

EUROPEAN CENTRAL BANK – INDEPENDENCE, TRANSPARENCY AND ACCOUNTABILITY

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1. Introduction

The European Community Treaty has established the ECB as a specialized, independent organization for conducting monetary policy and performing related functions. To this end, the ECB has been given a legal personality of its own, with its own decision-making bodies and powers. Its organization as a central bank responds to the specific nature of monetary policy, i.e. a public policy function that is implemented mainly by financial market operations.

The ECB has legal personality under Article 107(2) of the EC Treaty and enjoys the most extensive legal capacity accorded to legal persons under the respective national law of each Member State under Article 9.1 of the Statute of the ESCB. It may therefore acquire or dispose of movable and immovable property and be party to legal proceedings. In addition, the ECB enjoys those privileges and immunities that are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Communities of 8 April 1965.

As a legal person under public international law, the ECB is in a position to, among other things, conclude international agreements in matters relating to its field of competence and participate in the work of international organizations such as the International Monetary Fund (IMF), the Bank for

International Settlements (BIS) and the Organization for Economic Co-operation and Development (OECD).

Although performing a policy function under the EC Treaty the ECB is not a Community institution in the proper meaning of the term. It is not referred to in Article 7 of the EC Treaty which establishes the five institutions of the Community: the European Parliament, the Council, the European Commission, the Court of Justice and the Court of Auditors. These institutions are entrusted with the broad mandate of carrying out the tasks of the Community within the limits of the powers conferred upon them by the Treaty. Instead, the legal basis of the ESCB and the ECB is provided for in a separate article (Article 8 of the Treaty). This underpins the specific status of the ECB within the overall context of the European Community, sets it apart from the other institutions and their auxiliary bodies and limits its activities to a clearly defined special task.

As an organization created by the EC Treaty, the ECB enjoys genuine powers. These powers have not been delegated by the Community institutions; they are genuine powers given to the ECB by the EC Treaty. This feature distinguishes the ECB from the various decentralized agencies of the Community, which possess their own legal personality but have competences delegated to them by the Community institutions.

2. The importance of BCE's independence

A cornerstone of monetary order in the euro area is the independence of the ECB and euro area National Central Banks (NCBs) from political influence. This independence has been enshrined in both the EC Treaty and the Statute of the ESCB, rather than in secondary legislation, and thus has "constitutional" status.

The ECBs independence is a corollary to its primary objective of maintaining price stability and its exclusive competence for the monetary policy and related functions in the euro area. The ECB needs to be shielded from all types of influence that might be adverse to the achievement of its primary objective. An independent central bank is not only in a better position to pursue the primary objective of price stability; it is also perceived by the public to be more credible than a central bank which is dependent on a government. Indeed, governments have to pursue many objectives and are not perceived by the financial markets and the general public to always give priority to the objective of price stability where there is a conflict of objectives.

The independence of the ECB is not therefore an end in itself, but rather an indispensable element of a monetary order that gives priority to the objective of price stability.

a) Institutional independence

Article 108 is the key Treaty provision establishing the independence of the ECB. First sentence states explicitly that, *"when exercising their powers and carrying out their tasks and duties, neither the ECB nor an NCB nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body"*. The wording of Article 108 makes it illegal to accept or

seek instructions from any body, be it public or private, national or international, with the emphasis on the term "instruction". Article 108 does not preclude seeking relevant information or dialoguing with the aforementioned bodies.

The prohibition on the acceptance of instructions is complemented by a self commitment of the Community institutions and bodies and the governments of the Member States. The second sentence states that these bodies *"have undertaken to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the NCBs in the performance of their tasks."* Thus, they are obliged to abstain from attempting to give instructions to the members of the decision-making bodies of the ECB and the NCBs and to abstain from influencing them.

b) Legal independence

The ECB and NCBs enjoy their own legal personality, which is a prerequisite for the independence of the members of the Eurosystem. For the ECB, legal independence includes the right to bring actions before the European Court of Justice (ECJ) in order to uphold its prerogatives if they are impaired by a Community institution or Member State.

c) Personal independence

To substantiate the institutional independence, the Statute protects the personal independence of the members of the ECB's decision-making bodies. It stipulates, in particular, relatively long fixed terms of office:

- a minimum term of office of five years for the NCB governors, which is renewable;
- a non-renewable term of office of eight years for the members of the Executive Board.

A member of the ECBs decision-making bodies may not be dismissed in a discretionary manner on the grounds of past policy performance. Instead

members may only be removed from office if they become unable to fulfill the conditions required for the performance of their duties or if they are found guilty of serious misconduct. In such cases, the Governing Council or the Executive Board may apply to the ECJ to have the member of the Executive Board *compulsorily retired* (Article 11.4 of the Statute of the ESCB). In the same circumstances, an NCB governor may be *relieved from office* by the competent national authority in line with the procedures specified in the statute of their respective NCB.

