International Lawyer

Volume 29 | Number 1 Article 19

1995

Currency Exchange Controls: A Concept Paper Prepared for the Government of Bulgaria

REPORT

Central and East European Law Initiative (CEELI)*

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A smoothly functioning currency exchange system is an important aspect of a well-developed international economy. Ideally, such a system would not limit the ability to trade in and convert other countries' currencies. For a variety of reasons, however, a country often decides to impose currency exchange controls. This concept paper describes the primary international obligations that impact on a country's ability to impose currency exchange controls and the issues that arise if a country decides to impose such controls.

I. International Monetary Fund Obligations

The primary international obligations concerning currency exchange controls arise from the Articles of Agreement (the "IMF Articles") of the International

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If you are interested in becoming involved in CEELI, contact: John C. Knechtle, Director of Legal Assessments and Concept Papers, CEELI, 1800 M Street, N.W., Washington, D.C. 20036.

**Prepared for CEELI by: Russell J. Bruemmer, Esq. (principal drafter); Luis Garcia-Campuzano, Esq.; Professor Kenneth Hansen; Nancy A. H. Martin, Esq.; Katarina Mathernova, Esq. (principal drafter); Lester Nurick, Esq.; Professor Stephen Zamora.

Monetary Fund (the "Fund") and related materials.[1] The IMF Articles entered into force in 1945 and were amended in 1969, 1978, and 1992.[2] They govern the activities of the 179 countries that are the Fund's members (as of November 1994).

A. ARTICLE IV—EXCHANGE ARRANGEMENT OBLIGATIONS

Members' exchange arrangements must be maintained in conformance with Article IV of the IMF Articles, entitled *Obligations Regarding Exchange Arrangements*. The general obligations of members are set forth in Article IV, Section 1:

> **General obligations of members.** Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial economic stability, each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates. In particular, each member shall:
> (i) endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;
> (ii) seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions;
> (iii) avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members; and
> (iv) follow exchange policies compatible with the undertakings under this Section.

These obligations focus on exchange arrangements rather than on particular exchange rates. Prior to the Second Amendment in 1978, the only type of exchange arrangement permitted by the IMF Articles was a par value system with gold (or the U.S. dollar as a proxy for gold) as the common denominator. The Second Amendment entirely abolished gold and the par value system based on gold from the international financial structure. Thus, a system based on gold is now the only type of arrangement prohibited by the IMF Articles.

Article IV, Section 2 describes four types of exchange arrangements that a member may select:

- external valuation based on a currency's relationship to the SDR;[3]

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1. These related materials include resolutions of the Fund's Board of Governors and decisions of its Executive Board. Other sources of international obligations include bilateral agreements and the General Agreement on Tariffs and Trade ("GATT").
2. The effect of the Third Amendment, adopted in 1992, is explained in n.9 *infra*.
3. The SDR, or special drawing right, is a composite currency based on a basket of five currencies (the U.S. dollar, German mark, Japanese yen, French franc, and the British pound). The SDRs, which may generally be held only by Fund members and not by private parties, are used by monetary authorities as a unit of account against which the values of other currencies are expressed. They are utilized as reserve assets by their holders. The Fund quotas for each country are computed in SDRs.

- external valuation based on a currency's relationship to another denominator (other than gold), e.g. another member's currency;[4]
- a cooperative arrangement in which external valuation is based on the currency's relationship to the currency of two or more members; or
- a cooperative arrangement in which external valuation is based on the currency's relationship to the currencies of other members.

The IMF Articles also allow "other exchange arrangements of a member's choice."

An example of a cooperative arrangement is the European Monetary System ("EMS"). The EMS was established in the late 1970s and was based on the understanding that EMS members would maintain the value of their currencies against the other members' currencies within a prescribed range. If the value of a member's currency approached the top or the bottom of the range, intervention by the member's central bank was required to stabilize the currency.[5]

Also, some other international financial institutions use SDRs to denominate the amount of their loans. For example, International Development Association, an affiliate of the World Bank, denominates their credits in SDRs. Otherwise, the use of the SDR as a unit of account in private transactions has been very limited.

4. According to the 1994 IMF Annual Report, the U.S. dollar and the French franc are the most popular single currencies used for external valuation of other countries' currencies ("pegging"). Other currencies used for pegging include the Indian rupee, the Australian dollar, the South African rand, and the German mark.

5. The European Monetary System was established in the late 1970s to promote economic integration and currency stability among the EC members. It was established by the central banks of the then eight EC members after the Second Amendment to the IMF Articles eliminated the par value system as the measure of exchange rate controls. Until the September 1992 currency crisis in Europe, eleven of the twelve members of the EC were members of the EMS. (Greece does not participate in the EMS at this time. Among countries that are not EC members, Norway has linked its currency to the ECU and has voluntarily assumed the obligation of maintaining a maximum of 2.25 percent fluctuation of its central rate with the ECU.) At that time, Britain and Italy suspended their membership in the EMS.

The EMS is built on four main components: (i) the exchange rate mechanism ("ERM"); (ii) financing facilities to support the stability of the participating currencies and help the members to meet their obligations to maintain exchange rates within the prescribed margins; (iii) a special European currency unit ("ECU"); and (iv) the coordination of exchange rate policies against third, nonparticipating currencies. (For more detailed explanation of the EMS *see* David P. Valenti, *Currency Unification in the European Economic Community: The Mechanics, Politics, and Probability for Success*, 28 INT'L LAW. 1039 (1994).) Each member commits to maintain exchange rates that do not fluctuate outside prescribed parameters between its currency and that of each other member. Members were obliged to maintain their exchange rates within a 2.25 percent trading band, the so-called parity grid, above or below the bilateral central rates against other participating currencies. (Before the recent currency crisis, Spain, Portugal, and the United Kingdom were already exceptions; their exchange rates were maintained within a margin of fluctuation of 6 percent.)

During the summer of 1993, however, the ERM collapsed as Germany's relatively high interest rates exerted a downward pressure on the French franc and other currencies. Central banks tried to prop up the other currencies against the German mark, but they failed to hold back the pressures of the market. In early August of 1993, European Community finance ministers and central bank chiefs agreed to expand the trading bands of their currencies from the 2.25 percent permissible fluctuation to 15 percent. This agreement was intended to preserve the structure of the EMS while allowing the currencies to fluctuate much more freely in reaction to market pressures. The ERM crisis demonstrates the difficulty in trying to maintain currency rates without closely coordinating other areas of economic policy.

In addition to the IMF Articles, the Fund's Executive Board, in 1977, adopted the following principles (amended in 1987 and 1988) to govern a member's obligations:[6]

A. A member shall avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members.[7]
B. A member should intervene in the exchange market if necessary to counter disorderly conditions which may be characterized, *inter alia,* by disruptive short-term movements in the exchange value of its currency.
C. Members should take into account in their intervention policies the interests of other members, including those of the countries in whose currencies they intervene.

