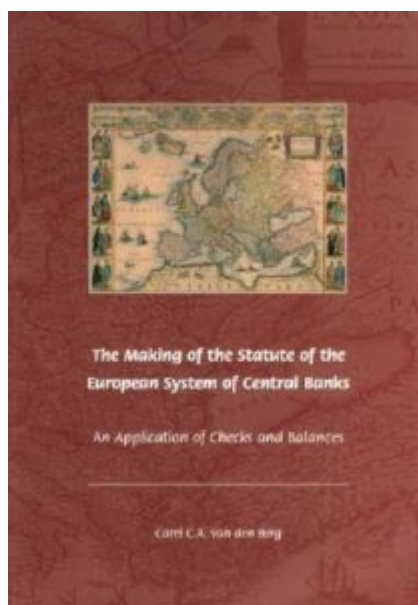


The Making Of The Statute Of The European System Of Central Banks ~ Chapter 3: Introduction to Cluster I



Checks and balances between the ESCB and the public authorities - (the political relations of the ESCB)

Chapter 3: *Introduction to Cluster I*

The ESCB, consisting of the ECB and the national central banks of the Member States, has been inserted, as a new institution *sui generis*, among the existing Community institutions.[1] We note there was no attempt to amend or change the existing institutions to the new EMU environment, e.g. there was no attempt to create an independent 'gouvernement économique' (an idea alluded to in the Werner Report), which would have taken away responsibilities assumed by the Ecofin Council and could have led to a reduced involvement of national parliaments, as Member States were reluctant to hand economic powers to the Community. [2] The relations of the ESCB with these other institutions will develop over time, but they will always have to be based on the Protocol on the Statute of the European System of Central Banks and of the European Central Bank and a number of relevant EC Treaty articles.[3] In this and the following two chapters we will select and study those articles of the Protocol and of the Treaty, which constitute the framework for the ESCB's relations with the other branches of government.

First we will take back a few steps and ask ourselves a few seemingly elementary questions, such as ‘what is the basic Community structure’ and ‘what makes the ESCB different from the existing Community institutions’? Their treatment will constitute a useful general background for chapter 4, where we reconstitute the genesis of the wording of the most important articles governing the external relations of the ESCB. Because of the relative importance of the concepts of independence and accountability for the System’s external checks and balances we pay some attention to them as well by referring to the existing literature on these topics. We do not develop new frameworks, as we focus on the concept of checks and balances, of which they constitute a part, though a familiar part. Part of our contribution will be that we do not look at them as antitheses, but as somehow complementary in terms of checks and balances. In chapter 4 and following reference will be made to US Federal Reserve System, i.e. where this might help us understand, and assess, better the solutions found for the ESCB.

Basic Community structure

The *basic Community structure* has developed out of the structure of the European Coal and Steel Community (ECSC), established in 1951 on the basis of the ideas of Jean Monnet.[4] The ECSC was managed by the High Authority, which had executive, but also regulatory powers. However, important decisions needed political backing in the form of approval by a Council of Ministers.[5] A Court of Justice was established to ensure lawful application and interpretation of the Treaty (and the regulations). An Assembly with representatives of the Member States was established (which met once a year) with consultative powers. The structure of the European Economic Community and Euratom, each established in 1957 by a Treaty of Rome, resembled this institutional design: a Council of Ministers which decides, but which can only do so on the basis of a proposal or recommendation of the Commission.[6] The Commission has the important right of initiative and forms the executive branch of the Community structure. The roles of the Court of Justice and the Assembly [7] were the same as under the ECSC.[8] The Single European Act (1986) introduced some important changes: the Assembly was renamed into European Parliament and most decisions in the area of the internal market could as of then be taken by a qualified majority in the Council and in co-operation with the European Parliament (instead of requiring unanimity among the ministers and only consultation of the Assembly).[9]