However, the governor concerned or the Governing Council may refer the matter to the Court, which has jurisdiction in such cases (Article 14.2 of the Statute of the ESCB). The statutes of the NCBs (as amended in line with Article 109 of the EC Treaty) extend the protection against discretionary dismissals to the other members of the NCBs' decision-making bodies; however, the other members do not enjoy the right to refer the matter to the European Court of Justice (ECJ).

d) *Financial independence*

The ECB and the NCBs have their own financial resources and income and enjoy organizational autonomy. Their financial and organizational autonomy enables the Eurosystem to perform its tasks as required.

The capital of the ECB is subscribed and paid up by the NCBs. The ECB has its own budget, independent from that of the EU. The Statute also allows the ECB to adopt autonomously the conditions of employment for its staff and to organize its internal structure as it sees fit.

In addition, as a supranational organization, the ECB enjoys in the territories of the Member States the privileges and immunities that are necessary for the performance of its tasks. Chapter 1 of the Protocol on the privileges and immunities of the

European Communities of 8 April 1965 guarantees, among other things, that the premises and archives of the ECB are inviolable and that its property and assets are intangible. The Protocol states further that these must not be subject to any administrative or legal measure of constraint without the authorization of the ECJ.

As regards the NCBs' financial and budgetary autonomy and the autonomy of their staff, the Member States have a certain influence over NCBs' budgets and the distribution of profits and staffing, be it as (sometimes sole) shareholder of their respective NCB or as national legislator. However, in line with the statutes of the NCBs, the Member States' rights are subject to the proviso that their exercise is not allowed to impede on the NCBs' capacity to perform their Eurosystem-related functions.

3. The efficiency of central bank transparency

In August 2003 the Executive Board adopted the ECB's mission statement reflecting its aims and position within the Eurosystem. *"The European Central Bank and the national central banks together constitute the Eurosystem, the central banking system of the euro area. The main objective of the Eurosystem is to maintain price stability: safeguarding the value of the euro. We at the European Central Bank are committed to performing all central bank tasks entrusted to us effectively. In so doing, we strive for the highest level of integrity, competence, efficiency and transparency."*

The first part of the mission statement emphasizes the ECB's vital relationship with the NCBs of the euro area and the primary objective of the Eurosystem. The second part stresses the ECB's commitment to performing its tasks in an effective manner, and the values which the staff and management of the ECB regard as especially

important for the performance of their duties. The values of integrity, competence, efficiency and transparency were given particular prominence in an ECB staff survey, the results of which served as direct input for the formulation of the mission statement.

These values are reflected in the way in which the ECB has organized its internal structure and working procedures. These structural and procedural features are not static but continually evolving with a view to developing the best practices and standards. Thus, in its start-up phase, the ECB's priorities were to establish its functions and to introduce the euro. Now that these initial goals have been successfully realized, the ECB has more recently increased its focus to strengthening its internal organization and human resources strategy.

In 2005, the Governing Council of the ECB agreed on a *mission statement* for the Eurosystem, as well as on a set of common values and organizational principles to promote a shared identity and successful team work among all members of the Eurosystem. The *six common values* agreed for the ECB are: competence, effectiveness and efficiency, integrity, team spirit, transparency and accountability, and working for Europe. The *nine organizational principles* include: participation, cooperation, transparency and accountability, distinguishing Eurosystem activities, cohesion and unity, exchange of resources, effectiveness and efficiency in decision making, cost efficiency, measurement and methodology, as well as exploit synergies and avoid duplications.

Committee chairpersons also seek to ensure that an atmosphere of trust prevails among committee members, and aim to foster a participatory team spirit. In line with the aims of the Eurosystem's mission statement, the committee structure contributes to good governance and

helps the Eurosystem to perform its tasks effectively and efficiently in a spirit of cooperation and teamwork. In this regard, it is important to pursue an approach that clearly defines roles and responsibilities for all members of the Eurosystem.

4. Accountability – a way to gain legitimacy

Accountability is a basic precondition for democratic legitimacy and a core element of democratic structures. In a democracy, all power emanates from its citizens and all decisions that bind and affect a community have to be legitimized by the will of the electorate. Thus, public policy decisions are legitimate if they are the direct or indirect expression of that will – this is often referred to as “input legitimacy” or “legitimacy by procedure” – or if they meet the justified expectations and needs of the citizens – a notion referred to as “output legitimacy” or “legitimacy by result”.

As an organization established by the EC Treaty, which was signed and ratified by all Member States in accordance with their constitutional requirements, the ECB enjoys “*input legitimacy*”. The EU Member States (acting through their elected representatives) took a sovereign decision to transfer responsibility for monetary policy and the related tasks to a new Community organization and to endow it with independence from political interference. Competency for monetary policy is transferred within the limits and the conditions of a mandate which clearly defines the objective of monetary policy and thus limits the amount of legally permitted discretion that the decision making bodies of the ECB can use in conducting monetary policy.