B. Article VIII—Specific Prohibitions

Other provisions of the IMF Articles also contain more specific requirements on exchange controls. Article VIII prohibits multiple and/or discriminatory exchange rates and governs certain activities of member countries undertaken without the approval of the Fund. (These topics are discussed more extensively in Sections II.A and II.B, respectively, of this memorandum.)

In general, Article VIII, Section 2(a) also prohibits a member from placing restrictions on *current international transactions* without the approval of the Fund.[8] On the other hand, Article VI, Section 3, points out that members may generally restrict capital transfers as long as such restrictions are not inconsistent with the obligations under Article VIII, Section 2 and the other provisions of the IMF Articles. The important distinction is between *current* transactions and *capital* transactions: the former are not to be restricted, but the latter may generally be limited in any manner that is consistent with other Fund obligations.

Apart from setting mandatory fluctuation margins, now significantly broadened, one of the most significant features of the EMS system that distinguishes it from the IMF regime is the obligation on the part of the EMS members and their central banks to intervene when necessary to reduce fluctuations of the respective exchange rates. This is usually done either by buying and selling the currency that hit the top or the bottom of the obligatory range or by raising or lowering domestic interest rates.

6. Decision No. 5392-(77/63), April 29, 1977, as amended by Decision No. 8564-(87/59), April 1, 1987, and Decision No. 8856-(88/64), April 22, 1988, in *Selected Decisions and Selected Documents of the International Monetary Fund* ("Selected Decisions") at 7, 18th issue, Washington, D.C. (1993).

7. This principle is identical with obligation (iii) of Article IV, Section 1, entitled *General obligations of members*.

8. A limited exception to the prohibition of restrictions on current account payments is contained in Decision No. 144-(52/51), August 14, 1952, in *Selected Decisions* at 370, 18th issue, Washington, D.C. (1993). This exception allows "payment restrictions for security reasons," because the Fund "does not . . . provide a suitable forum for discussion of the political and military considerations leading to [the imposition of such restrictions.]" *Id.*

These terms correspond more or less to items in the current account and capital account of the balance of payments, although differences have been established through IMF practice. Thus, definitional issues are important, and a member may need to consult the Fund on the definition of "current transactions" for purposes of Article VIII. (This topic is discussed in more detail in Section II.C of this memorandum.)

In addition, Article VIII obliges members (i) to buy, in certain circumstances, balances of its currency held by another member (Section 4); (ii) to furnish information regarding a member's balance of payments, and currency exchange and fiscal policies, upon the request of the Fund (Section 5; *see also* Section II.F of this paper); (iii) to consult with other members regarding existing international arrangements (Section 6); and (iv) to cooperate with the Fund and other members in "promoting better international surveillance of international liquidity" and putting the SDRs in the position of "principal reserve asset in the international monetary system" (Section 7).

C. Article XIV—Transitional Arrangements

A new Fund member that believes it cannot meet all of its obligations under the IMF Articles may "avail itself" of a "transitional arrangement" under Article XIV. Thus, a new member may notify the Fund that it is not "prepared to accept the obligations of Article VIII, Sections 2, 3, and 4,"—in effect, excluding itself from the application of those provisions. Under a transitional arrangement, the member may also "maintain and adapt to changing circumstances the restrictions on payment and transfers for current international transactions that were in effect on the date on which it became a member." Article XIV, Section 2.

Transition arrangements are not unlimited, however. Article VIII, Section 2 describes the member's obligations:

> Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund, and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the promotion of a stable system of exchange rates. In particular, members shall withdraw restrictions maintained under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the general resources of the Fund.

D. Other Provisions

A Fund member need not obtain the Fund's concurrence to select an exchange arrangement, but the choice must be consistent with the member's obligations under the IMF Articles. In addition, the Fund exercises "surveillance" authority over the international monetary regime and exchange rate policies of particular countries to ensure the effective operation of those policies. If a member country fails to fulfill any obligations under the IMF Articles, the Fund has the authority,

pursuant to Article XXVI, Section 2(a), to "declare the member ineligible to use the general resources of the Fund."[9] If the failure continues beyond a reasonable period, an eighty-five percent majority of the IMF's total voting power may require the member to withdraw from the Fund.

If a Fund member experiences balance of payments difficulties, the Fund may provide assistance through stand-by arrangements."[10] Each stand-by arrangement is separately negotiated with the Fund. Under such an arrangement, a member country is granted access to the Fund's resources consisting principally of the currencies of Fund members for a negotiated period of time, usually a year but not exceeding five years.[11]

The Fund resources are not automatically available to a member country; they are rather available only upon the member's agreement to follow Fund-approved policies "intended to help the member overcome balance of payments difficulties."[12] This principle is referred to as "conditionality."[13]

The prerequisite for obtaining a stand-by arrangement, as well as for a member's continued ability to draw on the Fund's resources under the arrangement, is the fulfillment of certain performance criteria, including macroeconomic goals and prohibitions of certain currency restrictions. A member's approach to dealing with the performance criteria is outlined in the member's economic program that the member negotiates with the Fund and communicates to the Fund via a *letter of intent* signed by the member's minister of finance and/or the governor of its central bank.[14] The Fund often raises issues relating to exchange controls (i.e.,

9. The Third Amendment to the IMF Articles adopted a new subsection to Article XXVI, Section 2, under which a member's voting and certain related rights could be suspended by the Fund if the member, after being declared ineligible to use the general resources of the Fund, continued its failure to fulfill the IMF Articles' obligations.

10. Article XXX(b) of the IMF Articles defines *stand-by arrangements* as:

> [A] decision of the Fund by which a member is assured that it will be able to make purchases from the General Resources Account in accordance with the terms of the decision during a specified period and up to a specified amount.

11. An alternative to stand-by arrangements are the so-called *extended arrangements* which may be used for as much as ten years under a special policy called Extended Fund Facility.

12. Stephen Zamora, *Guidelines on Conditionality, in* BASIC DOCUMENTS OF INTERNATIONAL ECONOMIC LAW 391-392 (Am. Soc'y Int'l L. 1990).

13. In addition to stand-by arrangements, in April 1993, the Fund established a so-called Systemic Transformation Facility ("STF") under which it provides financial assistance to members experiencing balance of payments difficulties due to *severe* disruptions in their traditional trade. Under the STF, members could receive a maximum of 50 percent of their quota in two equal purchases (tranches). The STF was primarily designed to cope with balance of payment disruptions in Eastern Europe and the former Soviet Union stemming from the break-up of their traditional non-market-based trade. The STF, which is designed as a transitional facility, shall expire on December 31, 1994. Executive Board Decision No. 10348-(93/61) STF, adopted April 23, 1993.

