

INTERNATIONAL MONETARY FUND

**Preliminary Considerations of Options to Address
Excessive Delays in the Completion of Article IV Consultations**

Prepared by the Strategy, Policy and Review and the Legal Departments

In consultation with other departments

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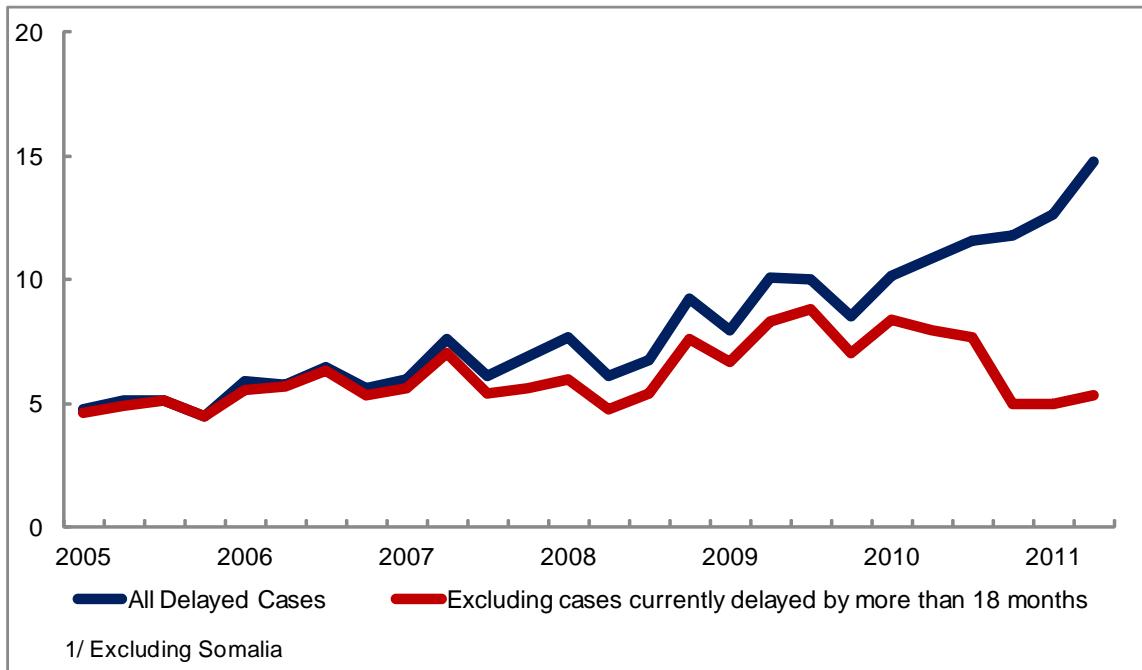
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I. INTRODUCTION¹

1. **This paper aims to engage Directors on how best to promote timely completion of Article IV consultations.** Surveillance is mandatory for both the Fund and its members, and members have an obligation to consult with the Fund for this purpose. In this context, it is useful to consider if further steps are warranted to address cases in which members do not consult with the Fund on a timely basis. This paper does *not* propose Board decisions at this stage. Instead it lays out ideas to elicit Directors' views. Based on this informal discussion, staff could return later to the Board, if needed for a formal discussion and possible decisions.
2. **Periodic consultations with members on their policies and access to the necessary information are essential for effective surveillance.** The Fund cannot effectively fulfill its bilateral surveillance obligation without members fulfilling their obligation to consult with the Fund. Furthermore, the Fund cannot adequately oversee the international monetary system—its multilateral surveillance obligation—if its bilateral surveillance does not cover major economies at a reasonable frequency. In this context, discussions with the authorities and other key stakeholders in the context of staff missions have formed the cornerstone of Fund surveillance, ensuring the quality of staff's analysis, as well as the relevance of its advice.
3. **The Fund's cooperative approach to consulting with members has worked well, but a few cases of severely delayed consultations have triggered calls for a discussion on how to address the issue of timeliness.** As discussed in Section II below, the Articles of Agreement give the Fund the power to *require* members to consult within a specified period. To date, the Fund has not subjected these consultations to firm deadlines, setting instead such deadlines as expectations and relying on members' willingness to engage in a cooperative manner. This approach has generally worked well. While at any point in time there have been countries for which the Article IV consultations were delayed, these delays have tended to be either reasonably short or, when more extended, for reasons obviously beyond the member's control—for instance related to the security situation. However, some recent delays have been exceptionally long for reasons not clearly beyond the relevant members' control (Figure 1). Against this background, a number of Directors have called for a clarification of the legal framework governing members' obligation to consult.
4. **The paper proceeds as follows.** Section II discusses the legal background on members' obligation to consult. Section III lays out broad options to address exceptional delays. Section IV suggests issues for discussion.

