

**ADAPTATION OF NATIONAL LEGISLATION AND CENTRAL BANK STATUTES
TO TREATY PROVISIONS CONCERNING CENTRAL BANK INDEPENDENCE**

**CRITERIA FOR EMI ANNUAL REPORTS ON LEGAL CONVERGENCE OF
MEMBER STATES: ISSUES FOR DISCUSSION**

European Monetary Institute
ARCHIVE
30 JUN 1995
CODE:
Cap 9
Central Bank Independence
"convergence"

INTRODUCTION

Article 108 of the Treaty requires all Member States to adapt their legislation to the requirements of the Treaty. Article 109j(1) provides for reports from the EMI and the Commission which *"shall include an examination of the compatibility between each Member State's national legislation, including the statutes of its national central bank, and Articles 107 and 108 of this Treaty and the Statute of the ESCB."* These reports are to be taken into account by the European Council in its composition of Heads of State or of Government to *"assess for each Member State whether it fulfils the necessary conditions for the adoption of a single currency"* (Article 109j(2)). The first assessment of this kind is to take place by the end of 1996.

If the adaptation of national legislation is the subject of the assessment report of the EMI and the Commission under Article 109j(1) due at the end of 1996, the adaptation of statutes of national central banks is the subject of an EMI report due to be issued during 1995. Article 7 of the EMI Statute provides that the EMI shall address a report to the Council annually on the *"statutory requirements to be fulfilled for national central banks to become an integral part of the ESCB"*.

This paper does not analyse all necessary items where national adaptations are needed; an exercise for which the EMI requires not only a clearer description of the basic features of the regulatory framework for Stage Three, but also a deeper knowledge of national legislations. The EMI has until the end of 1996 to make such an assessment. This paper concentrates purely upon the specific Treaty requirement of central bank independence, regarding which the EMI will have to produce a report in the course of 1995.

For the evaluation central bank independence criteria need to be developed. The intention of this note is merely to raise some issues for discussion in order to achieve commonly accepted grounds on which to base the report to be adopted by the EMI during 1995.

1 PURPOSE OF CENTRAL BANK INDEPENDENCE

Central bank independence is not an objective in itself, but an instrument for a stability-oriented monetary policy. The central banking system should be given the possibility to exclusively define monetary policy and to implement it. Independence from political authorities to define monetary policy in order to reach the statutory objective of price stability is required; but independence also means the legal power to implement monetary policy decisions: an independent but powerless central banking system would place it under the power of political authorities.

Independence of central banks is also essential for the construction of monetary union. The institutional aspect of monetary union requires monetary powers presently held by Member States to be pooled in a new institution, namely the European Central Bank. Such pooling would not be politically acceptable if Member States could influence the decisions of the European Central Bank.

Finally, central bank independence is instrumental for the credibility of the move to monetary union. The favourable experience with independent monetary authorities made by a number of countries is particularly relevant for a plural Community society where competing interests may tend to give greater thought to short-term considerations and thus lead to pressures in favour of a monetary policy stance which would not always be compatible with price stability in the longer run.

Central bank independence is proclaimed in Article 107 of the Treaty establishing the European Community ("the Treaty") where it states that *"Neither the ECB nor a national central bank, 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 Community institutions and bodies 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 ECB or of the national central banks in the performance of their tasks."* This paragraph is reproduced in Article 7 of the ESCB Statute.

Article 107 of the Treaty and Article 7 of the ESCB Statute must be read jointly with Article 14.3 of the ESCB Statute: *"The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it."* In addition, Article 8 of the ESCB Statute is of relevance: *"The ESCB shall be governed by the decision-making bodies of the ECB"*. Moreover, Article 12.1 of the ESCB Statute reads: *"The Executive Board [of the ESCB] shall give the necessary instructions to national central banks"*.