14. The Fund's general policies for standby agreements are entitled *Guidelines on Conditionality* and were adopted by the Fund's Executive Board Decision in 1979.

> Guidelines on Conditionality
>
> The Executive Board agrees to the text of the guidelines on conditionality for the use of the Fund's resources and for stand-by arrangements as set forth [below].
>
> Decision No. 6056-(79/38) March 2, 1979

liberalization of exchange controls and elimination of discriminatory currency practices) in the negotiations of performance criteria.

Unlike loan agreements with the World Bank, these stand-by arrangements are not considered international agreements by the Fund. Thus, a member's

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Use of Fund's General Resources and Stand-by Arrangements

1. Members should be encouraged to adopt corrective measures, which could be supported by use of the Fund's general resources in accordance with the Fund's policies, at an early stage of their balance of payments difficulties or as a precaution against the emergence of such difficulties. The Article IV consultations are among the occasions on which the Fund would be able to discuss with members adjustment programs, including corrective measures, that would enable the Fund to approve a stand-by arrangement.
2. The normal period for a stand-by arrangement will be one year. If, however, a longer period is requested by a member and considered necessary by the Fund to enable the member to implement its adjustment program successfully, the stand-by arrangement may extend beyond the period of one year. This period in appropriate cases may extend up to but not beyond three years.
3. Stand-by arrangements are not international agreements and therefore language having a contractual connotation will be avoided in stand-by arrangements and letters of intent.
4. In helping members to devise adjustment programs, the Fund will pay due regard to the domestic social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance of payments problems.
5. Appropriate consultation clauses will be incorporated in all stand-by arrangements. Such clauses will include provision for consultation from time to time during the whole period in which the member has outstanding purchases in the upper credit tranches. This provision will apply whether the outstanding purchases were made under a stand-by arrangement or in other transactions in the upper credit tranches.
6. Phasing and performance clauses will be omitted in stand-by arrangements that do not go beyond the first credit tranche. They will be included in all other stand-by arrangements but these clauses will be applicable only to purchases beyond the first credit tranche.
7. The Managing Director will recommend that the Executive Board approve a member's request for the use of the Fund's general resources in the credit tranches when it is his judgment that the program is consistent with the Fund's provisions and policies and that it will be carried out. A member may be expected to adopt some corrective measures before a stand-by arrangement is approved by the Fund, but only if necessary to enable the member to adopt and carry out a program consistent with the Fund's provisions and policies. In these cases the Managing Director will keep Executive Directors informed in an appropriate manner of the progress of discussions with the member.
8. The Managing Director will ensure adequate coordination in the application of policies relating to the use of the Fund's general resources with a view to maintaining the nondiscriminatory treatment of members.
9. The number and content of performance criteria may vary because of the diversity of problems and institutional arrangements of members. Performance criteria will be limited to those that are necessary to evaluate implementation of the program with a view to ensuring the achievement of its objectives. Performance criteria will normally be confined to (i) macroeconomic variables, and (ii) those necessary to implement specific provisions of the Articles or policies adopted under them.

   Performance criteria may relate to other variables only in exceptional cases when they are essential for the effectiveness of the member's program because of their macroeconomic impact.

departure from a specific portion of the letter of intent is not considered, and does not have the consequences of, a breach of such an agreement. Nevertheless, failure to adhere to the conditions of a stand-by arrangement can have significant consequences in dealing with the Fund or other financial institutions. Thus, compliance with the conditions of stand-by arrangements may be a necessary precondition to recognition by the world financial community, including development and commercial banks, that the country can be regarded as a safe borrower.[15]

II. Significant Issues in Currency Exchange Control

The implementation of a currency exchange system that complies with the requirements described in the preceding section can be very complicated. (These complications increase if the country is experiencing economic problems such as balance of payments deficits or liquidity shortfalls.) Moreover, a country's currency exchange laws have both national and international implications. Thus, a country's currency exchange control mechanisms are intertwined with many other aspects of that country's legal regime.

This section describes a number of key issues that must be addressed in adopting a currency exchange control mechanism. Each issue is described in relatively basic terms, and then, if possible, examples or alternatives are identified. This list of issues should not be viewed as exhaustive but is intended to illustrate the

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10. In programs extending beyond one year, or in circumstances where a member is unable to establish in advance one or more performance criteria for all or part of the program period, provision will be made for a review in order to reach the necessary understandings with the member for the remaining period. In addition, in those exceptional cases in which an essential feature of a program cannot be formulated as a performance criterion at the beginning of a program year because of substantial uncertainties concerning major economic trends, provision will be made for a review by the Fund to evaluate the current macroeconomic policies of the member, and to reach new understandings if necessary. In these exceptional cases the Managing Director will inform Executive Directors in an appropriate manner of the subject matter of a review.
11. The staff will prepare an analysis and assessment of the performance under programs supported by use of the Fund's general resources in the credit tranches in connection with Article IV consultations and as appropriate in connection with further requests for use of the Fund's resources.
12. The staff will from time to time prepare, for review by the Executive Board, studies of programs supported by stand-by arrangements in order to evaluate and compare the appropriateness of the programs, the effectiveness of the policy instruments, the observance of the programs, and the results achieved. Such reviews will enable the Executive Board to determine when it may be appropriate to have the next comprehensive review of conditionality.

Source of text: *Selected Decisions of the International Monetary Fund and Selected Documents*, 13th Issue, April 30, 1987, at 27-29 (Washington, D.C.: International Monetary Fund).

15. For example, usually the World Bank does not provide adjustment (balance of payment support) lending to its borrowing members without a Fund stand-by arrangement in place or at least under negotiation.

kinds of issues that should be considered in more detail before currency exchange controls are adopted or amended.

A. Multiple Currency Practices

Article VIII, Section 3 of the IMF Articles prohibits Fund members from engaging in "multiple currency practices . . . except as authorized by [the IMF Articles] or approved by the Fund." As noted this prohibition only applies to members who have accepted the obligations of Article VIII. As of April 30, 1994, 89 members have accepted the obligations of Article VIII.

A "multiple currency practice" exists when exchange rates for a Fund member's currency differ among different categories of exchange transactions.[16] Certain market driven variances—e.g., for purchases and sales or for spot or forward transactions—are not considered multiple currency practices. "Black market" rates that differ from official rates are also generally not considered multiple currency practices unless they are officially sanctioned or are so pervasive as to be implicitly sanctioned.[17] But an official structure that establishes different exchange rates for different transactions, or other official actions that have the effect of creating such differentiation (e.g., taxes, subsidies, etc.), may be found to be a multiple currency practice.[18]

Developing countries have often resorted to multiple exchange rates to combat balance of payment difficulties, macroeconomic instability, and/or lack of foreign currency reserves. Multiple rates are often used to favor certain types of "government-approved" uses of foreign exchange and to discourage other uses. Until recently, a hallmark of all centrally planned economies was a multitude of exchange rates for different classes of transactions, for legal enterprises engaged in favored activities, and for particular individuals. It may be difficult to eliminate all such differentiation on an immediate basis.