The Treaty of Maastricht has changed the situation considerably, by introducing

new areas of competence and decision-making procedures for the European Union. However, within the classical *first pillar*, encompassing the EEC (renamed European Community), the ECSC (expired in 2002) and Euratom the basic structure has remained relatively unchanged, important changes within this structure being the introduction of a co-decision procedure between the Council and the European Parliament, increasing the role of the latter, and the introduction of a right of initiative for the ECB (shared with the Commission) for some Council decisions.[10] This shared right of initiative is less of an infringement on the exclusive right of initiative of the Commission than it seems at first hand, as until then the Commission had no competence whatsoever in the monetary area. A few *special characteristics* of the four Community institutions (Parliament, Council, Commission and Court of Justice) will be mentioned here, because they help to understand the special position of the ESCB. The four traditional Community institutions operate as specific arms of the Community: they do not have legal personality and they operate always on behalf of the Community (the Community itself has legal personality).[11] Their task is not confined to one area (for instance transport or economic policy), but they have to carry out 'the tasks entrusted to the Community'.[12] 'Each institution shall act within the limits of the powers conferred upon it by this Treaty.' [13] The tasks of the Community are mentioned in Article 2 of the Treaty (we quote the tasks as amended by the Maastricht Treaty): 'to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.'

What makes the *ESCB* special compared to these institutions is its narrow objective, that is to guard the stable value of money. This is not only clear from Article 105-EC, but also from Article 3a(2)-EC, which clearly mentions that the primary objective of both the single monetary policy and the exchange-rate policy is to maintain price stability. By contrast, the activities of the Community (and therefore of its institutions), which activities are mentioned in Article 3 and 3a(1), are directed towards fulfilling the purposes mentioned in Article 2. Does this imply the ESCB is not part of the Community, but a partner? [14]

This question relates to the difference between the concept of the Community as

a political idea (closely related to the concept of a European Union) and the concept of the Community as a legal entity expressly related to the common market and *derived* objectives (such as a balanced development of economic activities, high levels of employment, economic convergence and social protection).[15] Indeed, it is probably better to say that monetary sovereignty has been surrendered to the Community *level* than to the Community as such. If we say that the ESCB is a Community institution *sui generis*, the emphasis is on *sui generis*. We would not concur with those who would describe the ESCB as an organ or body of the Community, because it does not do justice to the special position of the ESCB, as it suggests the ESCB could fall under the general political guidance of the European Council[16] - though we do agree the ESCB and the ECB are part of the Community framework.

Independence

Concurrent with the foregoing, the ESCB has been endowed with a high degree of *independence*. This was a *sine qua non* for Germany, based on its historical experience, supported by economic arguments (see genesis of Article 7-ESCB). Most authors distinguish institutional, personal, functional and financial independence (see Smits (1997), Endler (1998, p. 405) and also the Committee of Governors' Introductory Report on the draft ESCB Statute of November 1990, p. 5, par. (d)). For a further treatment of these elements of independence, see under Art. 7, section I.1. The ESCB is not goal-independent. In the words of Issing: 'the goal [is] set out by the legislature on behalf of the ultimate sovereign: the wider public, the people we serve.' [17] Others contest this; in their view the ECB still has too much goal independence, as it can define 'price stability'. [18] However, what we want to stress here is that the feature of independence as such is not unique for the ESCB.

For instance, the independence of the Commission is based on almost exactly the same wording as used for the ESCB. (In fact, the wording used for the Commission was copy-pasted by the drafters of the ESCB Statute.) [19] Another (and maybe better [20]) example might be that of the Court of Justice. The judges and advocates-general of the Court of Justice have to take an oath that they will perform their duties impartially and conscientiously. (Protocol on the Statute of the Court of Justice, Artt. 2 and 8). The judges and advocates-general are appointed for terms of six years by common accord by the governments of the Member States and cannot be dismissed by the political authorities. It could be

said that the ESCB has a degree of independence quite similar to that of the Court of Justice.[21]

But even the Court of Justice is not completely independent. For instance, the judges do not appoint their successors. Complete independence does not exist (and should not exist in a democracy). In a democracy there are only degrees of independence. Complete independence is even not supported by the literature: according to Rogoff's famous model (1985) the appointment of a completely independent and very conservative central banker will lead to a suboptimal outcome for society (read: it suboptimally raises output variability when supply shocks are large). He does plead for a central banker who places a large, but finite, weight on inflation rate stabilization. Of course, this is not the same as saying that the optimal solution is that in extreme situations the central banker can be overruled by the government (as recommended by Lohmann (1992)), because a government will more often see 'extreme situations' than the central banker, which risks upsetting the balance of power between the central bank and the political authorities.

