

Central Bank independence: some thoughts

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Ladies and Gentlemen,

Let me first thank The Institute for Global Financial Integrity for the invitation to speak in front of this very distinguished audience.

No need to say that I felt extremely honoured when receiving that invitation, and quite horrified when preparing my speech. I must confess, to my confusion, that I chose a theme that opens so many avenues for thoughts and raises so many questions, that I faced some difficulties to structure my views in an half an hour session.

Consistently rather than a grandiose painting “à la” Jacques-Louis David, I would like to offer a more « impressionist » approach.

Needless to say that my artistic choice necessarily implies that I am not speaking in my capacity of Banque Centrale du Luxembourg staff member, but in my own personal name.

1. Introduction

The debate about the independence of Central Banks is not new, and has evolved together with their roles and functions over centuries.

However let us keep in mind that more than 120 Central Banks came to earth only after 1950.¹ It is therefore not a surprise if the debate is still present while observing that independent Central Banks are rather the norm than the exception nowadays².

* Any views expressed in this address are those of the author and not those of the Banque Centrale du Luxembourg, or the Eurosystem.

2. Why independence for Central Banks?

The very first question arising when considering Central Banks independence is: why?

The economic literature is quite prolix both on the justification and the measurement of Central Banks independence.

The debate started, or started at its earnest maybe, in the 80's – early 90's. Perhaps one could identify two intrinsically linked developments.

On the economic side, the world was confronted with the collapse of the Bretton Woods system at the beginning of the 70s, then the oil shock in 1973, with its subsequent stagflation, then a second one in 1979. Then followed the chronic inflation of the 80s together with a deterioration of public finances in many countries, particularly in some European countries.

At the same time, a new school of thoughts of a normative nature emerged. In short it held the view that political parties tend to act in their own interest, namely being re-elected. Following that school, governments are using public expenditures, possibly financed by money creation, in a short-sighted way.³

Later on, in the early 90s, appeared methods for measuring the degree of independence of Central Banks⁴ and some studies concluded that increased independence of Central Banks contributes to explain the decline in inflation.⁵

In short, everything happened as if politicians on the one hand recognised the predominant role of inflation and on the other hand wanted to protect themselves against the temptation to adopt a short time horizon, under the pressure of the public opinion.

Taking also into account the length of the monetary policy transmission mechanism and the somewhat technical nature of monetary policy, they decided to make Central Banks independent.

Of course these arguments are debatable, but my purpose is not to analyse whether they are objectively right or not. I simply wanted to illustrate the intellectual environment in which the independence of Central Banks became a sort of generally accepted paradigm.

It is not a surprise that the same approach has been adopted when designing the European Central Bank and also applied to the National Central Banks within the European Union. Indeed the Treaties⁶ explicitly foresee the independence of the European Central Bank and of National Central Banks (art 130 of TFEU)⁷.

When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB⁸ and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions,

bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national Central Banks in the performance of their tasks.

3. What about democracy?

A first issue that comes immediately to one's mind when considering the independence of Central Banks is whether it is compatible with democracy.

This is for sure a question that would deserve much more than a few minutes, but let me try and offer you a few elements for further thoughts.

On that theme as well an abundant literature is available. Among the many papers and speeches "Central Banking in a democracy" by Alan Blinder is unavoidable⁹. He delivered that speech in 1996, soon after his resignation as Vice-Chairman of the Board of Governors of the Federal Reserve System. He offers a concise, yet very rich analysis of the issue that provide us with a convenient guide.

In particular the way Blinder formulates his question is in my view extremely helpful:

"How can an independent Central Bank be rationalized within the context of democratic government?"

He then puts forward six elements that should help checking when independence is compatible with democracy¹⁰.

1. The first element is that:

"[...] the public has a right to demand honesty from its central bankers".

2. Second, Central Banks decision should be reversible by the political authorities, but only under extreme circumstances.

3. The third element of his recipe is what can be qualified as the "constitutional stage" of democracy: some choices are written in a Constitution rather than left to the daily decision making process of the legislators or the government.

4. Fourth, the basic goals to be pursued by the Central Banks are chosen by elected politicians, not by the central bankers themselves.