Moreover, a country may find it necessary to impose multiple exchange rates even after a set of singular rates has been in existence for a certain period. The example of Mexico, a member of the Fund which introduced exchange controls, including multiple exchange rates, in 1982, is illustrative. The Banco de Mexico introduced two basic exchange rates: a general rate and a preferential rate for priority transactions. In addition, the Banco de Mexico had the authority to set special exchange rates according to the country's needs. Apart from the official rates, there were unofficial or "coyote" rates in Mexico as well as the United States. After the introduction of multiple rates and accompanying strict currency controls, Mexico entered into negotiations with the Fund, which, *de facto*, ap-

16. Joseph Gold, Exchange Rates in International Law and Organizations 252 (ABA Sec. of Int'l Law and Practice, 1988).

17. *See* Stephen Zamora, *Exchange Control in Mexico: A Case Study in the Application of the IMF Rules*, 7 Houston J. Int'l L. 103, 106 (1984).

18. *See* Gold, *supra* note 16, at 252.

proved the controls without imposing any sanctions on Mexico. Under the influence of the Fund, however, Mexico lifted some of the restrictions and simplified its multiple exchange rate system.

Because there is no requirement in the IMF Articles or the Executive Board decisions of a Fund approval *prior* to an imposition of a restrictive currency regime by a member country, "the Fund is forced by circumstances to react to *faits accomplis*, as it apparently was in the case of Mexico."[19] The Fund's approval of Mexico's currency controls and restrictions never took the form of an explicit public statement, and its eventual acceptance resulted from negotiations between the Mexican government and the Fund.

B. Discriminatory Currency Arrangements

Article VIII, Section 3 also prohibits Fund members who have accepted Article VIII from engaging in "discriminatory currency arrangements." Although there is significant overlap (and often confusion) between the categories of "multiple currency practices" and "discriminatory currency arrangements," the two are distinct concepts that may encompass slightly different types of behavior. Moreover, according to the Fund's former General Counsel, Sir Joseph Gold, the Fund "observes a far more rigorous opposition to discriminatory currency arrangements than to multiple currency practices."[20]

Sir Joseph Gold defines discriminatory currency arrangements as "arrangements by a member to discriminate through its exchange system for the benefit, or to the detriment, of another member or members."[21] The concept prohibits "arrangements by a member that discriminate against another member or other members by means of unequal treatment through the exchange system."[22] Thus, the prohibition reaches to any practice that either discriminates against or favors another member or members to the exclusion of the other members of the Fund.

C. Current/Capital Account Distinctions

Currency convertibility refers to the ability to purchase and sell foreign currency, at fixed or fluctuating exchange rates, without any administrative restrictions.[23] Ideally, a country's economy should function without any restrictions on convertibility. Often, however, developing countries find it necessary to impose

19. Zamora, *supra* note 17, at 120.
20. Gold, *supra* note 16, at 280.
21. *Id.* at 281.
22. *Id.*
23. Joshua E. Greene & Peter Isard, Occasional Paper No. 81, *Currency Convertibility and the Transformation of Centrally Planned Economies*, IMF, June 1991, at 3. Historically, currency convertibility meant the freedom and capacity to convert money into gold at set exchange rates.

restrictions on currency conversion until their economies can function with convertibility.[24]

The IMF Articles, and the scholarly research in this area, distinguish between conversions for current account transfers and those for capital account transfers.[25] Thus, Article VIII, Section 2(a) prohibits Fund members from imposing restrictions on payments and transfers for "current international transactions" without the approval of the IMF. By contrast, Article VI, Section 3 recognizes the right of member countries to maintain "such controls as are necessary to regulate international capital movements," as long as they do not "restrict payments for current transactions."[26]

Distinguishing between payments for current transactions and capital transfers may be difficult. As defined in Article XXX(d) of the IMF Articles, "payments for current transactions means payments which are not for the purpose of transferring capital." Among the examples of current account payments are those due in connection with foreign trade and "current business, including services" as well as moderate remittances for family living expenses. In addition, however, current account payments include such quasi-capital items as "payments due as interest on loans and as net income from other investments" and "payments of moderate amounts for amortization of loans or for depreciation of direct investments."

Countries that attempt to regulate capital transfers will need to take account

24. For a recent study of such arrangements, see generally Eduardo Borensztein & Paul R. Masson, *Exchange Arrangements of Previously Centrally Planned Economies*, Part II of Occasional Paper 102, Financial Sector Reforms and Exchange Arrangements in Eastern Europe, IMF, February 1993 at 37-56.

25. *Current account convertibility* brings about, according to Greene and Isard, both benefits and risks to a country with an economy in transition from a centrally planned to a market system. Among the benefits are increased access to technology and consumption items, as well as increased competitive pressures through creating a competitive environment and promoting production. Among the risks are reductions in real wages, unemployment, and idle production capacities.

Capital account convertibility also generates both benefits and risks. On the one hand, it encourages direct investments and attracts foreign capital, management and technology. On the other hand, it enables great outflow of domestic capital and may increase macroeconomic instability caused by short-term speculative movements of capital across the borders.

See generally, Greene & Isard, *supra* note 23 at 5-8. Because the risks of introducing current account convertibility are significant, the Fund economists have identified four macro and microeconomic conditions that a country ideally should meet before abolishing all restrictions on current account transactions: (i) an appropriate (neither too depreciated nor too appreciated) exchange rate that is in harmony with balancing the country's international payments; (ii) a sufficient level of international liquidity, including access to foreign financing, foreign exchange reserves, and foreign currency holdings and assets of the country's citizens; (iii) macroeconomic stability, including price stability, credible fiscal discipline, and firm monetary control; and (iv) an ability to respond and adjustment to market prices. Because these four conditions are difficult for any country to meet, general convertibility for current account transfers may be desirable even if each of these conditions is not strictly met. *Id.* at 9-12.

26. Some developed industrial countries have maintained capital account restrictions until quite recently. For example, France abolished remaining restrictions on capital movements only on January 1, 1990. *But see* Gold, *supra* note 16, at 304-307 (a special rate of exchange for capital transfers is, according to the IMF Staff, a "multiple currency practice.")

of these definitions. Moreover, such countries should also be aware that private parties may seek to characterize certain transfers as current transactions in order to facilitate the movement or repatriation of investment.