This leads us to the important issue of 'checks and balances' between the different elements of government (defined in a broad sense).[22] Independence and accountability have a place within the framework of 'check and balances', which can be understood easily if one realizes that both concepts relate to other parts of the government: independence from whom? And accountable to whom? Checks and balances were also a recurring theme - though mostly implicitly - during the negotiations on and drafting of the articles of the ESCB Statute, which will be dealt with in chapter 4. It appeared to the author that the central banks were ahead of the academics, for instance as regards the importance of independence for maintaining price stability and the ways in which independence could be designed. The first studies that specifically deal with the importance and measurability of central bank independence date from the late eighties and especially the early nineties. [23] A lonely predecessor in this respect was Donald Fair (1980), who compared the relations between governments and central banks for twenty OECD countries. He emphasized that no country has been prepared to grant complete independence and none is likely to. The relative success of the best known independent central banks, i.e. those of Germany and Switzerland, are ascribed by Fair to the *communis opinio* in these countries over the main economic policy objectives.[24] Bade and Parkin should also be mentioned for

their seminal paper, first presented in 1977 at a conference in Victoria, Australia, and available over the years as updated unpublished mimeo and as a Working Paper in 1988.

Finally, we do not share Neumann's approach which is to dismiss the issue of democratic accountability by saying a central bank only makes 'technical' decisions.[25] According to Neumann, democratic accountability is only necessary in cases where institutions make political decisions, i.e. face a trade-off with respect to conflicting objectives, whereas an independent central bank is only committed to one objective. This is too simple: in practice there are many moments when a central bank has to decide whether or not to move interest rates and how fast on the basis of imprecise and often conflicting information, with important consequences for general macro-economic and financial developments. The point in favour of independence is that political authorities have a shorter time horizon and will probably consistently lean towards easier money, as the time lags between monetary easing and inflation are relatively long, which behaviour is not conducive to price stability. (The occasions that ministers have called for tighter monetary policy are very rare indeed.) The behaviour of the government is at the same time understandable, but also self-defeating. This is captured by the time-inconsistency (or 'dynamic inconsistency') concept. This concept was formulated by Kydland and Prescott (1977) and later developed by Barro and Gordon (1983).[26] Basically, their analysis shows that, if the appointed monetary authority shares the government's incentive to expand output above its equilibrium level, discretionary policy has an inflationary bias. The temptation for the government comes from the desire to achieve growth higher than potential growth, or an unemployment rate below the natural rate, by surprise monetary stimulation, which however will lead to a shift of the Phillips curve to the right, leading to an equilibrium with unchanged output and higher inflation. (See also Blinder (1998), *Central Banking in Theory and Practice*, pp. 36-50.) The 'solution' is to appoint a relatively conservative central banker.[27] One of the earliest references to the impact of reputation of the central bank governor on the outcome of monetary policy is to be found in a study by Kenneth Rogoff in 1985 and Alex Cukierman in 1986.[28]

Accountability [29]

Accountability (like independence) is an elusive concept. One commonly used definition among academics is based on the Oxford English Dictionary, which

defines accountable as “obliged to give a reckoning or explanation for one’s action; responsible”.[30] We also think accountability should extend to the *way in which* a central bank has achieved its objective (in other words, accountability should not be confined to explaining failures). Indeed, in certain circumstances it might be better to overshoot the target than to achieve it at extremely high costs – which in itself pleads against using contracts between government and central bank governor setting ceilings to inflation, with the possible exception for countries coming from a situation with very high inflation or a low reputation for the central bank. Or to put it differently, would the performance of the Bundesbank have improved if it had been under a contract; and what would have happened with the contract in the extreme event of the unification when inflation went up? It is hard to imagine anything but reduced credibility for the Bundesbank and thus reduced discipline in the other sectors of the economy. Briault c.s. (1996, p. 21) say as much by pointing out the Bundesbank model with so much independence and so little accountability would not have survived without the social acceptance of sound monetary policy. Their argument seems to imply that imposing a contract on the central bank presupposes support for sound monetary policy is lacking, possibly especially among those who impose the contract, which would indicate the contract is meant to bind the hands of the government and not so much of the central bank.[31]