Further “input legitimacy” is derived from the procedure for appointing the members of the ECB's decision making bodies; they are all appointed by the democratically elected

representatives of the Member States. As already stated, Executive Board members are appointed by common accord of the Member States at the level of the Heads of State or Government (after consultation of the European Parliament); the other members of the Governing Council are appointed by their respective national authorities in line with prevailing procedures.

However, the ECB can also derive “*output legitimacy*” by successfully performing the tasks entrusted to it. The conduct of monetary policy and the performance of other tasks have been made subject to independent decision making for a specific purpose, i.e. maintaining price stability in the euro area. The experience of a number of central banks in the post-war period has shown that this objective can be best achieved by having an independent central bank that acts within a clear and binding mandate. In this way, despite its intentional distance from the normal political process, an independent central bank can enjoy full output legitimacy.

In addition, the legitimacy of independent central banks rests on a comprehensive framework for holding them accountable. Independence and accountability are two sides of the same coin. Thus, the ECB is called on to explain and justify to the European citizens and their elected representatives how it uses the powers and prerogatives it has been entrusted with.

The term “accountability” refers to a concept deeply rooted in the democratic and institutional conventions of English-speaking countries. In a European context, the notion of “being accountable” is understood to mean being held responsible for one’s decisions and actions and being required to justify and explain them.

This concept necessarily refers to an ex post justification and explanation. Indeed, if any political body – such as a parliament or government – were able to intervene or influence

directly the policy-making of the central bank, they would actually be taking part in the decision-making process itself and hence would share the responsibility for the policy outcomes. This would not only contradict the independent status of the central bank, but it would also render the concept of accountability meaningless.

To a large extent, accountability goes hand in hand with transparency. Transparency means not only releasing information, but also structuring that information in such a way that the public can understand it. Transparency thus facilitates the process of holding an independent central bank accountable. The Treaty provisions for holding the ECB accountable and the practices and procedures established over the years have been adapted to the specific political, economic and institutional circumstances in which the ECB operates. The ECB is a supranational central bank that carries out its tasks for the multi-country economy of the euro area; its audience is not genuinely European, but rather multinational. The ECB has also been given a specific institutional structure with the ex officio participation of the NCB governors in its decision-making.

Despite institutional and political differences, the provisions and procedures for holding the ECB accountable ensure that the ECB fulfils its accountability obligations no less effectively and adequately than a “conventional” central bank in a national context.

5. Conclusions

In designing a blueprint for the Eurosystem, it was also important to incorporate a number of critical components for the success of central banking, as identified by the experience of central banks with a strong record in delivering price stability. We briefly review several – but by no means all – of the Eurosystem’s “building blocks”.

a. Modern monetary theory has flagged the critical role of *central bank independence*. It is widely seen as a prerequisite for the successful pursuit of price stability. Central bank independence is consistent with the existence of a decentralized operational framework for monetary policy, whereby decisions on a single short-term interest rate are made centrally, and it also leaves scope for a central bank to evolve over time. It should have, and has in most cases, constitutional rank. The studies on central bank independence were influential in that more attention was devoted to the issue in political cycles. Over past decades far-reaching reforms of monetary constitutions around the world aiming at increasing central bank independence have been undertaken. All euro area NCBs were made fully independent at the time of Stage One of EMU.

b. Central banks should have a *clear policy goal based on a constitutional mandate*. Central bank mandates have evolved over time. Over the last two decades, the conclusion that has emerged from the academic debate, and that is widely shared by policy makers, is that focusing monetary policy on the goal of price stability is its best possible assignment, reflecting the comparative advantages between policy instruments and policy objectives. Actual practices or operational concepts may, however, vary somewhat across major industrial countries.

c. Most central banks around the world have accepted the importance of *high standards in terms of transparency and clarity*. Transparency is an attribute with several facets touching upon the diverse actions (and activities) of the Eurosystem. Its aim is to render monetary policy more effective by ensuring that the public understands the monetary policy objective, as well as the preparation and decision-making processes behind it. However, transparency is not an end in itself. *Modern central banks have chosen to be accountable to citizens for their monetary policy*. This helps monetary policy to better anchor inflation expectations and enhance its credibility. Accountability is the legal and political obligation of a central bank to explain and justify its decisions to citizens and their elected representatives. High standards in terms of accountability provide the necessary checks and balances for an independent central bank that performs its tasks in a democratic society. The process of accountability requires the existence of a binding mandate against which a central bank's actions can be assessed. Accountability normally takes the form of a dialogue that involves elected representatives (i.e. Parliament, Government) and the central bank. In a wider sense, accountability includes a broad range of official communications by the central bank in which it explains to the general public how it achieves its policy goal.

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