central governments respectively¹; the stocks of central government and central government-guaranteed debt, held by residents and non residents respectively, including currency and maturity composition;
- (v) balance sheet of the central bank;
- (vi) external current account balance;
- (vii) exports and imports of goods and services;

¹ The general government consists of the central government (budgetary funds, extra budgetary funds, and social security funds) and state and local governments.

- (viii) the international reserve assets and reserve liabilities of the monetary authorities, specifying separately any reserve assets which are pledged or otherwise encumbered as well as any net derivative positions;
- (ix) gross domestic product, or gross national product;
- (x) consumer price index;
- (xi) gross external debt²; and
- (xii) consolidated balance sheet of the banking system.

2. The obligation to provide the data specified in paragraph 1 shall commence one year from the date of adoption of this decision and will apply to data for the relevant periods commencing six months from the date of adoption of this decision.

² Gross external debt is the outstanding amount of those actual current, and not contingent liabilities that require payment(s) of principal and/or interest by the debtor at some point(s) in the future and that are owed to nonresidents by residents of an economy.

Decision No. 2—Procedural Framework for the Application of Article VIII, Section 5

1. This decision is adopted to deal with cases in which a member fails to provide information to the Fund as specified in Article VIII, Section 5 or in a decision of the Fund adopted pursuant to Article VIII, Section 5 (hereinafter “information required under Article VIII, Section 5”). Failure to provide information includes both the nonprovision of information and the provision of inaccurate information.

2. A member has an obligation to provide information required under Article VIII, Section 5 to the best of its ability. Therefore, there is no breach of obligation if the member is unable to provide information required under Article VIII, Section 5 or to provide more accurate information than the information it has provided. However, a member that is unable to provide final data is obligated to provide provisional data to the best of its ability until it is in a position to provide the Fund with final data.

3. In the context of performance criteria associated with the use of the Fund’s general resources, a member may be found in breach of its obligation under Article VIII, Section 5 only if (i) it has reported that a performance criterion was met when in fact it was not, or that a performance criterion was not observed by a particular margin and it is subsequently discovered that the margin of non-observance was greater than originally reported, and (ii) a purchase was made on the basis of the information provided by the member, or the

information was reported to the Executive Board in the context of a review which was subsequently completed or of a decision of the Executive Board to grant a waiver for non-observance of the relevant performance criterion.

Procedures prior to report by the Managing Director to the Executive Board

4. Whenever it appears to the Managing Director that a member is not providing information required under Article VIII, Section 5, the Managing Director shall call upon the member to provide the required information; before making a formal representation to the member, the Managing Director shall inform, and enlist the cooperation of, the Executive Director for the member. If the member persists in not providing such information and has not demonstrated to the satisfaction of the Managing Director that it is unable to provide such information, the Managing Director shall notify the member of his intention to make a report to the Executive Board under Rule K-1 for breach of obligation unless, within a specified period of not less than a month, such information is provided or the member demonstrates to his satisfaction that it is unable to provide such information.

5. Whenever it appears to the Managing Director that a member has provided inaccurate data on information required under Article VIII, Section 5, the Managing Director shall consult with the member to assess whether the inaccuracy is due to a lack of capacity on the part of the member. If, after consulting with the member, the Managing Director finds no reason to believe that the inaccuracy is due to a lack of capacity on the part of the member, he shall notify the member of his intention to make a report to the Executive Board for breach of

obligation under Rule K-1 unless the member demonstrates to his satisfaction within a period of not less than one month that it was unable to provide more accurate information.

6. If the Managing Director concludes that the nonprovision of information or the provision of inaccurate information is due to the member's inability to provide the required information in a timely and accurate fashion, he may so inform the Executive Board. In that case, the Executive Board may decide to apply the provisions of paragraph 8 below.

Report by the Managing Director

7. After the expiration of the period specified in the Managing Director's notification to the member, the Managing Director shall make a report to the Executive Board under Rule K-1 for breach of obligation, unless the Managing Director is satisfied that the member's response meets the requirements specified in his notification. The report shall identify the nature of the breach and include the member's response (if any) to the Managing Director's notification , and may recommend the type of remedial actions to be taken by the member.

Consideration of the Report

8. Within 90 days of the issuance of the Managing Director's report, the Executive Board will consider the report with a view to deciding whether the member has breached its obligations. Before reaching a decision, the Executive Board may request from the staff and the authorities additional clarification of the facts respecting the alleged breach of obligation; the Executive Board will specify a deadline for the provision of such clarification.

9. If the Executive Board finds that the member's failure to provide information required under Article VIII, Section 5 is due to its inability to provide the information in a timely and accurate fashion, the Executive Board may call upon the member to strengthen its capacity to provide the required information and ask the Managing Director to report periodically on progress made by the member in that respect. The member may request technical assistance from the Fund.

10. (a) If the Executive Board finds that the member has breached its obligation, the Executive Board may call upon the member to prevent the recurrence of such a breach in the future and to take specific measures to that effect. Such measures may include the implementation of improvements in the member's statistical systems or any other measures deemed appropriate in view of the circumstances.

(b) In addition, if the Executive Board finds that the member is still not providing the required information, the Executive Board will call upon the member to provide such information.

(c) The Executive Board will specify a deadline for taking any remedial actions specified under (a) and (b). The decision may note the intention of the Managing Director to recommend the issuance of a declaration of censure if the specified actions are not implemented within the specified period.

In order to assist the Executive Board in identifying the appropriate actions to address a breach of obligation under Article VIII, Section 5, the member may, before the Board meeting, provide the Executive Board with a statement specifying the remedial actions it intends to take and a proposed timeframe. The member may also request technical assistance from the Fund.