Accountability nor independence are the main topic of this study. However, they are relevant concepts in the context of checks and balances. We will come back to accountability and independence in chapters 5.2.2 and 5.3. We will see that more accountability does not necessarily mean less independence. Accountability can make the independence *de facto* more acceptable to others. In an unbalanced system, eliciting jealousy and irritation among the political authorities, even independence-engraved-in-stone is at risk. So the essential point is that central bankers are not served by minimizing accountability. [32]

Before describing some of the outcomes in terms of checks and balances, first a short observation on the *democratic deficit*. This expression is normally used by authors who put the emphasis on the negative aspects of a too high degree of independence (which is usually equated with a lack of accountability towards democratically elected politicians).[33] For the central bankers the fact that the Statute would become part of the Treaty (in the form of a protocol) implied that the Statute would be endowed with the highest form of democratic approval.[34]

For them a democratic deficit was not apparent. Nonetheless, some authors (Gormley/de Haan, Stiglitz) are of the opinion that 'monetary policy ultimately should be controlled by democratically elected politicians' (Gormley/de Haan (1996), p. 112). In addition to this 'normative-legal' argument, these authors also refer to economic academic writings, according to which a conservative central banker can be 'too independent' to be long-lasting; in such a case the government will try to effectuate less independence (or a less conservative governor) in order to minimize their own loss function depending on the government's own preference for output stabilisation.[35] We will analyse both arguments.

The first argument against an independent central bank (the 'normative-legal' one) has been dealt with adequately by a number of constitutional courts in Europe. The German constitutional court (Karlsruhe) refuted this argument in a well-known verdict on a case initiated by a group of citizens who wanted to block the ratification of the Maastricht Treaty. The Karlsruhe court judged that the modification in the 'Demokratieprinzip', implied by the Treaty of Maastricht (i.e. a deviation from the principle that important policy decisions should be taken by elected persons) was acceptable, because it considered 'an independent central bank would be better able to ensure price stability (thus providing an economic foundation for economic decisions by the official and private sector) than bodies which might benefit from higher inflation and which rely on political support with a short-term focus.' [36] [37] In France parliament approved a constitutional amendment which the French Constitutional Court had deemed to be necessary - thereby clearing any constitutional obstacles and clearing the way for ratification of the Treaty of Maastricht.

If the Union were ever to develop statehood capacities, it will have to be decided whether to expressly vest all monetary powers in one of the branches, e.g. the legislative branch[38], or in the Union as such, for instance using the formulation of the German constitution: 'Der Bund errichtet eine Währungs- und Notenbank als Bundesbank' (Article 88 Grundgesetz *ante* Maastricht).

One could describe the democratic process in the case of the ECB as follows: first, elected politicians subscribe to the importance of price stability; second, they choose a credible method for achieving this - one proven method being to place the central bank outside the direct control of themselves, giving up the possibility of using monetary policy for electoral purposes. This supports the logic of instrumental independence, though not yet per se of goal independence.