5. As a fifth ingredient, the Central Bank leaders should be politically appointed by the highest level, meaning in his context the President of the United States.

6. And finally, accountability is the corollary of independence.

4. Some personal thoughts about independence and democracy

Let me try and share my personal thoughts about and around Blinder's recipe, more specifically in the case of the European Central Bank and the Eurosystem. It is not that the reading grid proposed by Blinder would be the only and ultimate set of criteria helping us to pass a judgment, but simply because, used as a thread it offers an occasion to feed up the debate.

Two criteria in my own subjective opinion are quite straightforward, namely the issue of honesty of the central bankers and the one relating to the reversibility of the decisions.

Owing to time constraints I would propose to address them only very briefly.

Criterion 1: Honesty of central bankers

"The public has a right to demand honesty from its central bankers".

Well: of course!

Who would pretend that honesty is not a must for central bankers? Not only for them, by the way.

However "Caesaris mulier non fit suspecta"! Caesar's wife must be above suspicion. Safeguards are necessary to ensure that this is under scrutiny and control as well.

Similarly to many Central banks in the world, the ECB has in place an ethics framework¹¹ that applies to the members of staff of the ECB¹². In addition Executive Board members of the ECB are bound by Supplementary Code of Ethics Criteria¹³ that they have adopted.

Finally, the members of the ECB's Governing Council, including the Governors of the National Central Banks, adhere to a specific Code of Conduct¹⁴.

Not dwelling further, in any human activity, there is always the risk that someone is not faithful to its responsibilities and ethics. It is important from a democratic point of view that the highest possible safeguards are in place.

Criterion 2: Reversibility of decisions

The second criterion on which we might be brief is the reversibility of decisions.

Let me quote it again:

“Central Banks decision should be reversible by the political authorities, but only under extreme circumstances”

At first reading reversibility of any Central Bank decision by another authority seems intrinsically inconsistent with its independence.

That is probably why the notion of “extreme circumstances” is part of the criterion.

Again the Treaties offer the answer (Articles 263 to 266 of the TFEU).¹⁵

They clearly state that the European Commission as the guardian of the Treaties, or a Member States, the Council, the European Parliament could indeed bring the ECB to the European Court of Justice

“on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers”.

By the way, recourse to the European Court of Justice is also possible for legal and natural persons, to the extent they are affected by ECB decisions.

And it could happen that the European Court of Justice will declare such ECB decision as void. Of course this doesn't imply that anyone can go to the Court just because he or she would prefer, say a rate hike, when the ECB maintains or even reduces its policy rates.

Such a judicial control on the Central Bank also exists in Japan, UK, and USA for instance.

Without entering into legalistic debate for which I am not really equipped, I would think that indeed the ECB and other Central Banks are not “almighty” and that a certain degree of reversibility of decisions exists at the request of political authorities, while recognising that the debate is by far not close.

Criteria 3, 4 and 5: Democratic process

Allow me to now turn to three criteria on which I would like to elaborate further that relate to the democratic *process*, i.e. the involvement of political authorities:

- the “constitutional stage”,
- the setting of the goals at political level,
- and the appointment of the central bankers.

In the European Union, which is not a country and does not have a Constitution *stricto sensu*, the independence but also the other features of the ECB and the Eurosystem are covered in a similar way by in the Treaties.

As you all know, the mandate of the ECB is clearly defined in its statute ¹⁶ (Art. 2) that determines price stability as its primary objective and clarifies other objectives.

Even the tasks, not only the general goals, are specified in the ECB statute¹⁷ (Art. 3) which names the conduct of monetary policy, the conduct of foreign exchange operations, the management of reserves and also the involvement in prudential supervision or in the functioning of payment systems.

As for the appointment of central bankers the Treaties (Art. 283 TFEU) ¹⁸ specifies that all members of the Executive Board are appointed by the European Council, acting by a qualified majority, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank. In addition the term of office is quite strictly fixed: eight years and not renewable¹⁹.

Equivalent procedures are followed at national level

This appointment process gives their democratic legitimacy to the central bankers.