The purpose of central bank independence is thus to create for Stage Three a central banking system (the ESCB) that is immune from interference of political constraints, particularly those of national governments and Community institutions, in the conduct of the single European monetary policy, but is at the same time a system in which the NCBs - whilst maintaining their legal personalities - are fully integrated from a functional point of view with the ECB. Consequently, the ESCB is independent in its relationships with the external world, but comprises an internal system of full functional integration of NCBs (those which belong to Member States without a derogation) with the ECB. This integration is fostered by the provision that NCBs Governors are *ex-officio* members of the ECB Governing Council and participate in the centralised decision-making.

2 THE TRANSITION TO STAGE THREE

Article 108 of the Treaty states that the adaptation of NCB statutes to the Treaty requirements shall be in place "*at the latest at the date of the establishment of the ESCB*".

According to Article 109i, the date of establishment of the ESCB will occur "*immediately after the decision on the date for the beginning of the third stage*". Therefore, adaptation of NCB statutes to the criteria of independence should occur prior to the starting date of the "interim period" or Stage Two B (and not prior to the start date of Stage Three as is commonly understood).

Member States with a derogation are under the obligation to adapt their NCB statutes to the Treaty under the same terms as the NCBs that will belong to the ESCB. Therefore, NCB's should attain independence before the start date of the "interim period" in all Member States, without regard to the likelihood of individual Member States entering monetary union. Only the United Kingdom is expressly excluded from the obligation to adapt the statute of the Bank of England to Treaty provisions until and if that Member State decides to join monetary union (Article 5, UK Protocol)¹. Nevertheless, in order to fulfil the conditions necessary to join monetary union, should it decide to do so, the United Kingdom will have to adapt its Bank of England legislation to the Treaty provisions.

Article 109e(5) of the Treaty shows the desire of the High Contracting Parties to have an early status of independence of its central banks. It reads: "*During the second stage, each Member State shall, as appropriate, start the process leading to the independence of its central bank, in accordance with Article 108.*" It is difficult to understand why a process would be started and not then concluded. Moreover, early adaptation would underline the commitment of Member States to

¹ Protocol 12 on Denmark and its Government subsequent notification not to enter Stage Three of EMU does not exclude the obligation to adapt the statute of its central bank to Treaty provisions.

move to Stage Three, with beneficial effects in markets. It is submitted that Article 108 is to be interpreted in the sense that following adaptation of national legislation central banks actually become independent before the establishment of the ECB and are fully responsible for the monetary policy in their respective Member State. This proposition favouring an early adaptation of NCB's statutes in Stage Two is based on the following reasons:

- (a) From a functional point of view, independence is of paramount importance during Stage Two, when NCBs have to contribute to achieving the important convergence criterion of price stability. Furthermore, central bank independence helps to strengthen credibility with regard to achieving durable convergence of the criterion of long-term interest rates.
- (b) From an institutional point of view, central bank independence would foster the independence of the EMI and the fulfilment of its tasks. Governors of NCBs are required to act as members of the EMI Council without seeking or taking instructions from governments of Member States nor from Community institutions and other official bodies (Article 8 EMI Statute). To fulfil this requirement, NCB statutes should provide them with independence from government.
- (c) The establishment of the ECB is dependent on receiving the powers foreseen in the Treaty from NCBs; this transfer of monetary policy powers requires legal recognition in the national legislations concerned. It would create legal uncertainty if powers vested in the ECB by the Treaty coexisted with powers vested in NCBs by national legislations.

There may be provisions that will have to be amended before the establishment of the ECB in spite of such amendments only having a meaning after the ECB is established. Some of these relate to the status of dependency of NCBs vis-à-vis the ECB, or to the recognition that monetary policy decisions will no longer be taken by NCBs but by the ECB. It is submitted that adaptations of national central bank statutes have to take place in full before the establishment of the ECB, in spite of the fact that the effectiveness of some of the new statutory provisions might have to be delayed and will be contingent on that Member State joining the monetary union.