However, allowing a government to change the central bank's goal in the run-up to elections would surely make monetary policy less predictable, the pre-commitment of the central bank to price stability less credible and the inflation expectations less subdued.[39] [40]

The second (economic-electoral) argument pleading against a too independent or too conservative central banker[41] seems to hold better. Being experienced central bankers, many of them serving for many years and a number of them having served before in the administration of their country, the governors knew that an organization which creates the suspicion it is aiming for uncontrolled 'power' will come under much more indirect and even direct political pressure, with the ultimate threat of a change in their legal base.[42] The importance they thus attached to 'an institutional balance of power' led to a situation, in which the ESCB is indeed less than completely independent. [43] Our purpose is not to try to evaluate whether the ECB is too independent or not. This is a too narrow view. It would seem beforehand that different degrees of independence are possible, provided the independence is embedded in an appropriate structure of checks and balances. For instance it would be hard to imagine that a governmental body which could not be sent away by a parliament would be allowed to define price stability.

Indeed, the following chapters will show the Statute is full of these kinds of 'checks and balances', the roots of most of these going back to the report of the Delors Committee.

NOTES

[1] Article 4.1 of the EEC Treaty (see also next footnote) originally mentioned four institutions (which are usually referred to as Community institutions): a European Parliament, a Council of Ministers, a Commission and a Court of Justice. In 1977 Article 4.3 was added, which mentioned a fifth institution: the Court of Auditors. The Treaty of Maastricht moved the Court of Auditors to Article 4.1.

[2] We do not delve into these issues. Here we only note that in the end - apart from the establishment of the ESCB - only a few aspects of the Community framework were adapted to the new situation. We will come back to this in the paragraph below on the 'Basic Community structure'.

[3] The Treaty of Maastricht (signed on 7 February 1992 and, after being ratified by all Member States, effective as of 1 November 1993) created the European Union (EU). The official name of that Treaty is the Treaty on European Union

(TEU). The Union (Articles A-F of the Treaty of Maastricht) is founded on the European Communities, supplemented by a *second* and *third* pillar (a common foreign and security policy and cooperation in the fields of justice and home affairs) (Articles J and K of the Maastricht Treaty). The European Communities encompass the European Economic Community (which was rebaptised by the Treaty of Maastricht into the *European Community* (EC)), the European Atomic Energy Community (Euratom), like the EEC established in 1957, and the *European Coal and Steel Community*. (The ECSC Treaty was concluded in 1951 for fifty years and has expired.) The EMU provisions are part of the EC (i.e former EEC) Treaty, while the Protocol on the Statute of the ESCB and of the ECB is attached to the EC Treaty. Sometimes reference will be made to the Treaty of Maastricht, where what is actually meant is a reference to the EC Treaty as established and amended by Maastricht.

[4] See Francois Duchêne's biography of Jean Monnet: *Jean Monnet, The First Statesman of Interdependence* (1994).

[5] See also van den Berg, van Dijk and van der Werff, 'Institutional Setting of the European System of central banks', in van Bergeijk c.s. (2000), *The Economics of the Euro Area*, p. 155.

[6] The Treaty does not distinguish different Councils of Ministers, in other words in institutional terms the Council of Ministers of Transport is the same as the Council of Ministers of Economic Affairs, though indeed the composition in terms of persons depends on the subject matter. The most visible Councils are the General Council (the Council of Foreign Affairs Ministers) and ECOFIN (the Council of Economic and Finance Ministers). It is standard practice that Council decisions relating to economic and monetary union are taken by ECOFIN (as confirmed by Declaration 3 of the Treaty of Maastricht). In exceptional cases the Council can meet in the composition of Heads of State or Government (Article 109J-2) and 109K(2)-EC (relating to the assessment whether a Member State fulfils the necessary conditions for the adoption of the single currency). This differs from the European Council, which is composed of the Heads of State or Government and the president of the Commission. The European Council is a political body and 'provides the Union with the necessary impetus for its development and shall define the general political guidelines thereof' (Article D of the EU Treaty). These guidelines take the form of Conclusions issued after their meetings (at least twice yearly). In exceptional cases decisions are taken 'by common accord of the governments of the Member States at the level of Heads of State or Government'. Examples are the appointment of the members of the

Executive Board of the ECB (Article 109a(2b)-EC) and the decision to abrogate a derogation of a Member State not yet participating in the euro area (Article 109k(2)-EC). In case of weighted voting, the votes of the members of the Council of Ministers are weighted according to a key, reflecting more or less the size of the Member State the minister is representing (Article 148(2)-EC). The Council cannot act without either a Commission proposal or recommendation. However, it may 'request' the Commission to make a recommendation or proposal in specific fields. See Article 109d-EC. Within the Council unanimity is required to amend a Commission proposal (a Commission recommendation can be amended by the same majority as needed for the decision itself).