I would be inclined to conclude that with regard to these three elements of the recipe, “constitutional stage”, determination of goals, and designation of members of the decision making bodies, the independence of the European Central Bank is indeed compatible with democracy.

Yet, allow me to move one-step further and share with you my thoughts on three specific issues.

- i. First, some argue that the independence of the ECB would not be compatible with democracy because the members of the decision-making bodies are not directly elected, neither by the people nor by the parliament, be it European or national. This is of course a legitimate interrogation.

My view is that this counter-argument has to do with the form of democracy, or the way it is implemented, rather than with the genuine question of democratic character of the Central Bank.

The discussion could follow two directions.

The first has to do with the legitimacy of those who decided and or have been involved in the decision process on having provisions in the Treaties on the designation of central bankers. The European Council and the Council of ministers, for instance, are institutions of the European Union: they represent the citizens of Europe, and have been themselves appointed through a democratic process. Let us not forget that the whole functioning of the Union is based on representative democracy²⁰ explicitly mentioned in Art. 10 TEU, which stipulates that:

“The functioning of the Union shall be founded on representative democracy. [...]

and also that:

“Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.”

The second stream of argumentation would be that non-elected persons occupy many other important positions. It is particularly the case for members of the Court of Justice, of the Court of Auditors, of the Economic and Social Committee just to name a few. It is the case at national level as well. This is of course debatable and the debate is not close that addresses the pros and cons of having judges and sheriffs directly elected or appointed by political authorities

One has the right to prefer another form of democracy and to suggest injecting an additional dose of direct democracy in the process of adopting Treaties, designating central bankers, fixing their goals and tasks. Like many citizens, I would support the idea that the European Parliament should bear more responsibilities in the conduct of the Union, for instance.

However, it is not because the process is more complex, more indirect, that it is not democratic. The European construction looks like a curious cathedral mixing features influenced by different styles, Gothic, Roman, Ancient Greek, Baroque, Modern Art, more recently some High Tech and even some dose of surrealism: still it is a cathedral.

- ii. A second issue for thoughts has to do with the monetary policy ultimate target.

As mentioned earlier the Treaties define the goals assigned to the Eurosystem, price stability being the prominent one. However, as you know, the ECB itself sets the quantitative definition of price stability:

“ [...] below but close to 2 %”.

This reflects the intention to offer a benchmark against which the citizens could assess the performance of the Eurosystem. Yet should that choice remain with the experts, the technicians, or with the political authorities²¹? In the United Kingdom, for instance, the quantitative specification of the price stability objective is the responsibility of the Treasury, while for the ECB, but also for the Federal Reserve System and the Bank of Japan, this responsibility lays with the Central Bank itself.

One could argue that deciding on the quantitative specification is as important as setting the objective of price stability itself. Leaving the decision with the government, for instance, would offer a possibility to the citizens to express a preference in favor or against the target by voting for or against the ruling party.

On the other hand, leaving that responsibility with the Central Bank might be a way to protect the government against itself, avoiding the temptation to set a quantitative objective that would actually make the price stability objective irrelevant.

iii. I cannot refrain from sharing a third issue for thoughts.

Ironically, there are opinion leaders, some of them claiming that the ECB does not really fit with democracy, who would like the ECB to take decision in a domain that actually belongs to other institutions competences²². Indeed the article 219 of TFEU provides that the decision to participate in an exchange rate system or in the absence of such a system, the formulation of general orientations, belong to the competences of the Council. So far, the Council has decided not to adopt any other regime than the free floating of the Euro.

Curiously, there are voices inviting the ECB to act forcefully on the foreign exchange markets in order to favor a depreciation of the euro vis à vis other currencies, against the will of the Council. Perhaps they do not realize that they are asking the ECB not to respect the Treaties in this matter...

Criterion 6: Accountability

Remains the sixth criterion mentioned in the toolkit, and not the least: accountability.

As for the ECB, accountability²³ is required by the Treaties (Art. 284 TFEU), imposing some obligations of reporting, of testimonies in front of the European Parliament, and so forth.