As indicated above, new members are given the opportunity to avail themselves of a "transitional arrangement," one aspect of which is maintenance of "restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member." New members must, however, abolish such restrictions "as soon as they are satisfied that they will be able . . . to settle their balance of payments in a manner which will not unduly encumber their access to the general resources of the Fund."[27]

D. Limitations on Capital Flow

Closely linked to the capital account convertibility is the issue of limitations on capital flows. A country may impose limitations both (i) on residents and their ability to invest abroad; and (ii) on nonresident investors and their ability to repatriate investments made in the country as well as any profits and income from those investments.

In regard to the former, most of the former centrally planned countries, including the Czech Republic, Hungary, Poland, Russia, and the Slovak Republic, restrict the ability of residents, individuals or legal entities, to obtain credits or invest abroad. With respect to the latter type of restrictions, the situation is different. Even if a country is not ready to eliminate all controls on capital movements, it may nevertheless ease its restrictions in some specific areas, for example, in order to encourage foreign investment. For example, many of the former Eastern Bloc countries, including Lithuania, Poland, and Romania, allow nonresidents to repatriate profits, compensation, and investment earnings. The Czech Republic, Estonia, Hungary, Latvia, and the Slovak Republic, in addition, allow repatriation of the initial investments.

E. Internal Convertibility

Internal convertibility refers to the ability of a country's residents (both individuals and enterprises) to convert holdings of domestic currency into foreign currency (and vice versa) and, thus, to maintain assets denominated in foreign currencies. These restrictions are typically resorted to by countries with balance of payments problems and with limited reserves of freely convertible currencies. Nothing in the IMF Articles prohibits a country from restricting the ability of its residents to engage in such activities, and a number of countries have such restrictions.[28] For example, the Czech and Slovak Republics, Hungary, Poland,

27. *See* IMF Articles, Article VIII, Section 2.

28. Mexico's experience with U.S. dollar bank deposits is illustrative of the risks of unrestricted internal convertibility. In order to prevent capital flight, the Mexican Government encouraged its citizens to deposit dollars in Mexican banks (the so-called mexdollar deposits) by offering attractive

Romania, and Russia all maintain some restrictions on the ability of residents to convert their domestic currency into a foreign currency.[29]

Closely related to such direct restrictions are provisions that require residents to repatriate and exchange some or all of their foreign currency acquired through export proceeds or accruals of foreign exchange in general. Most of the countries that had centrally planned economies, including the Czech and Slovak Republics, Latvia, Hungary, Poland, Russia, Romania, and Ukraine, require residents to repatriate and surrender foreign currency proceeds.

Several countries, including the Czech and Slovak Republics, Romania, and Poland, distinguish between internal convertibility for individuals and that for enterprises. For example, in the Czech and the Slovak Republics, and in Poland, individuals have virtually unlimited ability to obtain and hold foreign currency. They must, however, "repatriate" such currency, and open foreign currency accounts only with banks in their respective countries. Accounts abroad may be opened only with express permission from local authorities, typically the state banks. Enterprises, on the other hand, must exchange all foreign exchange proceeds from exports. They must hold accounts in banks in the respective local currencies, and, when they need foreign exchange for their business operations, they must repurchase foreign exchange from the local authorized banks.

Limits on the import/export of certain goods or other trade provisions that restrict imports/exports can affect internal convertibility. Countries undergoing transition from centrally planned to market economies tend to impose import/export reporting and/or licensing requirements as part of their transition schemes. At the initial stages of transition, all the countries of Eastern and Central Europe controlled the amount and content of goods imported or exported to or from the countries. With the general liberalization of foreign trade in the past two years, most of these countries, including the Czech and Slovak Republics, Hungary, and Poland, have lifted many import/export restrictions and maintain them only for selected, mainly strategic, items. This makes a workable currency control regime all the more important.

F. Monitoring Mechanisms

1. *IMF Level*

Pursuant to Article XIV, Section 3 of the IMF Articles, the Fund annually monitors the existence of currency restrictions inconsistent with Article VIII that

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interest rates. When this failed to curb the flight of capital, the government enacted strict exchange controls which, *inter alia*, immediately converted all mexdollar accounts into peso accounts at the then applicable exchange rate. For a detailed discussion *see* Stephen Zamora, *Peso-Dollar Economics and the Imposition of Foreign Exchange Controls in Mexico*, 32 Am. J. Comp. L. 99 (1984).

29. Indeed, only in recent years has the United States allowed its residents to maintain bank accounts in the United States that were denominated in foreign currencies.

are in force under Section 2 of Article XIV, authorizing transitional arrangements. Any member state maintaining such restrictions must consult the Fund annually "as to their further retention."

In addition, Article VIII, Section 5, entitled *Furnishing of information*, authorizes the Fund to request member countries to provide national data on all subjects related to their fiscal, currency, investment, and import/export regime, and balance of payments, whenever the Fund "deems [it] necessary." This information is made available to other members as, according to subsection 5(b), the Fund acts "as a center for the collection and exchange of information on monetary and financial problems."

2. *National Level*

Various procedures are used at the national level to monitor flows of capital and goods across national borders. These vary from simple reporting requirements to complex administrative procedures for securing authorizations or licenses. With regard to reporting requirements, many industrialized countries require reports on large flows of capital or capital goods. For example, United States citizens have an obligation to declare in their custom forms any importation of $10,000 or more in cash, travellers checks, or commercial papers when entering the United States. In addition, the United States, Great Britain, and Switzerland have imposed various monitoring obligations in connection with efforts to control money laundering.

As an example of the latter, residents of several former Eastern Bloc countries, including the Czech and Slovak Republics, Hungary, and Poland, need authorizations of their central banks or ministries of finance in order to open bank accounts abroad or obtain commercial credits from banks abroad.

G. TRANSPARENCY/REPORTS

1. *IMF Level*

"Transparency" refers to the ability of those with an interest in the marketplace to determine what laws apply and what decisions have been reached with respect to those laws. Transparency is an important aspect of an efficiently functioning currency exchange control system that conforms with existing international obligations. This transparency occurs at both the Fund level and the national level.

The Fund prepares reports, both annual and on an *ad hoc* basis, based on the information received from members on the status of currency controls in their countries and other related matters to the Fund. Pursuant to Article XII, Section 7, entitled *Publication of reports,* the Fund annually publishes a statement of its accounts and every three months publishes statements of its operations, transactions, and holdings of SDRs, gold, and currencies of its members. It also publishes a yearbook entitled *Exchange Arrangements and Exchange Restrictions*.

At the same time, pursuant to Section 8 of the same article, entitled *Communication of views to members*, the Fund may, at its discretion, communicate with any member on an informal basis on any matter under the IMF Articles. Also, a seventy percent majority of the total voting power may authorize the Fund to publish a report on a member country regarding its economic and monetary developments if they "tend to produce a serious disequilibrium in the international balance of payments of members."