¹ This paper was prepared by a team comprising J.F. Dauphin, T. Konuki, S. Cogliardi and M. Shannon, (all SPR) and N. Rendak, M. Makonnen and R. Leckow (all LEG).

Figure 1. Average Delay of Delayed Consultations (in months)¹

II. LEGAL BACKGROUND

A. Member's Obligation to Consult with the Fund

5. **The Articles require the Fund to conduct bilateral surveillance.** The Fund is obligated under Article IV, Section 3(a) to “oversee the compliance of each member with its obligations” under Article IV, Section 1. Given the importance of exchange rate policies for the Fund, Article IV, Section 3(b) further requires the Fund to exercise “firm surveillance” over exchange rate policies of members, and to adopt specific principles for the guidance of members with respect to those policies. These provisions constitute the legal basis for bilateral surveillance.

6. **To enable the Fund to conduct bilateral surveillance, each member is required to provide it with the necessary information and to consult with it when requested.** The obligation to consult is set out explicitly in Article IV, Section 3(b) with respect to a member’s exchange rate policies and, with respect to the member’s domestic economic and financial policies, forms part of the general obligation under Article IV, Section 1 “to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates.”²

7. **Consultations must allow for meaningful policy discussions.** While the Board has not provided comprehensive guidance on the scope or content of a member’s obligation to

² See [The Fund's Mandate—The Legal Framework](#), page 6, footnote 9.

consult under Article IV, some essential elements of the obligation can be derived from an analysis of the provision itself, its legislative history and the manner in which it has been applied in practice. These elements include the following:

- The obligation applies to all members.
- The obligation arises when a member is “requested” to consult by the Fund.³ Under the current framework, this “request” is effectively set out in the provisions of the 2007 Surveillance Decision which provides that “members shall [emphasis added] consult with the Fund regularly under Article IV” and that “in principle” these consultations shall take place annually.”⁴ In the context of individual members, these provisions are supplemented at the end of each Article IV consultation when the Executive Board notes the expected periodicity of the next Article IV consultation with the member.⁵
- The obligation requires the member to consult with Fund staff on the issues the Fund considers relevant for the purposes of surveillance. For this purpose, it is the Fund that delineates the range of issues to be discussed within the parameters of members’ obligations under Article IV and relevant Board decisions.

Separately (but closely related to the obligation to consult), the member must provide the Fund with the information required for surveillance pursuant to Article IV, Section 3 (b) and Article VIII, Section 5.⁶ For Article IV consultations to fulfill their purpose under the Articles, the Fund must have the opportunity to have access to critical information that it

³ The need for a request is explicit with respect to consultations on a member’s exchange rate policies under Article IV, Section 3 (b) and is implicit in the obligation to consult with respect to a member’s domestic economic and financial policies.

⁴ [Decision on Bilateral Surveillance over Members' Policies](#) adopted June 15, 2007 (“2007 Surveillance Decision”), paragraph 17, [Decision on Article IV Consultation Cycles](#), adopted September 28, 2010.