You will note by the way that the words “accountability” and “accountable” do not appear in the Treaties (with the exception of art 300 TFEU referring to the Comity of the Regions). This might explain why there is sometimes some confusion between accountability and transparency. The ECB clarified its own views in one of its Monthly Bulletin releases.

Accountability is considered as an obligation vis à vis the “political order”²⁴ namely the citizens, when transparency is more an instrument serving accountability but also contributing to the efficiency of the monetary policy²⁵.

I do not have the sentiment that anyone is putting in question the fact that indeed the Eurosystem complies with its obligation of accountability. It was even praised by the European Parliament in this respect.

Still I would like to address briefly one issue.

It is indeed a well know suggestion that the ECB should publish its *Governing Council Minutes*, as a way to improve accountability through even more transparency.

In this respect, reference is usually made to the publication of the Federal Open Market Committee (FOMC) that since December 2004 releases its *Minutes* three weeks after its meetings.

There is an equivalent publication by the ECB: the so-called *Introductory Statement* presented by the President of the ECB a couple of hours after the Governing Council meeting at the occasion of the monthly press conference.²⁶

Both publications are by no means a complete transcription of the discussions in the FMOC or the ECB Governing Council, but a summary of the analysis and arguments supporting the monetary policy decision. The main difference²⁷ is that the *FOMC Minutes* relate the votes of the voting members.

In addition, both Central Banks publish a very detailed and complete record of the meetings proceedings. As for the FED, they are called *FOMC Transcripts*²⁸, while the ECB name them *ECB Minutes*, which might create some confusion. However, the FED publishes its *Transcripts* after five years, while the ECB imposes a thirty-year delay (unless decided otherwise by the decision-making bodies of the Eurosystem).

In an attempt to bring some serenity in an often emotional debate, I would be inclined to reduce the debate to two questions.

- i. First, why does the ECB not indicate the votes in its *Introductory Statement*, as the FED does in its own *Minutes*? Even if most of the time the Governing Council members take their decisions by consensus, the question remains valid for the few occurrences when indeed there is a vote.

The non-disclosure of the votes might be a direct corollary of the ECB independence. Members of the Governing Council are deemed to act and decide in the interest of the citizens of the European Union, or more precisely of the Eurozone, not as representatives of their country of origin. This is true for the members of the Executive Board and for the Governors of the National Central Banks as well. This is not always understood: their quality of Governors qualifies them as Governing Council members, not as “national representatives” as they are quite often perceived. The disclosure of their individual position in the Governing Council meetings could possibly put them under pressure, or they could be tempted to please their own public opinion, or their national public authorities, to the prejudice of the European public interest.²⁹

I would propose another argument. If indeed the Treaties foresee that a collective body is in charge of the monetary policy decisions and not one single person, it necessarily implies that views can diverge or converge, but also that they can change during the course of the discussion. In an era when communication is so prominent, I would be inclined to see the risk of inhibiting the debate, or reducing the degree of openness of argumentation.

Finally on this precise subject: I would be inclined to think that if the option of not publishing the votes is preferred, then the members of the Governing Council should refrain from expressing their dissenting opinion through interviews, speeches, or whatever other channel. It is a question of ethics and fairness vis à vis those other members who stick to the rule.

After all, in the decisions of the Court of Justice, the dissenting voices are not disclosed.

- ii. As a second issue, remains the question of the delay after which the ECB Governing council publishes its *Minutes*. For both the FMOC and the ECB, why do they not publish their *Transcripts* for the first one, their *Minutes* for the other, sooner after the relevant meetings?

Of course, the arguments raised for justifying the non-disclosure of the votes in the *Introductory Statement*, if accepted, are even more valid for the detailed publications of the debates, discussions, exchanges of arguments. At least a delay is warranted, long enough to avoid that the disclosure of that information could hamper the independence of the Governing Council members. Maybe thirty years are not necessary for that matter.

iii. I was about to conclude that everything is well that ends well, and that indeed the arguments against the disclosure of the votes in the *Introductory Statement* are convincing, even more against an early disclosure of the *ECB Minutes*.