3 THE NECESSARY IMPLICATIONS OF ARTICLE 107 PROHIBITIONS: REQUIRED ADAPTATIONS TO THE TREATY

3.1 Introduction

Although Article 109e (5) declares that the adaptation of national legislation should lead to central bank independence, the only explicit features of independence that appear in Treaty and ESCB Statute articles are the two following items:

- Article 107 of the Treaty (and Article 7 of the ESCB Statute): the prohibition to seek and receive external instructions;
- Article 14 of the ESCB Statute: NCB's Governors should be appointed for a minimum period of 5 years and are protected from arbitrary dismissal.

This does not mean that Member States would be in compliance with the Treaty if they only adapted their legislation to these two particular features.

It could be argued that Article 107 of the Treaty has direct effect in Member States, and it is thus not even necessary to introduce it in national legislation nor reflect it in NCB statutes. Moreover, it could also be said that Article 107 applies only in Stage Three. Compliance with Treaty requirements might therefore be limited to adapting the status of the Governor to the tenure of office provisions of Article 14.2 of the ESCB Statute. This position is legally untenable, as Article 108 (which requires specific adaptations of national legislation to Treaty provisions) contradicts any idea of direct effect of Article 107. The requirement of specific adaptation of NCBs' statutes and national legislation implies that the content of Article 107 must be incorporated into national law before the ECB is established, and will be the subject of the EMI yearly reports to the EU Council.

This paper submits that the minimal interpretation of the Treaty requirements shown in the paragraph above does not lead to central bank independence, nor to due fulfilment of the prohibitions of Article 107, and thus does not comply with Articles 107, 108 and 109e(5) of the Treaty.

3.2 National recognition of the prohibitions of Article 107

In order that full compliance with Article 108 takes place, and for reasons of legal security and clarity, it is submitted that national statutes of NCBs should reproduce the content of Article 107, both in its passive terms (NCBs should not receive or seek instructions) and its active terms (Community institutions and bodies, and governments of Member States, should not seek to influence members of decision-making bodies of NCBs in the performance of their monetary tasks).

Such implementation by national legislators might also correctly interpret the wording of Article 107 of the Treaty in the sense that in Stage Three, one Community institution, namely the ECB (as proclaimed in Articles 8 and 14 of the ECB Statute), will be entitled to govern NCBs in the areas of the ESCB, and thus to issue decisions, instructions and guidelines to NCBs. NCBs will be under the legal obligation to comply with such compulsory acts.

3.3 The need for national legislation to complete and develop Article 107

A statutory provision merely repeating the prohibitions of Article 107 would be convenient, as argued above, but would not be sufficient. Instructions can be effected in many ways without expressly recognising them in NCB statutes, if precautions are not taken to prevent this. Cases of personal dependency and the granting of rights to governmental representatives might create situations which facilitate government interference. Use of regulatory power by governmental bodies might hamper functional independence of NCBs.

It is thus submitted that adaptation of NCB statutes to Article 107 of the Treaty requires certain features to be addressed so that the prohibitions of the Article are actually effective.

These features may be classified as institutional, functional and financial.

4 INSTITUTIONAL INDEPENDENCE

The following features need to be analysed:

4.1 Institutional definition of NCBs: accountability and control systems

(i) Managerial accountability

Some NCBs have the legal nature of a commercial company, with its capital owned either totally or partially by the State, and subject basically to the laws and regulations applicable to commercial companies. Such laws and regulations make the Board of Directors accountable vis-à-vis the shareholders. Moreover, in the cases where public-owned capital co-exists with private shareholders, the Board might be under the fiduciary duty to obtain and distribute as much profit as reasonable.

In other cases, where NCBs are defined as public-law corporations, some system of accountability and control of the decision-making bodies of the NCBs needs to be established and is normally provided for.