[7] Since 1976 members of the Assembly (European Parliament) are elected by direct universal suffrage (whereas before they were chosen by the national parliaments), with a fixed number of elected representatives for each Member State (depending more or less on the size of its population) - see Article 138-EC.

[8] The ECSC, EEC and Euratom shared these two institutions (see Convention on Certain Institutions Common to the European Communities, 1957). In 1967 the High Authority and the Commission were merged too, as well as the special Council of the ECSC, the Council of the EEC and the Council of Euratom (see Treaty establishing a Single Council and a Single Commission of the European Communities, the so-called Merger Treaty, 1967). Since then the Council is called the Council of the European Communities (plural).

[9] As reflected in Article 100A of the amended EEC Treaty.

[10] The so-called second and third pillar are basically intergovernmental structures, with no role for the Commission in the decision-making structure nor an executive role and no jurisdiction for the Court of Justice except in respect of one article on home affairs. These pillars relate to provisions on a common foreign and security policy and on cooperation in the fields of justice and home affairs.

[11] Article 210-EEC. See also the genesis of Article 1-ESCB *infra*.

[12] Article 4.1-EEC: 'The tasks entrusted to the Community shall be carried out by the following institutions: etc.'

[13] *Idem* Article 4.1.

[14] In this respect Smits (1997, p.93, ft 330) refers to a publication by Dunnett, who draws from the wording and order of the provisions establishing the Community institutions, the ESCB and the European Investment Bank (EIB) 'a sign of an intention to confer comparable legal status on the Community, the ESCB and the EIB.'

[15] A striking difference with the American Constitution is that the Constitution's

declaratory opening words ('We the people of the United States, in Order to form a more perfect Union, establish Justice, [...], promote general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.') are clearly directed to its citizens, and not to member states or policy makers.

[16] Smits (1997, p.93) prefers to call the ESCB an organ of the Community.

[17] Interview with Issing, executive board member of the ECB responsible for the directorate monetary policy, economic developments and research, in *Central Banking*, Vol XI, 2001, p.32.

[18] Begg and Green (1998). We do not concur with them: pre-defining price stability, e.g. as a point target, would take away all flexibility for the central bank, or risk bringing it under control of the political authorities when they would have to approve the use of escape clauses. For us, the essential point of the ESCB not being goal independent is that the ESCB is not free to switch its goal from price stability to, for instance, exchange rate stability, while neglecting price stability. Moreover, political authorities are more likely to change the goal for electoral reasons than central banks.

[19] See genesis of Article 7-ESCB.

[20] In real life, pressure of governments on 'their Commissioners' is an existing phenomenon. For an example of political pressures on Commissioners, see Endler (1998), p.433, ft 89.

[21] This strong independence might be defended by using the following analogy: 'Just as the law is to be guarded by an independent authority, the judiciary, so is the stable value of money to be guarded by an independent institution, the central bank.' Analogy used by J. Zijlstra, former governor of the Dutch central bank and quoted by De Beaufort Wijnholds (1992, pp.14 and 18).

[22] For instance, when the Federal Reserve is described as 'independent *within* the government', the word 'government' not only refers to the Administration, but also to Congress (see Chapter 4 under Article 7-ESCB, section I).

[23] For instance, Alberto Alesina ('Macroeconomics and politics', in Stanley Fischer (ed.) NBER Macroeconomics Annual, 1988), Alex Cukierman ('Central Bank Strategy, Credibility, and Independence: Theory and Evidence', 1992), Alberto Alesina and Lawrence Summers ('Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence', *Journal of Money, Credit, and Banking*, 25 (1993) and Sylvester Eijffinger and Eric Schaling ('Central bank Independence: Criteria and Indices', *Beihefte zu Kredit und Kapital* 13 (1993b).