In addition, the Fund makes decisions of its Executive Board and the Board of Governors available in a publication entitled *Selected Decisions and Selected Documents of the International Monetary Fund.*

2. *National Level*

It is also extremely important that any domestic laws, rules, and regulations are readily accessible and available to the public. Transparency of national exchange controls is an area in which the Fund can be expected to exert influence as it negotiates with a Fund member. To achieve this goal, countries usually publish their laws and regulations in official gazettes before their effective dates.

Currency regulations and restrictions are, however, often carried out at an administrative level (e.g., resolutions or decisions of the governors of the central banks or ministers of finance) rather than through legislation passed through the regular parliamentary process. It is, therefore, important that such administrative measures are also available to the public, either in the same official gazette or a separate publication. In addition, a country should make decisions of judicial and/or administrative bodies implementing the domestic currency exchange controls and restrictions available to the public.

To increase accessibility, countries with official languages other than those commonly used for international financial transactions should consider publishing pertinent laws and regulations in at least one of those languages. For example, Hungary's official gazette is simultaneously published in the Hungarian, German, and English languages.

III. Country Analyses

The third part of this paper consists of comparative charts. The charts outline provisions contained in the relevant laws and regulations in Bulgaria and several other, similarly situated, Central and East European countries and former Soviet republics. The charts, *inter alia,* include such issues as: the existence of multiple and/or discriminatory exchange rates; restrictions on current and capital account convertability; the existence of internal convertability for business and/or private purposes; restrictions on currency flows both inward and outward; permissible levels of foreign capital participation; restrictions on repatriation of profits; and mandatory repatriation and/or surrender of export proceeds by countries' residents.

TABLE 1[30]

	BULGARIA * * * IMF member since 9/25/90	CZECH REPUBLIC * * * IMF member since 1/1/93	HUNGARY * * * IMF member since 5/6/82
Existence of multiple rates; determination of the exchange rate(s)	single rate—based on daily average of supply and demand of currencies by 15 commercial banks authorized; BNB intervenes only to hedge against fluctuations	single rate—based on a weighted basket of two currencies; 35% US Dollars and 65% German Marks	single rate—based on a weighted basket of 11 currencies (AUT, BEL, GER, FIN, FRA, ITA, NET, UK, SWE, SWI, USA) (weights adjusted annually); forint adjusted daily
(i) License necessary for sale/purchase of foreign currency; (ii) Convertibility for current account payments	(i) yes, from the chairman of the BNB (ii) sale of currency unrestricted on currency markets	(i) yes (ii) yes	(i) all registered enterprises are entitled to carry out foreign trade in convertible currencies [(individuals need authorization)] (ii) full convertibility for any business purpose
(i) Convertibility for capital account payments; (ii) Foreign capital participation		(i) yes, from the State Bank; (ii) established by FEA for payments and transfer by enterprises; individuals—only with foreign exchange license	(i) allowed provided that enterprise is registered with NBH
Internal convertibility for non-business (tourist) purposes		limited to 12,000 per year (special permit necessary for bigger allowance for education, medical, or family maintenance purposes)	limited to U.S.D. $800.00 annually
Repatriation of profits by non-resident investors	repatriation of liquidated capital, after-tax profits, and liquidation quota is not restricted (Law on the Protection of Foreign Investment of 1/92)	free transferability of profits, dividends, capital gains, interest earnings, and the full value of the capital participation (in case of liquidation)	free transferability of profits, capital gains, and liquidated investment capital; paid-in capital in foreign currency may be retained in an interest-bearing foreign exchange account and used, e.g., for tax and duty fee imports.

30. This information is gathered from analyses of current laws as well as information gathered from the Embassies of the respective countries.

(i) Mandatory repatriation of proceeds from exports by residents; (ii) mandatory surrender	(i) no (ii) no	(i) yes (both individuals and enterprises) (ii) no	(i) yes (ii) yes, unless exempted (applies to enterprises and individuals)
Remittances of earnings by foreign workers	unrestricted, permission from BNB not needed	subject to permission of the State Bank (granted liberally)	employees of JVs may transfer abroad up to 50% of their income
(i) Residents' foreign currency deposit accounts with local banks; (ii) transferability of funds	(i) residents may open such accounts (interest bearing); (ii) transferability is free of any limitations or restrictions	(i) residents—individuals can open such accounts (interest bearing); balances usable w/out restrictions (apart from selling the funds in the account); resident enterprises—may open such accounts only w/permit exempting them from the 100% surrender requirement; (ii) balances—freely usable; the account-keeping bank does not examine the origin of the money on the account	(i) individuals may keep interest-bearing foreign currency accounts at authorized banks (10% tax levied on interest); (ii) funds may be used for travel purposes, charity, or purchase of imported goods only; the account-keeping bank does not examine the origin of the account's holdings
(i) Nonresidents' foreign currency deposit accounts with local banks; (ii) transferability of funds	(i) residents may open such accounts (interest bearing); (ii) transferability is free of any limitations or restrictions	(i) nonresidents (individuals and legal persons) may open such accounts; (ii) payments and transfers are without restrictions (apart from selling the funds in the account)	(i) nonresidents may open such accounts with authorized commercial banks (10% tax levied on interest); (ii) export permit necessary, but banks grant automatically when request is made
Import quotas and other import restrictions	no import quotas; or restrictions; registration with Ministry for Foreign Economic Relations for statistical purposes; tariffs—harmonized system of nomenclature	no import quotas	more than 90% of trade goods are liberalized, and hence not subject to any quota or restriction
Export licensing and other export restrictions	largely unrestricted; but restrictions on some agricultural products	export licenses necessary only for a limited number of strategic products	exporters must fill out a form with the NBH; 85% of exported goods are liberalized

TABLE 1—(Continued)

	BULGARIA * * * IMF member since 9/25/90	CZECH REPUBLIC * * * IMF member since 1/1/93	HUNGARY * * * IMF member since 5/6/82
Ability of residents to (i) obtain credits from abroad; (ii) borrow foreign currency from domestic commercial banks	residents may borrow (i) from abroad without authorization of BNB; (ii) from domestic commercial banks	(i) with approval of the State Bank	(i) all foreign borrowing, with the exception of short-term commercial credits, requires the approval of the NHB (granted liberally); (ii) residents may borrow foreign currency from domestic banks authorized to deal in foreign currency for specified purposes, no special permission of the NHB is needed
Ability of commercial banks to obtain credits from abroad; exemption for foreign exchange activities	banks may borrow only if they do not request governmental guarantees	no approval necessary	all authorized commercial banks may perform foreign exchange transactions including obtaining of credit abroad