The question arises as to what extent decision-making bodies of NCBs would be independent from either the shareholders or the public bodies to whom they would be accountable when adopting monetary policy decisions. Monetary policy decisions taken with the goal of price stability in mind might entail losses for the NCB or might not be the best decisions in respect of attaining year-end profits. The answerability system should prevent NCB directors being held liable for such losses or for not taking measures to reach year-end profits.

A solution would be to specify reaching price stability as the first objective of the NCB. Such an objective would overrule the objective of making profits or avoiding losses. Nevertheless, the question is still valid if private shareholders exist and have a legitimate claim for year-end profits. In these case, this solution should be supplemented with an offer by the State to private shareholders to acquire their shares.

If public bodies (e.g. Parliaments or parliamentary committees, Departments of Finance, the Treasury, etc.) are entrusted with the monitoring of NCB annual accounts, legislation should also contemplate giving full autonomy to NCB Boards in deciding monetary policy, even if that entails losses or a reduction in profits. Decisions adopted in the field of monetary policy and with the purpose of maintaining price stability should therefore not be taken into account when discharging the Board. On the contrary, achieving price stability should be the only paramount criterion to judge NCBs Boards due fulfilment of their duties.

(ii) Political accountability

Accountability may also arise from the monetary policy functions of NCBs. If NCBs are entrusted with the task of maintaining price stability, their decision-making bodies should perhaps be made accountable for the fulfilment of that task. Legislation might thus foresee a kind of *a posteriori* judgement on the performance of NCB Boards (i.e. by parliamentary committees, by Governments, etc.). In addition, democratic control might lead to annual parliamentary debates on monetary policy, periodic appearances of NCB Governors before Parliament to explain monetary plans and current monetary questions, or the right of Parliament or of Government to request the presence of NCB Governors in parliamentary or ministerial discussions on economic policy.

This kind of political control and assessment of NCB's monetary decisions is unavoidable in the democratic systems in Europe and cannot be questioned. Transparency and public debate of monetary issues is, without doubt, a feature of western democratic constitutions. However, it is submitted that the legal institutional framework of NCBs should prevent political bodies from having the right to dismiss or take any action vis-à-vis decision-making organs of NCBs, when assessing monetary policy or their target performance; that would be tantamount to creating a dependency of NCBs on political bodies which is incompatible with the Treaty.

4.2 Rights of Governments to attend meetings of decision-making bodies of NCBs

Some NCB statutes give governmental representatives the right to attend meetings of NCB Boards. In those cases, the representatives might have the following powers:

- the right to intervene in discussions but no voting rights;
- the right to submit motions for approval, but no voting rights;
- the right to delay the adoption of decisions;
- the right to suspend decisions and submit them to governmental approval (or rescission).

The attendance of governmental representatives at meetings of NCB decision-making bodies could be regarded as a curtailment of NCB independence, since it gives the possibility of influencing monetary policy decisions.

Nevertheless, the Treaty provides a system which should be used as a basis for the amendment of NCB statutes in this field. Article 109b gives a right to the President of the EU Council and to the European Commission to attend ECB Council meetings "*without having the right to vote*". In Stage Three the ECB will be the origin of decisions concerning monetary policy, with which NCBs of the ESCB will have to comply. If the Treaty foresees the attendance of the EU Council and Commission at ECB Council meetings, it seems illogical to prevent NCBs from having a similar arrangement. It is thus submitted that a national system where governments have a right to send a representative to meetings of decision-making bodies of NCBs is compatible with independence of NCBs.

Following the Treaty model it is also submitted that national systems granting voting, vetoing, delaying or suspending powers to governmental representatives in NCBs are inconsistent with NCB's independence.

4.3 Method of appointment of NCB Governors

Independence in decision-making bodies of NCBs requires that such bodies are not seen to be dependencies of the national government or even of the Ministry of Economy or Finance. When appointing the Governor, basic conditions for eligibility should be laid down and a system established that does not give exclusive power of appointment to Government. Such conditions should be as objective as possible, since the purpose would be to avoid arbitrary nominations based on personal dependency of the candidate on Government (political links, civil servant career, etc.). The Treaty again provides a model, in Article 109a, where it is stated that members of the Executive Board of the ECB "*shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters*". The appointment is made by unanimity of the European Council on a recommendation from the Council of Ministers and after consultation of the European Parliament and the ECB Governing Council.