[24] D. Fair (1980), "Relationships between central banks and government in the determination of monetary policy - with special reference to the United Kingdom", SUERF Series 31A.

[25] Neumann (1991), p.109.

[26] Kydland and Prescott (1977), 'Rules Rather Than Discretion: The Inconsistency of Optimal Plans', *Journal of Political Economy* 85 (June 1977), pp. 437-492; Barro and Gordon (1983), 'A Positive Theory of Monetary Policy in a Natural-Rate Model', *Journal of Political Economy* 91 (August 1983, pp. 589-610).

[27] See also section I.1 of Article 2, treated in chapter 4.

[28] Rogoff (1985); Alex Cukierman (1986).

[29] See also Amténbrink (1999), *The Democratic Accountability of Central Banks - A comparative study of the European Central Banks*, esp. p. 377

[30] The first ones to use this approach were Briault, Haldane and King (1996) in the *Bank of England Working Paper Series No 49* (p. 11). For them "the natural context in which to consider accountability is within a principal-agent relationship. And, in a monetary context, these roles are typically taken by the government - as principal - and the central bank - as agent." We think a central bank could also be accountable to parliament directly (the American system) or indirectly through the public (like was the case in Germany), and not so much directly to the government. We come back to this issue when discussing Art. 10.4-ESCB on the confidentiality of the proceedings of the meetings of the ECB's Governing Council.

[31] The relative lack of political pressure by the government on the Bundesbank is shown in a study by Maier, Sturm and de Haan (2002), who use the number of news reports in which politicians argued in favor of a change in monetary policy. ('Political Pressure on the Bundesbank: An Empirical Investigation Using the Havrilesky Approach', in *Journal of Macroeconomics*.) As shown by Maier and Knaap (2003), to the extent pressure was applied it did not critically influence the Bundesbank's monetary policy. (See also Maier (2002).)

[32] A similar approach is now being taken by some academic writers, see de Haan and Amténbrink, who for instance conclude specific institutional features 'may at the same time support the independence of the central bank as well as its accountability.' (De Haan/Amténbrink (2000), 'Democratic Accountability and Central Bank Independence: A Response to Elgie', *West European Politics*, Vol.23, No.23 (July 2000), pp. 179-190.)

[33] See inter alia Gormley/de Haan (1996), 'The Democratic Deficit of the European Central Bank'; Elgie (1998), 'Democratic Accountability and Central

Bank Independence'; Stiglitz (1998), *Central Banking in a Democratic Society*; and W. Buiter (1999), 'Alice in Euroland'. For an eloquent reply to Buiter, see Issing (1999), 'Willem in Euroland'. For a comment on their debate, see de Haan and Eijffinger (September 2000a). In their paper on 'Independence and Accountability' Briault c.s. (1996, p. 43) conclude there is an inverse relationship between accountability and goal independence.

[34] It also ensured that the Statute could not be amended lightly.

[35] See S. Lohmann (1992); S. Fischer (1994b), 'How Independent Should the Central Bank be?', *American Economic Review*, Vol. 85, no. 2, pp.201-6; and Eijffinger and Hoerberichts (1998).

[36] Endler (1998), p. 568, which contains the following quote from the Karlsruhe's 1993 Maastricht Urteil (BVerfGE89, 155, C.II.3.a): '[weil] eine unabhängige Zentralbank den Geldwert und damit die allgemeine ökonomische Grundlage für die staatliche Haushaltspolitik und für die private Planungen und Dispositionen bei der Wahrnehmung wirtschaftlicher Freiheitsrechte eher sichert als Hoheitsorgane, die ihrerseits in ihren Handlungsmöglichkeiten und Handlungsmitteln wesentlich von Geldmenge und Geldwert abhängen und auf die kurzfristige Zustimmung politischer Kräfte angewiesen sind.' *In this regard it is worth noting that the verdict also stated that the Treaty of Maastricht contains 'long-term requirements [aimed at achieving monetary stability] which do not prohibit a release from [Lösung aus] this community when it fails to be a stability community.'* (1993 BVerfGE 89, 155 - Maastricht, C.II.2.e). *According to Karlsruhe EMU is not irreversible.*