Yet I was recently a little shaken in my convictions by the fact that Board Members of the ECB expressed publicly their preference for the publication of the *Minutes*, although it is not clear in which form exactly.

Perhaps I should change my mind: the publication of the votes in the *Introductory Statement*, or even an early publication of the *ECB Minutes*, can maybe allow the citizens to eventually better control whether all Governing Council members really act in an independent way...

I think the guided tour through Alan Blinder's six criteria is complete.

As already said, the ingredients of his recipe should not be considered as the ultimate benchmark, but on the one hand they have the merit of being shared by many other authors, and on the other hand they bear the stamp of common sense.

While leaving the door open for further discussion, and raising myself some questions, I would argue that the independence of the ECB and the Eurosystem is indeed compatible with democracy even if there is always room for improvement.

And let me observe that in non democratic countries the Central Banks are never independent from the political power.

5. Last consideration: is the independence of the ECB in danger?

Before concluding I would like to very briefly address a last question.

The bulk of this presentation addresses the question as to whether the independence of Central Banks, more particularly of the ECB and the Eurosystem, is compatible with democracy and under which conditions.

Yet asking the question in that way implicitly assumes that indeed independence is warranted.

My last interrogation would be whether the independence of the ECB and the Eurosystem could possibly be in danger.

Allow me to just enumerate four elements of concern.

- i. The legislator might decide to give new responsibilities to the Central Banks, as it is for instance the case in the field of financial supervision. In the future, Central Banks could be in charge of domains for which they do not necessarily have the expertise available when the decision is taken. However rewarding, new tasks imply additional resources, human, technical and therefore financial resources. It would be odd if the financial independence, especially of small Central Banks, would consequently be at risk.

The new tasks could also potentially be source of conflicts with the authorities if new responsibilities are not assorted with exclusive and full competence.

- ii. Another risk relates to the behaviour of public opinion leaders, who are using the ECB and the Eurosystem as a scapegoat. This problem is not specific to the Central Banks and affects more generally the European Institutions. By blaming quite systematically the European Central Bank, even when the blame is by no means justified, they are affecting its credibility, which in turn could have a bearing on its capability to exercise its role efficiently in an independent way. It is not that Central Banks cannot be criticized, quite the contrary: arguments can be very useful and central bankers are always happy to listen and confront their reasoning.
- iii. Partially connected to the latter point, the independence of Central Banks is also at risk when the European authorities themselves are not European enough in their deeds. For instance it seems that in the eyes of some European leaders their countries of origin are more equal than others, granting them a definite right to occupy a seat in the Executive Board of the ECB. The episode during which heavy pressure was exercised on an Executive Board member to force him to resign, only because of his nationality, unfortunately offers a bad signal.
- iv. Finally I wonder if central bankers should not be protected against themselves. Not very long time ago the names of central bankers were little known to the public at large. They were familiar only to limited circles of persons, even in their own countries. Of course there were a few exceptions.

I feel compassionate with top level central bankers: they are permanently under the spotlights, as only rock stars can possibly be. Not only has this increased the risk of confusion when the communication is not perfectly coordinated, but it might weaken their capability to exercise their independence.

My point is that central bankers' language is too often geared towards specialists, commentators, commercial bankers, academics, or what is commonly called "the market". By speaking too much, too often in a highly technical way, in the best case,

or in a purely “jargonesque” fashion in the worst one, central bankers run at least two risks:

- first they run the risk of being misunderstood, of cutting themselves from those to whom they are accountable, namely the citizens. It is not a question of transparency³⁰, but rather of type of transparency;
- secondly, they might also create distortions and give an advantage to some economic agents at the expense of others.

Eventually when taking into account the behaviour of market participants who seem to react to any statement, any comment, any news with “juvenile enthusiasm”, I see the risk that central bankers become prisoners of their own communication.

6. Conclusion

Ladies and Gentlemen, it is now high time for reaching a conclusion.

Actually, I am not sure that I could really propose one. Not only do I not pretend having answered my own questions, even less having settled any issue. I just wanted to raise with you a few issues around the independence of Central Banks that in my eyes deserve further debate.

Rather than elaborating a definite statement that you may forget as soon as we will leave this room, allow me to me simply quote a prominent central banker.