National systems appointing NCB Governors should follow similar patterns, and provide for basic objective eligibility conditions, and a method of appointment that would include constitutional organs other than Government (e.g. parliaments, regions, the Crown, etc.).

4.4 Security in the tenure of office

Independence of Governors requires security in the tenure of office for a reasonable period of time. In addition, a situation of dependency exists if NCBs statutes, whilst establishing a fixed minimum period for office for Governors, permit re-election and such re-election depends exclusively on Government.

Article 14.2 of the ECB Statute requires a minimum term of office for Governors of NCBs of five years, and arbitrary dismissal is prohibited. These provisions need to be included in central bank statutes. However, the Treaty is silent with respect to re-election. Treaty silence should be elaborated by national legislators, taking into account Article 109e (5)'s final purpose of central bank independence. The longer the period of tenure of office, the greater the independence of NCB Governors. Thus, although the Treaty does not require anything more than the five-year minimum, the degree of independence of NCBs could be assessed taking into account the terms of office established by national legislations, and the persons covered by such legislation. In this respect, mention should be made of the criteria of the Treaty, which provide a non-renewable term of eight years for Executive members of the ECB.

The above-mentioned considerations regarding appointments would also apply for re-election. Absolute discretion of Government would be tantamount to dependency. Re-elections should be decided by constitutional organs other than Government, and perhaps with a greater emphasis on such other organs than in the case of first appointments. Similarly, recognising the exclusive right of initiative for NCB's Boards to propose the re-election of their Governors might be a guarantee against governmental dependency.

Article 14.2 of the ECB Statute states that a Governor of an NCB - part of the ESCB - may not be arbitrarily relieved from office, and submits final decisions on anticipated dismissals to the European Court of Justice. A similar system is provided for ECB Executive Board members in Article 11.4.

Statutes of NCBs should be consistent with the above Treaty provisions, which should be considered as the minimum necessary legal adaptations of NCB statutes. The degree of NCB independence could also be measured with respect to the legal protection granted against the arbitrary dismissal of its Governor. That legal protection might be provided by granting the exclusive initiative for dismissal to the NCB Board, and by giving explicit and objective reasons for such dismissals in order to facilitate judicial review thereof.

4.5 Status of economic independence of Governors

A situation whereby Governors have an economic dependency on government could create an institutional dependency of the NCB itself. The Treaty is silent with respect to NCBs, but sets a criteria by stating that ECB Executive members “*shall perform their duties on a full-time basis. No member shall engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Governing Council.*” That provision should not be read as addressing merely a question of dedication of time to the ECB of its directors, but also, more substantially, the question of neutrality and independence of the Executive Board vis-à-vis private or public persons.

It is thus submitted that the adaptation of NCB statutes to the Treaty requires a legal status of economic independence of NCB Governors.

4.6 Status of other members of decision-making bodies of NCBs

Article 14 of the ESCB Statute only concerns NCB Governors. Article 107, however, addresses its prohibitions to “*the members of the decision-making bodies of the national central banks*”. It makes little sense that collective bodies may be composed of one independent person, namely the Governor, and several other persons that might not be equally independent, where decision-making is effected collectively. Governors might be left in a minority. Moreover, Vice-Governors normally have statutory replacement functions that place them in similar situations to Governors. Thus, above considerations concerning the Governor should be extended to all members of NCB decision-making bodies. NCB statutes should extend the provisions regarding conditions for eligibility, security of tenure of office, re-election, economic independence, which have been examined above with regard to Governors, to all members of NCB decision-making bodies.