⁵ Since 1983, when the Executive Board endorsed the practice of specifying in Article IV staff reports the “expected date” of completion of the subsequent Article IV consultation, Fund policy has set forth the frequency of Article IV consultations in terms of “expectations”. At the time, it was explained that the “practice of establishing, at the conclusion of each consultation, a final date for the discussion of the next consultation with the member would be helpful, although the specification of the cycle in this fashion should not be so rigid as to detract from management’s prerogative, in consultation with the member country and the Executive Director concerned, to change the scheduling.” On this occasion, the Board also agreed that the status of members’ observation of the consultation schedule, including the reasons for delays, be periodically reported to the Board.

⁶ Article IV, Section 3 (b) requires members to provide the Fund with the information necessary for the conduct of its firm surveillance over their exchange rate policies. However, for the purposes of requiring information for surveillance, the Fund has always relied upon the obligation of members to report information under Article VIII, Section 5. Moreover, the information that members are required to provide under Article VIII, Section 5 is further specified in [Decision on Strengthening the Effectiveness of Article VIII, Section 5](#).

requires to conduct surveillance and to engage in meaningful discussions with the authorities on policies.

8. **Consultations take place between the member and the Fund, including the Executive Board.** While the consultation under Article IV begins with discussions with Fund staff, it is only concluded when the Executive Board has reviewed the member's policies and decides to complete the consultation.

B. Periodicity

9. **To date, the Fund has not subjected the obligation of members to consult under Article IV to any firm periodicity.** Rather, it has defined the frequency of Article IV consultations in terms of "expectations" whose "deadlines" are not mandatory.⁷ Unless the Fund specifies a mandatory deadline by which members must consult with the Fund, members cannot be found in breach of this obligation if they do not consult within the expected timeframe. For such a breach to be possible, the principles of due process and uniformity of treatment would require that members be put on notice in a clear and transparent manner ex ante of the circumstances under which a member could be found in breach of obligation as well as the consequences if such a finding were made.

III. BROAD OPTIONS GOING FORWARD

10. **The cooperative approach should remain the core pillar of any framework to support timely Article IV consultations.** As noted, the present system has generally worked well. In considering options going forward, it will be important to continue to put primary emphasis on cooperation, recognizing that the overwhelming majority of members are doing what is necessary to consult with the Fund.

11. **Any change to the current framework would need to weigh the costs of strengthened procedures against their potential effectiveness.** Any amendment should avoid placing an unnecessary burden on the Fund, either by requiring staff to report with excessive frequency to the Board or by requiring the Board to become involved in cases that do not merit its attention.⁸ Any changes should put in place effective incentives for the reengagement of non-cooperating members, e.g., cases where members are simply *unwilling* to consult with the Fund.

12. **Against this background, three broad options are outlined below, ordered by the extent to which they would depart from the existing system.**

⁷ See [Decision on Article IV Consultation Cycles](#), adopted September 28, 2010.

⁸ As noted in footnote 5, the Board already monitors all Article IV consultation delays through a dedicated quarterly report.

A. Option 1

13. **The first option would focus on informal mechanisms within the current framework.** Under this approach, management and staff would continue to use informal channels to engage with members that have not consulted with the Fund on a timely basis. This approach would build on the assumption that cases of non cooperation have been, and are expected to remain, very rare, and a view that they are likely to be more effectively handled through informal channels than formal procedures, with potential scope for more informal engagement than currently occurs. Such an approach may also take into account the extent to which Directors consider that such cases will resolve themselves over time.

14. **This option has the advantage of not increasing the burden on staff, the Board, or members.** However, the absence of visible actions to address cases of serious delays may raise questions about the importance that the Fund attaches to members' obligation to consult. There is a reputational risk for the institution to the degree it is viewed as leaving noncooperation cases unchecked. It also raises the risk of contagion from precedents of non-cooperation.

B. Option 2

15. **The second option would establish concrete formal steps to address cases of serious delays while largely preserving the existing framework.** Under such an approach, the Fund would seek to engage members through explicit, but relatively limited, changes to existing procedures. This would have the advantage of including concrete actions while avoiding the creation of a more obligation-based framework for dealing with a handful of cases. The extent to which the actions that may be taken within the existing framework would provide enough incentives for non-cooperative members to start re-engaging with Fund staff would need to be considered. Such actions could be considered individually or, perhaps more effectively, combined.