TABLE 2

	POLAND * * * IMF member since 6/12/86	ROMANIA * * * IMF member since 12/15/72	SLOVAKIA * * * IMF member since 1/1/93	RUSSIA * * * IMF member since 6/1/92
Existence of multiple rates; determination of the exchange rate(s)	presumably several rates; in 1990, zloty was pegged to U.S.$ (ZL 9,500 = $1); since May 1991, the exchange rate is determined on the basis of a weighted basket of currencies (USA, GER, UK, FRA, SWI) (Resolution No. 17 of the Council of Ministers on rules governing foreign currency exchange rates)	single official exchange rate—pegged to a basket of six currencies that reflects the geographical pattern of Romania's trade; interbank foreign exchange market was introduced—the exchange rate is determined through auctions	single rate—based on a weighted basket of two currencies: 40% US Dollars and 60% German Marks	presumably several exchange rates ("special commercial" and "market")
(i) License necessary for sale/purchase of foreign currency; (ii) Convertibility for current account payments	(i) yes, general foreign exchange permits are issued by the Ministry of Finance; individual permits are issued by the president of the NBP (subject to appeal to the Supreme Administrative Court); (ii) once general or individual permits are granted, payments for invisible expenses (insurance, transportation, etc.) are permitted freely if related to such authorized trade transactions	(i) yes; the NBR issues authorizations to banks for selling/lending foreign currency; (ii) foreign currency available for current account payments through authorized banks; general or individual authorizations, usually from the Ministry of Finance, necessary for transactions in foreign currency	(i) yes (ii) yes, full convertibility for judicial persons	(i) yes, from the CBRF; deals involving foreign currency between residents and between residents and nonresidents, circumventing the authorized banks, are null and void; (ii) enterprises need a license to conduct transactions involving foreign currency; once the license is granted, they may, presumably, obtain sufficient foreign exchange from the authorized bank

TABLE 2—(Continued)

	POLAND * * * IMF member since 6/12/86	ROMANIA * * * IMF member since 12/15/72	SLOVAKIA * * * IMF member since 1/1/93	RUSSIA * * * IMF member since 6/1/92
(i) Convertibility for capital account payments; (ii) Foreign capital participation	(i) subject to obtaining a foreign exchange permit from the Minister of Finance (except for inheritances which may be authorized by bilateral agreements or be based on reciprocity—up to 1 million Zloty); (ii) JVs founded under the Joint Venture Act of 1991; foreign investors may have a majority participation	(i) all inward and outward transfer of foreign currency subject to authorization of the Ministry of Finance; resident legal entities need authorization of the NBR to open accounts abroad; transfers by resident individuals typically not allowed (except for inheritances); (ii) foreign capital participation allowed up to 100% (Foreign Investment Law of March 1991)	(i) portfolio investments and their transfers abroad are subject to the approval (foreign exchange license) of the State Bank (usually approved if considered to facilitate exports); (ii) foreign capital participation allowed up to 100% (no approvals necessary for JVs with private companies, only with state-owned enterprises)	(i) authorization of the CBRF is necessary for capital transfers; (ii) foreign capital participation allowed up to 100% (authorization necessary if investment exceeds 100 mil. Rubles)
Internal convertibility for nonbusiness (tourist) purposes	permission for tourist travel granted only if means of support is assured either by nonresidents, or from resident's own funds from an "A" account, or obtained in the free market, or travel takes place w/an authorized tourist group	limited to equivalent of U.S. $75.00 for every two years	limited to 12,500 koruna per year ($1.00 = approximately 30 koruna) (special permit necessary for bigger allowance for education, medical, or family maintenance purposes)	(the CBRF sets procedures and quotas for the purchase of foreign currency by resident individuals)

Repatriation of profits by nonresident investors	nonresident investors (other than JVs) may transfer abroad: profits on direct investment up to 10% of invested capital; up to 50% of export surplus (not to exceed 50% of net after-tax profit); Ministry of Finance may authorize transfers exceeding 50%; proceeds of sale of assets upon liquidation; JVs with *foreign participation* may transfer profits from export proceeds without limitation (Joint Ventures Act of 6/1991)	unrestricted transfer of profits out of foreign currency receipts; repatriation of up to 15% of the initial capital out of lei earnings annually, subject to approval of the Agency for the Promotion of *Foreign* Investment (Foreign Investment Law of 1990)	free transferability of profits, dividends, capital gains, interest earnings, and the full value of the capital participation (in case of liquidation)	free transferability of after-tax profits, dividends, interest earnings, *compensation* for nationalization, and the invested capital (in case of liquidation); nonresident enterprises may purchase foreign currency on the "domestic currency market" in return for their Ruble business proceeds (Law on Foreign Investments of 7/1991)
(i) Mandatory repatriation of proceeds from exports by residents; (ii) mandatory surrender	(i) yes (ii) yes, for export proceeds and pensions from abroad; applies also to foreign visitors	(i) yes, 50% of export proceeds must be sold to the NBR (as a contribution to a special fund for training of staff involved *in international* cooperation); (ii) yes, enterprises must sell their export proceeds to the authorized banks; individual residents working abroad must transfer a part of their income (does not apply to employees of international organizations)	(i) yes (both individuals and enterprises); (ii) yes, full surrender and conversion into koruna by enterprises (not individuals), unless granted foreign exchange license; individuals must either sell foreign currency to a bank or deposit the funds in a foreign currency account with an authorized local bank	(i) yes; export revenues funds must be transferred into accounts in authorized banks in Russia, unless permitted otherwise; (ii) yes, enterprises must sell part of their export proceeds (minus the cost of transportation, insurance, and expediting of freight abroad), and 10 percent of all hard currency revenues to the Central bank (revenues from international production cooperation are partly exempted)

TABLE 2—(Continued)

	POLAND * * * IMF member since 6/12/86	ROMANIA * * * IMF member since 12/15/72	SLOVAKIA * * * IMF member since 1/1/93	RUSSIA * * * IMF member since 6/1/92
Remittances of earnings by foreign workers	employees of JVs may transfer abroad their income without special foreign exchange permit (Joint Venture Act of 6/1991); transfers of other nonresident workers are determined by agreements between domestic and foreign institutions or enterprises		subject to permission of the State Bank	foreign employees of enterprises with foreign investment may transfer abroad their after-tax foreign currency earnings
Residents' foreign currency deposit accounts with local banks; transferability of funds	residents may hold foreign exchange in: (a) "A" accounts—only for individuals (interest bearing); may be used freely for transfers abroad, travel, purchases of goods and services; may not be used to effect settlements between individuals (no need to declare the sources of the funds deposited); (b) "ROD" accounts—for juridical persons (interest bearing) for funds accumulated in these accounts before 1/1/90 when 100% surrender requirement went into effect; (c) "Bank PKO, S.A." deposit certificates—interest bearing; the source of funds need not be declared	residents may open foreign currency accounts w/the Romanian Bank for Foreign Trade and other commercial banks	(i) residents—individuals can open such accounts (interest bearing); balances usable w/out restrictions (apart from selling the funds in the account); resident enterprises—may open such accounts only w/permit exempting them from the 100% surrender requirement; (ii) balances—freely usable; the account-keeping bank does not examine the origin of the money in the account	residents (individuals and enterprises) may open hard currency (interest bearing) accounts with authorized banks; individuals need not prove the origin of the money in the bank account