(d) At the expiration of the period specified by the Executive Board, the Managing Director will report to the Executive Board on the status of the specified actions. If the member has not taken the specified actions within the specified period, and depending on the circumstances of such failure, the Managing Director may recommend and the Executive Board may decide: (i) to extend the period before further steps under the procedural framework are taken; (ii) to call upon the member to take additional remedial actions within a specified timeframe; or (iii) to issue a declaration of censure against the member.

Declaration of Censure

11. If a member fails to implement the actions specified by the Executive Board before the established deadline, the Managing Director may recommend that the Executive Board adopt a declaration of censure. Before the adoption of a declaration of censure, the Executive Board will issue a statement to the member setting out its concerns and giving the member a specified period to respond. If no satisfactory response is received, the Executive Board may adopt the declaration of censure.

12. The declaration of censure will identify the breach of obligation under Article VIII, Section 5 and the specified remedial actions the member has failed to take within the specified timeframe. The declaration may specify a new deadline for the implementation by the member of the specified remedial actions; in addition, the declaration may identify further remedial actions for the member to implement before the specified deadline. It will note that the member's failure to implement any of the actions called for in the declaration within the specified timeframe may result in the issuance of a complaint for ineligibility under Article XXVI (a) and the imposition of this measure.

Sanctions under Article XXVI

13. Following the adoption of a declaration of censure, if the Board finds that the member has failed to implement any of the actions called for in the declaration within the specified timeframe, the Managing Director may issue a complaint to the Executive Board and recommend that the Executive Board declare the member ineligible to use the general resources of the Fund for its breach of obligation under Article VIII, Section 5. The Executive Board decision declaring the member ineligible to use the general resources of the Fund will note that the member's persistence in its failure to fulfill its obligations under Article VIII, Section 5 following the declaration of ineligibility may result in the issuance of a complaint for the suspension of the member's voting and related rights and in the imposition of this measure.

14. If the member persists in its failure to fulfill its obligations under Article VIII, Section 5 for six months after the declaration of ineligibility, the Managing Director may issue a complaint and recommend that the Fund suspend the member's voting and related rights. The Executive Board decision suspending the member's voting and related rights will note that the member's persistence in its failure to fulfill its obligations under Article VIII, Section 5 following the declaration of suspension of voting and related rights may result in the issuance of a complaint for compulsory withdrawal and in the initiation of the proceedings for the compulsory withdrawal of the member from the Fund.

15. If the member persists in its failure to fulfill its obligation under Article VIII, Section 5 for six months after the suspension of its voting rights, the Managing Director may initiate proceedings for the compulsory withdrawal of the member from the Fund.

16. All the Executive Board decisions arising from a breach of obligation taken under the procedures described above, including a decision to issue the statement of concern referred to in paragraph 10, will give rise to a public announcement with prior review of the text by the Executive Board.



INTERNATIONAL MONETARY FUND

Public Information Notice

EXTERNAL
RELATIONS
DEPARTMENT

Public Information Notice (PIN) No.
FOR IMMEDIATE RELEASE

International Monetary Fund
700 19th Street, NW
Washington, D. C. 20431 USA

IMF Approves Decisions Strengthening the Effectiveness of the Legal Framework for the Provision of Information to the Fund

On June 9, 2003, the Executive Board of the International Monetary Fund (IMF) concluded its discussion on strengthening the effectiveness of the legal framework for the provision of information to the Fund.¹ The conclusions of this discussion were incorporated in proposed decisions which the Board approved on [December xx, 2003].

Background

The IMF needs to have access to information that is as complete and accurate as possible in order to carry out its responsibilities—which include surveillance and the provision of financing to its member countries. The IMF relies primarily on voluntary cooperation to obtain the needed information. On the whole, this cooperative approach has served the institution and its members well. In recent years, however, several instances of reporting problems—including failure to report important information and reporting of inaccurate information—have motivated efforts on a number of fronts to improve the provision of data by members.

One area in which the Fund has been seeking to make improvements is in the legal framework for the provision of information to the IMF. Article VIII, Section 5 of the IMF's Articles of Agreement is a central pillar of this legal framework: it requires member countries to report certain information to the IMF, to the extent that they have the

¹ The Executive Board discusses policy issues on the basis of reports prepared by the staff. At the conclusion of the discussion, the Managing Director, as Chairman of the Board, summarizes the views of Executive Directors. This PIN summarizes the views of the Executive Board as expressed during the June 9, 2003 Executive Board discussion based on the staff report, and incorporated in decisions approved on December [], 2003.

capacity to do so. Remedies and sanctions are available to the IMF to address the relatively rare cases involving reporting problems that are not amenable to cooperative approaches.

In strengthening the effectiveness of Article VIII, Section 5, the Executive Board addressed a number of issues. First, the existing list of information that members are required to report under Article VIII, Section 5 excluded some key categories of fiscal and monetary information, thereby hindering the IMF's effectiveness in the conduct of its activities. Second, there was a need to limit the scope of application of Article VIII, Section 5, in the context of financing from the IMF's General Resources Account, to avoid a proliferation of nuisance cases. Third, there was a need for the establishment of a procedural framework specifying the circumstances in which remedies and sanctions would apply to address cases in which a member is in breach of Article VIII, Section 5.

Executive Board Assessment

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Public Information Notices (PINs) are issued, (i) at the request of a member country, following the conclusion of the Article IV consultation for countries seeking to make known the views of the IMF to the public. This action is intended to strengthen IMF surveillance over the economic policies of member countries by increasing the transparency of the IMF's assessment of these policies; and (ii) following policy discussions in the Executive Board at the decision of the Board.