16. **One possibility would be to seek formal involvement from Management in encouraging the member's authorities to consult with the Fund.** For instance, once a certain delay has passed, say a year, the framework would provide for Management to send a letter to the member reminding it of its obligation under the Articles and strongly urging it to engage in consultation discussions with staff.

17. **The Fund could consider increasing the publicity of delayed consultations.** For instance, the Fund could periodically publish a brief report listing members for which the consultation has been delayed by more than, say, 18 months past the scheduled expectations date, and stating the reasons for delays along the lines of the categories used in the existing quarterly Report on Delayed Article IV Consultations (see footnote 8). This report would be first considered by the Board, possibly on a lapse-of-time basis, alongside the quarterly report. Publicizing only delays over 18 months would seem reasonable as at any point in time in the past ten years, the maximum number of members with delays to complete the consultations of more than 18 months has been no more than 7 (Figure 2). Such a step would have the advantage of increasing the transparency on all delayed consultations, although

members whose delays are attributable to reasons that are obviously beyond their control may object to publication alongside other cases.

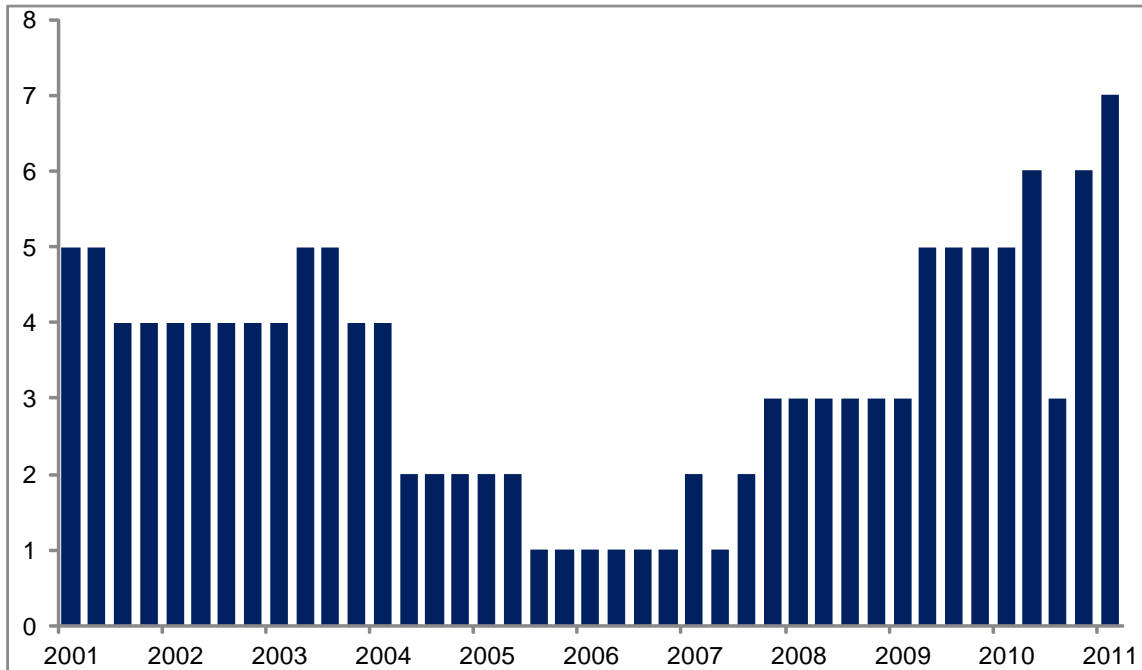
18. **The Board could hold discussions of the member’s economy based on staff reports prepared without discussions with the authorities.** In cases of prolonged delays, staff could undertake an assessment of the member’s economy and its policies based on available information and prepare a report including, to the extent possible, staff’s assessment and policy recommendations.⁹ The Board could discuss this report in an informal session. Such reports could be prepared periodically, for instance annually, as long as the member has not consulted with the Fund, regardless of the reasons for the delay. The Board could also require that such reports be published, with appropriate deletions and due caveats on the limitation of the information available to staff. Publication would provide transparency regarding staff’s understanding of the situation in the member’s economy.¹⁰