“The independence of a central bank, guaranteeing monetary stability for all on the basis of a multipartisan consensus, is perhaps also closely related to democratic progress. We have yet to identify the new Montesquieu, who could demonstrate that modern democracy now naturally goes hand-in-hand with a cross-party, independent monetary authority, ensuring a sound and stable monetary foundation for this modern democracy to flourish. This hypothesis remains to be rigorously put to the test. However, I recall that the institutions of our political democracy very carefully examined the question of central bank independence and the ultimate goal of price stability.”³¹

Who else than President Trichet could have helped me to conclude?

Thank you for your patience.

¹ See, among many other sources :
BIS Issues in the Governance of Central banks
Report from the central bank governance group, May 2009

² In this presentation Central Banks independence will often be commented in relation with monetary policy because monetary policy is often seen as their activity “by excellence” and the most scrutinised and debated one. Yet modern Central Banks carry out many tasks in which the issue of independence is also relevant.

³ James M. Buchanan
The limits of liberty: between anarchy and Leviathan
The University of Chicago Press, 1975

William D. Norhaus
The political business cycle
Review of economic studies, n°3, 1975

For a survey of research in that domain, see:
Carlo Panico and Maria Olivella Rizza
Central Bank independence and Democracy: A Historical Perspective (Ch. 26)
In: Richard Arena, Augusto Graziani, Neri Salvadori (editors)
Money, Credit, and the Role of the State: Essays in Honour of Augusto Graziani
Ashgate Publishing, 2004

⁴ Sylvester Eijffinger and Eric Schaling
Central bank independence in twelve industrial countries
Banca Nazionale del Lavoro, Quarterly Review, 184, 1993

⁵ Alberto Alesina and Lawrence H. Summers
Central Bank independence and Macroeconomic performance: some comparative evidence.
Journal of Money Credit and Banking, May 1993

⁶ Actually several treaties, amended over time, lay down the rule of law on which the European Union is based. Two treaties, having the same legal standing, are relevant in the context of this conference: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

⁷ Art. 130 TFEU
When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union

institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

⁸ The distinction between the European Central bank (ECB), the European System of Central Banks (ESBC) and Eurosystem is well known. Although strictly speaking the Treaties mention ECB and the ESCB, in this presentation, for the sake of convenience, the distinction will not be explicitly made at each occurrence.

⁹ Alan S. Blinder
Central Banking in a Democracy
Speech presented at the Federal Reserve Bank of Richmond on 26 September 1996, printed in:
Federal Reserve Bank of Richmond, *Economic Quarterly* Volume 82/4 Fall 1996

¹⁰ The arguments are presented here in a different order than the original one.

¹¹ ECB
Part 0 of the ECB staff rules containing the Ethic Framework
Official Journal C40/13, 9 February 2011

¹² For instance, staff members are expected to maintain high standards of professional ethical behaviour as far as their duties at the institution are concerned. Relations with national Central Banks, other public authorities, market participants of course, media and the public in general are also covered.

¹³ ECB
Supplementary Code of Ethics for the members of the Executive Board of the European Central Bank
Official Journal C 104/8, 23 April 2010

¹⁴ ECB
Code of Conduct for the members of the Governing Council

¹⁵ Article 263 TFEU (ex Article 230 TEC)
The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.
It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural

requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 264 TFEU (ex Article 231 TEC)

If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void.

However, the Court shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

Article 265 TFEU(ex Article 232 TEC)

Should the European Parliament, the European Council, the Council, the Commission or the European Central Bank, in infringement of the Treaties, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice of the European Union to have the infringement established. This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court that an institution, body, office or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.

Article 266 TFEU (ex Article 233 TEC)

The institution whose act has been declared void or whose failure to act has been declared contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 340.

¹⁶ Art. 2 Protocol n°4 TFEU

In accordance with Article 127(1) and Article 282(2) of the Treaty on the Functioning of the European Union, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119 of the Treaty on the Functioning of the European Union.