[37] In Germany the independence of the Bundesbank, established in 1957, had been debated before by specialists in constitutional law. Those supporting the Verfassungszulässigkeit (constitutional acceptability) of independence of the Bundesbank had argued that (1) only an independent central bank can guarantee price stability (with the need for price stability being based on the constitutional obligation of the government to aim for a 'gesamtwirtschaftlichen Gleichgewichts') and (2) the government has some room to delegate powers, provided certain conditions are met. They argued that in this case such conditions had been met, because the Bundesbank was required to inform and consult with the government, because the government had a dominant say in the appointment of the directors (and because the government is accountable to parliament, the influence of parliament was ensured), and finally because the legislator could change the law. The opponents had argued that the character of monetary policy is 'high politics', because of its influence on the economy, and can therefore not

be out the control of the executive. In these days it never came to a case before the Constitutional Court. (Endler (1998), p. 265-271.) By the way, Issing (1982) reduced this argument of 'high politics', with which he obviously did not agree, to the postulate that 'governments should have the possibility to print money, when the election approaches'. That, he said, can hardly be called a strengthening of the democracy. Or as put by A. Moravcsik in 'Democracy and Constitutionalism in the European Union' (ECSA Review (13:2), Spring 2000, pp. 2-7): 'non-majoritarian decision-making [= by non-elected independent government agencies - cvdb] is justified in democratic theory not simply because it may be efficient, but because, ironically, it may better represent the long-term interest of the median voter than does a more participatory system.'

[38] Copying the American situation where all monetary powers are vested in Congress, see chapter 4 under Article 7, section I. Congress delegated these powers to the Fed. The alternative is to vest the monetary powers constitutionally directly in the central bank, putting it at the same level as the Court of Justice.

[39] This is not true, at least not to the same extent, for policies like tax policy. Although one could imagine that tax policy-without-any-short-term electoral motives would be better than with such motives, it is clear that tax policy is directly affecting the income distribution, and therefore has a high political and electoral content, which is thus less easily delegated to an independent institution. Moreover tax policy does not lend itself for defining one narrow objective, which makes delegation more difficult. As regards monetary policy independence, in the case of the Bundesbank its independence was inherited partly from its predecessor, the Bank deutscher Laender (see appendix 3) and partly based on the experience of hyperinflation. This led to a successful low inflation policy of the independent Bundesbank, which was exported to the other EC countries. In case of the Fed, the delegating party was Congress (and not government), which was not able to run monetary policy itself. When after a long period without a central bank it was decided to establish one, a compromise had to be found between those favouring government influence on the central bank and those fearing government influence. Vide also appendix 1.

[40] See also Eggertsson and Le Borgne (IMF WP 03/144), who develop a theory describing when it is rational for an individual elected (and re-electable) politician to delegate tasks or not.

[41] Independence and conservatism can be distinguished. See Berger, de Haan and Eijffinger (2001, p. 4 ff.).

[42] Compare Briault c.s. (1996, p. 40) who mention that according to a purely

political explanation of accountability 'independence and accountability should run in parallel - or else a widening democratic deficit would force change on the existing institutional set-up.'

[43] To use the words of Endler (1998, p. 568): 'In der Verfassung eines States soll der unkontrollierte Machtausübung regelmäßig durch die aus dem Rechtsstaatsprinzip fließende Teilung der Gewalten entgegen gewirkt werden.' Endler continues: 'Nun läßt sich das schon national nur schwer zu fassende Gewaltenteilungsprinzip nicht einfach auf die Europäische Union übernehmen, da diese gerade keinen Staat darstellt. Der EuGH (European Court of Justice) spricht immerhin näherungsweise von dem Erfordernis eines 'institutionellen Gleichgewichts der Organe.' This concept of 'institutional balance' might be suitably applied also to the ESCB, though we do not consider the ESCB (or the ECB) as a Community organ.