19. **Preparing reports without discussions with the authorities would ensure that the Board continued to monitor developments in member countries on a regular basis, but the approach would come with its own risks.** Such an approach would not constitute a consultation with members for the purposes of the member’s obligation to consult under Article IV. It would be difficult for staff to provide a rigorous assessment in the absence of consultations with the member, particularly where information gaps are large. As a result, the reports may miss key vulnerabilities. There would be a reputational risk for the Fund if the circumstances in which the reports would be prepared were not fully understood by the public or there were confusion regarding the status of this report versus an Article IV consultation report. Similarly, there is a risk that some members may see this as a possible substitute for consultations.

⁹ Such a report would, in any case, need to identify information gaps that affect staff’s assessment.

¹⁰ Under Fund policies, the Fund could not publish a report that set out the Fund’s (i.e., the Executive Board’s) views on a member’s policies or that contained confidential information provided by the member without the relevant member’s consent. Accordingly, to the extent that the report would be published without the relevant member’s consent, any such information would need to be deleted. As a practical matter, identifying the relevant information that would need to be deleted for this purpose may prove difficult in some circumstances.

Figure 2. Number of Members Delayed over 18 Months (end-of-quarter data)



C. Option 3

20. **The third option would be to establish an obligation-based framework to address cases of noncooperation.** The Board could adopt a decision of general applicability clarifying the scope and content of the obligation to consult, and setting out a procedural framework for determining the existence of a breach and taking remedial measures. Such a framework would have similar characteristics to those established for arrears and data provision. It would be based on clear rules that respect the principle of uniformity of treatment, would be set up in a manner that focuses on genuine cases of noncooperation, and would give members the benefit of any reasonable doubt in determining questions of noncompliance.

21. **The establishment of such a framework would have the advantage of providing a strong signal of the importance that the Fund attaches to the obligation to consult but represent a greater departure from the existing system.** The Fund would need to determine whether setting up such a framework would be the optimal way to address such cases, taking into account the small number of cases with substantial delays currently but also the possible risk of contagion. Because establishing such a framework would raise a number of legal and operational issues, a possible design of the framework and related issues are discussed in some detail in Annex I.

IV. ISSUES FOR DISCUSSION

22. **The above options are not necessarily mutually exclusive.** Establishing concrete steps under the existing system, or adopting a new framework, would not preclude

continuing also to use informal channels to seek to reengage with non-cooperative members. Similarly, a possible obligation-based framework could include ideas discussed under option 2 (e.g., letter from Management, staff report based on available information).

23. Directors may wish to comment on the following issues.

- Do Directors agree that excessive delays in Article IV consultations undermine the Fund's ability to effectively discharge its surveillance mandate?
- What are Directors' views on the broad options described in Section III?

ANNEX I. POSSIBLE ELEMENTS OF AN OBLIGATION-BASED FRAMEWORK

1. **This annex discusses in greater detail the legal and practical issues in designing the potential contours of a framework under option 3.** Such a framework should seek to preserve the cooperative approach, while providing the means to deal with cases of non-cooperation. Possible features could be as follows:

- The Board would continue to specify the periodicity of the next Article IV consultation at the conclusion of each Article IV consultation with a member, and, on this basis, the deadline by which that consultation would be *expected* to be concluded.
- A second *mandatory* deadline would also automatically apply. It would be set uniformly and would be calculated from the expected date for completion of the consultation, and would be the limit by which the member would be *obligated* to complete its consultation discussions with staff.
- The Board would be notified of any case in which the mandatory deadline is exceeded. The Board would determine whether the delay was for reasons beyond the member's control, based on a recommendation from the Managing Director. Where this was not the case, the member would be found in breach of its obligation to consult with the Fund.
- A framework of remedial measures would be applied, with emphasis on seeking to engage the member in a cooperative manner. The framework could mirror those already established for misreporting under Article VIII, Section 5 and financial arrears.