¹⁷ Art. 3 Protocol n°4 TFEU

3.1. In accordance with Article 127(2) of the Treaty on the Functioning of the European Union, the basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Union;
- to conduct foreign-exchange operations consistent with the provisions of Article 219 of that Treaty;
- to hold and manage the official foreign reserves of the Member States;
- to promote the smooth operation of payment systems.

3.2. In accordance with Article 127(3) of the Treaty on the Functioning of the European Union, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3.3. In accordance with Article 127(5) of the Treaty on the Functioning of the European Union, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

¹⁸ Art. 283 TFEU

1. The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States whose currency is the euro.

2. The Executive Board shall comprise the President, the Vice-President and four other members.

The President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognized standing and professional experience in monetary or banking matters, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank. Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

¹⁹ Similarly, in the USA the President appoints the FED Chairman, while in Switzerland the Conseil Federal, i.e. the government, appoints the Director General of the Swiss National Bank.

²⁰ Art. 10 TEU

1. The functioning of the Union shall be founded on representative democracy.

2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

²¹ Among others, see :

Peter Kenen

Comparative analysis of the Central Banks of the World

In: Independence and Accountability: Developments in Central Banking
Bicentennial Symposium of the Banque de France, 30 May 2000

²² Art. 219 TFEU (ex Article 111(1) to (3) and (5) TEC)

1. By way of derogation from Article 218, the Council, either on a recommendation from the European Central Bank or on a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, may conclude formal agreements on an exchange-rate system for the euro in relation to the currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the procedure provided for in paragraph 3.

The Council may, either on a recommendation from the European Central Bank or on a recommendation from the Commission, and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the euro central rates.

2. In the absence of an exchange-rate system in relation to one or more currencies of third States as referred to in paragraph 1, the Council, either on a recommendation from the Commission and after consulting the European Central Bank or on a recommendation from the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies.

These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

3. By way of derogation from Article 218, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union with one or more third States or international organisations, the Council, on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.

4. Without prejudice to Union competence and Union agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

²³ Art. 284 TFEU

1. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank. The President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank.

2. The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

3. The European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

²⁴ ECB

The accountability of the ECB
ECB Monthly Bulletin, November 2002

²⁵ ECB

Transparency in the monetary policy of the ECB
ECB Monthly Bulletin, November 2002

²⁶ The press conference follows the Governing Council meetings in which monetary policy is discussed (i.e. the first one of the two meetings in a month). In addition to the Introductory Statement, the journalists bombard the President of the ECB with questions. In the following days or weeks, the decisions and their background are explained with a profusion of details in speeches and publications.

²⁷ In addition the FOMC publishes its Minutes after a three-week delay while the press conference of the ECB takes place only two hours after the Governing Council meeting, during which journalists ask questions.

²⁸ These records are only very slightly edited, for obvious reasons like correcting grammatical mistakes, clarifying unintelligible words and so forth. Only sensitive information about foreign officials, or any third person that could be identified, are subject to deletion. Even reading carefully these transcripts, one will never know Mr. Bernanke's opinion on Mr. Trichet or Mr. Draghi, for instance.

²⁹ A second reason presented by the ECB is less straightforward. The Governors of the National Central Banks draw their democratic legitimacy essentially from their own citizens, being designated by their national public authorities. The only element of Union legitimacy lies in the fact that the Treaties indeed say that as soon as they are Governors they also are members of the Governing Council²⁹, but there is no intervention of Union authorities in their individual appointment. This would imply that the accountability of the Governing Council should be a collective and not an individual one. This in turn would justify not disclosing the individual positions in the Council.

³⁰ It is Mishkin who "dared" addressing the issue of excess of transparency: he claimed that transparency can go too far. His view essentially related to the announcement of monetary policy target, but one could generalise it to the entire communication by Central Banks.

Frederic Mishkin

Can Central Bank Transparency Go Too Far

In: *The Future of Inflation Targeting*, Reserve Bank of Australia Conference Proceeding, Sydney, July 2004

³¹ Jean-Claude Trichet

Introductory statement

In: Independence and Accountability: Developments in Central Banking
Bicentennial Symposium of the Banque de France, 30 May 2000