Nonresidents' foreign currency deposit accounts with local banks; transferability of funds	nonresidents (individuals and juridical persons) may open such accounts (interest bearing, except for demand deposits) which may be credited with transfers from abroad or currency legally obtained in Poland; funds may be freely transferred abroad or given as a gift to residents; nonresidents are free to open Zloty accounts (no interest); must declare the source of funds; transfers to residents (apart from gifts) require foreign exchange permit (granted without restrictions)	nonresidents may open such accounts w/the Romanian Bank for Foreign Trade and other commercial banks; no restrictions on the use of the funds in these accounts; three types of accounts: (a) "A"—in convertible currencies (interest bearing)—free transfer abroad; (b) "B"—in nonconvertible currencies—may be debited only for payments in these currencies or for local transactions; (c) "C"—in lei—only for domestic transactions; time deposits available (interest bearing)	(i) nonresidents (individuals and legal persons) may open such accounts; (ii) payments and transfers are without restrictions (apart from selling the funds in the account)	nonresidents may open such accounts (interest bearing) with authorized banks
Import quotas and other restrictions	no licenses necessary for imports, apart from military equipment, radioactive materials, temporary imports of capital goods, and transport equipment for leasing; the Customs Law allows for import quotas; none were applied in 1990; ad valorem import tariffs apply	import transactions subject to licenses issued by the Ministry of Trade and Tourism; the Ministry may curb imports to protect public health, or for reasons of national security, defense, or balance of payments; imports are subject to ad valorem import tariff	temporary import surcharge on consumer products	residents (legal entities) need a license to import goods/services

TABLE 2—(Continued)

	POLAND * * * IMF member since 6/12/86	ROMANIA * * * IMF member since 12/15/72	SLOVAKIA * * * IMF member since 1/1/93	RUSSIA * * * IMF member since 6/1/92
Export licensing and restrictions	export licenses required for goods subject to export quotas; export under international agreements stipulating bilateral settlements; temporary exports of capital goods and transport equipment for leasing; and 16 products to help maintain balance in the domestic market; export quotas apply to goods subject to import restrictions in other countries, and coal, steel scrap, live animals, pork, and sugar	export transactions subject to authorization of the Ministry of Trade and Tourism; the authorizations are not discriminatory or restrictive	export licenses necessary only for a limited number of strategic products	residents (legal entities) need a license to export goods/services

Ability of residents to (i) obtain credits from abroad; (ii) borrow foreign currency from domestic commercial banks	(i) specialized enterprises may take financial loans from foreign banks with approval from the Minister of Finance; (ii) specialized enterprises may, with approval from the Minister of Finance, extend commercial credits in foreign currency to residents		(i) with approval of the State Bank	(i) with approval of the CBRF
Ability of commercial banks to obtain credits from abroad; exemption for foreign exchange activities	the NBP, Bank Handlowy, Bank PKO, S.A. and the Export Development Bank may borrow abroad (the Ministry of Finance sets upper limits on foreign borrowings by the banks)		with approval of the State Bank	

TABLE 3

	ESTONIA * * * IMF member since 5/26/92	LATVIA * * * IMF member since 5/19/92	LITHUANIA * * * IMF member since 4/29/92	KAZAKHSTAN * * * IMF member since 7/15/92
Existence of multiple rates; determination of the exchange rate(s)	single rate	single rate—set weekly by Bank of Latvia for all currencies against the Lats individually	single rate—set daily by bank of Lithuania and authorized hard currency commercial banks on basis of average buying and selling rates of various foreign currencies	single rate—set twice a week on the basis of interbank auctions
(i) License necessary for sale/purchase of foreign currency; (ii) Convertibility for current account payments	(i) no; (ii) yes, full convertibility of juridical persons	(i) yes from Bank of Latvia; all residents, foreign individuals, and legal entities may own foreign currency; (ii) no limitations	(i) yes (ii) no limitations	(i) yes (ii) yes
(i) Convertibility for capital account payments; (ii) Foreign capital participation	(i) yes; (ii) foreign capital participation allowed up to 100% (need to obtain a governmental foreign investment license)	(i) no limitations or restrictions; (ii) in most sectors foreign capital participation allowed up to 100% (not allowed in defense industry; manufacture of narcotics; weapons and explosives; emission of stock, banknotes, coins and stamps; in the areas of mass media and education, natural resources, fishing, hunting and port management) (Law on Foreign Investment of 11/5/1991). In certain sectors foreign participation is allowed only up to 49%; foreigners also need a permit	(i) no limitations or restrictions; (ii) in most sectors foreign participation allowed up to 100% in certain strategic sectors, the energy sector, for example	(i) need permission of the NB which also registers such investments (the country, however, lacks control mechanisms to monitor such transactions and distinguish them from current account payments)

Internal convertibility for nonbusiness (tourist) purposes	yes	no limitations on after-tax profits	no limitations on after-tax profits	
Repatriation of profits by nonresident investors		unrestricted	unrestricted	yes
(i) Mandatory repatriation of proceeds from exports by residents; (ii) mandatory surrender	(i) no; (ii) no	(i) no; (ii) no	(i) no; (ii) no	(i) yes; (ii) yes, surrender of 50%; subject to granting exceptions
Remittances of earnings by foreign workers				
(i) Residents' foreign currency deposit accounts with local banks; (ii) transferability of funds		(i) yes, unrestricted; (ii) no formal restriction, but not practically workable given high rates	(i) yes, unrestricted; (ii) yes	
(i) Nonresidents' foreign currency deposit accounts with local banks; (ii) transferability of funds		(i) yes, but in practice different as foreign banks are reticent to invest; (ii) no	(i) yes; (ii) no	(i) yes, with authorized banks; (ii) yes, repatriation allowed
Import quotas and other import restrictions				yes
Export licensing and restrictions	restrictions only for strategic goods	export duties are levied on raw exports of material	there are restrictions on narcotics, firearms, and alcohol	yes, export licenses necessary for mineral resources
Ability of residents to (i) obtain credits from abroad; (ii) borrow foreign currency from domestic commercial banks	(i) (ii) yes			
Ability of commercial banks to obtain credits from abroad; exemption for foreign exchange activities	the use of foreign credits is regulated by the Bank of Estonia			