Establishing Mandatory Deadline

2. **An obligation-based framework could complement the current expected date for concluding a consultation with a later mandatory deadline.** The framework would continue to rely mainly on deadlines set as expectations at the end of each Article IV cycle.¹ But, setting a mandatory deadline is necessary if one wants to enforce the obligation in non-cooperative cases, including by finding members in breach of their obligation to consult where warranted. Three questions would need to be addressed:

- *What should be the subject of the mandatory deadline?* Because members have no control over the time it takes for the consultation to be concluded by the Board, it would be reasonable to set the mandatory deadline in reference to completion of substantive discussions for the Article IV with staff as opposed to the conclusion of the consultation by the Board.

¹ Normally the expected date would be the one stipulated in the most recent Article IV report. However, under the policy governing Article IV cycles, this expected deadline may shift automatically in certain circumstances, e.g., when the Fund approves an arrangement for a member.

- *Through what mechanism should the mandatory deadline be fixed?* Setting the mandatory deadline automatically (i.e., through a Board decision of general applicability) would recognize that the obligation to consult applies to all members, irrespective of their circumstances.
- *How far from the expected deadline should the mandatory deadline be?* Defining the appropriate length of such an interval would be a judgment call that would need to strike a balance between the need to capture only the longest delays while not letting such delays become so significant that they severely undermine the Fund's capacity to discharge its mandate. Leaving about a year and a half between the initial expected date for concluding the consultation and the later mandatory deadline for completing the discussions with staff would seem a reasonable interval (see paragraph 17 and Figure 2 of the paper).

3. **Members would need to be given ample advance notice of the upcoming mandatory deadline.** In keeping with the principle of maintaining a cooperative approach toward surveillance, a member with a long-delayed Article IV consultation would need to be reminded well in advance of the upcoming mandatory deadline. This would give it time to remedy the situation before the matter was brought to the Board's attention. Under one possible approach, the Managing Director would send a letter to the member notifying it of the upcoming mandatory deadline. The letter would also advise the member of the potential application of the remedial framework (see discussion below) if the discussions with staff were not completed by the mandatory deadline for reasons that are not beyond the member's control. No such letter would be needed when discussions with staff had started, but had not been completed due to delays resulting from the Fund's own internal processes.

Finding of Breach

4. **An obligation-based framework would need to set out procedures and potential remedial actions to be taken if the mandatory deadline were not met.** In addressing potential cases of noncompliance with the obligation to consult, this framework would need to ensure that members were granted due process and were given the benefit of any reasonable doubt. Moreover, wherever possible, it would seek to address genuine cases of noncompliance in a cooperative manner with the relevant member.²

5. **When the mandatory deadline was not met, the matter would be brought to the Board's attention, with early notice to the member.** A possible approach would be as follows. The Managing Director would notify the member of his intention to issue a report to the Executive Board. The member would have, say, 60 days to respond and provide its explanation for the delayed consultation. The Managing Director would subsequently issue

² As such, its approach would be similar to that inherent in the Fund's policies for addressing cases of breach of obligation under Article VIII, Section 5 and cases of financial arrears to the Fund. [Decision on Strengthening the Effectiveness of Article VIII, Section 5](#), and [Procedures for Dealing with Members with Overdue Financial Obligations to the General Department and the SDR Department](#).

the report, which would include the member's response (if any) and include staff's assessment of the reasons why the consultation was not completed. The report would make a recommendation regarding a possible finding of breach of obligation. The Board would consider the report within, for instance, 90 days of its issuance.

6. **If the Board found that the member had failed to consult with staff by the mandatory deadline for reasons not beyond its control, the member would be found in breach of obligation and subject to the application of remedial measures.** In determining whether the member was in breach of obligation for a failure to consult with the Fund, the Board (based on the Managing Director's recommendations) would need to assess the reasons that prevented the timely conclusion of the discussions. An assessment of compliance for this purpose would be based upon the relevant circumstances of the member. A member would not be found in breach of obligation if its failure to consult was due to circumstances beyond its control.³

7. **An obligation-based framework would need to provide guidance on the types of circumstances that would be considered beyond the member's control.** Reasons beyond a member's control may arise for a number of situations—for example, because of civil unrest, because there is no recognized government with which the Fund can consult, because the occurrence of a natural disaster makes it impossible or extremely difficult for the government to consult. Such circumstances are expected to be extremely rare and it would not be advisable to seek to identify them *ex ante* in the framework. In applying the framework, the Fund would assess whether the circumstances were such as to make it impossible or extremely difficult for the member to engage in meaningful policy discussions with the Fund. As noted above, the Fund, in assessing these various questions, would give the member the benefit of any reasonable doubt.

8. **If the member were not found in breach of obligation, the Board would need to set a new deadline within which the member would be required to consult with staff.** The Board would review the situation regularly, for instance every 6 months, until the discussions were held and the consultation was concluded. In cases where the Managing Director's report does not recommend a finding of a breach of obligation, its consideration could be on a lapse-of-time basis.

Possible remedial measures

9. **An obligation-based framework would need to set out procedures for remedial actions for members found in breach of their obligation to consult.**

³ The obligation to consult under Article IV may be contrasted with the obligation of members to report information under Article VIII, Section 5. In the latter case, the Articles explicitly require the Fund to take into account the ability of members to furnish the data requested, and the member may not be found in breach of obligation if its failure to report accurately is due to its inability to provide that information. While the Articles do not provide for a similar express exemption for purposes of the obligation to consult under Article IV, principles of due process support an approach under which a member would not be found in breach of the obligation to consult if the failure to consult were due to circumstances beyond its control.

- *A possible approach could be to mirror closely the measures that apply in cases of breach of the data provision obligation under the Article VIII, Section 5 or overdue financial obligations to the Fund.* These procedures would include periodic reviews of the situation by the Board, e.g., every 6 months, and would provide for the application of remedies that would seek to engage the member in a cooperative approach. As such, the remedies would be applied on an escalating basis only to the extent that such cooperation was not forthcoming. Remedies could include: declaration of censure; suspending the use of the GRA and concessional resources, suspension of voting rights; and eventually compulsory withdrawal from the Fund. As in the cases involving arrears to the Fund and breach of obligation under Article VIII, Section 5, the application of such measures would be expected to be extremely rare, as the purpose of such framework would be to elicit cooperation before having to resort to sanctions (Table 1). All Board decisions under the remedial procedures would be published, as would be the initial findings of breach of obligation.
- *Another option would be to complement the above framework by the periodic Board discussions (and, possibly, publications) of staff reports as described in paragraph 18 of the report.* This would be done in parallel to the escalating process of remedial measures.

Table 1. Breach of Obligation and Escalating Remedial Measures:
Number of Precedents in the Past 25 Years

	Findings/ emergence of breach	Complaint issued	Censure	Ineligibility of use of Fund resources	Declaration of noncooper- ation/ suspension of TA	Suspension of voting rights	Compulsory withdrawal
Data provision	13	n/a	0	0	n/a	0	0
Overdue financial obligations	18	16	n/a	7	2	2	0

Source: Staff reports and FIN databases.

Transitional arrangements

10. **Should a comprehensive framework be adopted, the transition from the current system would need to be carefully managed.** A new strengthened framework should probably not enter into force right upon its adoption, but only after a lag (e.g., a year) to avoid having members potentially be immediately found in breach of obligation without having time to take remedial action. The details of the transition would also need to be carefully laid out so that members clearly know when the mandatory deadline would first apply.