4 FUNCTIONAL INDEPENDENCE OF NATIONAL CENTRAL BANKS.

Functional independence means, in a positive definition, that each NCB is given all necessary means to fully and solely formulate and implement monetary policy with the primary aim of achieving price stability. In order to be able to act autonomously, it is essential that NCBs are given the necessary policy instruments and that those instruments can be used without restrictions.

In a reverse or passive definition, functional independence means that NCB are not obliged to fulfil tasks which would render it extremely difficult, if not impossible, to attain this primary objective of price stability.

Functional independence in Stage Three will entail the capacity for NCBs to implement ECB instructions and guidelines without any interference from political authorities,

4.1 In the area of monetary policy

Functional independence entails:

(i) Autonomy for formulating monetary policy

This precludes any shared responsibility with governmental bodies for the formulation of monetary policy, and in particular, entails the capacity to set monetary policy targets.

(ii) Autonomy for issuing implementation decisions

The implementation of monetary policy requires adequate instruments. Central banks should avail themselves of all necessary monetary policy instruments. No monetary policy instrument would be left to the Government.

Furthermore, NCBs would be able to use monetary policy instruments freely. If a NCB does need permission from, or does need the assistance of governmental regulations, to implement monetary policy decisions, governments would be in a position to influence such decisions. NCBs should be vested with the capacity to issue regulatory orders, circular letters and implementation decisions by themselves, without governmental interference.

(iii) Legal regime of acts of national central banks

Some present NCB features provide for a system whereby the review of acts adopted by the NCB is vested on the Government, prior to a possible final review by the judiciary. Such a system gives the idea that central banks are somehow a dependency of Government. It is submitted that such a system contradicts the principle of central bank independence; this would lead to a recommendation that national legislation should provide that legal acts of NCBs be directly reviewable by the judiciary.

(iv) Governmental intervention in administrative means of NCBs

Functional independence would also imply that NCBs have the adequate means to perform basic tasks of monetary policy. Decisions on these means might be adopted by bodies in which governmental or political representatives have decisive influence. Some NCB statutes provide for independence only in decision-making related to monetary policy, and not for decision-making in issues related to the organisation and administration of NCBs. One of these areas might be, for example, the management of NCB staff. An area more closely related to monetary policy is the printing of banknotes. It is submitted that functional independence also requires avoiding

dependence on politically-dependent bodies for the adoption of administrative or organisational decisions.

(v) Protection from Governmental regulations

Governments have the power to issue regulations. Central bank independence might be curtailed by such regulations, unless appropriate upper-rank legislation protects NCBs from such possible regulations. In the areas falling within the fields of the ESCB, legislation should thus preclude the possibility of Governmental interference by ways of decrees or other.

4.2 Areas other than monetary policy

Article 107 of the Treaty limits the requirement of central bank independence “*When exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty*”. NCBs may perform activities other than the primary task of conducting monetary policy. Functional independence would also require that NCBs may not be forced by Governments to carry out tasks which might be incompatible or may undermine that primary task. The Treaty has already provided that one traditional central bank activity, namely being a banker to public administrations, needs to comply with the prohibitions of Article 104. Article 14.4 of the ESCB Statute submits the performance by NCBs of functions other than monetary policy and related functions to the decision of the ECB Governing Council. Statutes of NCBs should appropriately reflect this concern for functional independence. Imposing tasks on NCBs requires prior consultation of the ECB (and, in Stage Two, of the EMI); one possibility *ex lege ferenda* might be a legal commitment to accept the ECB’s opinion on compatibility of any such potential new central bank task.

Exchange rates have a direct implication for monetary policy, and cooperation between central banks and governmental bodies is thus essential. Some national legislations provide for joint decisions between NCBs and ministries of finance (e.g. Austria), some for a procedure of compulsory but non-binding consultation between government and NCBs (e.g. Germany, Spain and Portugal), and some give the initiative to the central bank with Government making the final decision (e.g. Finland). Article 109 gives competence to the EU Council of Ministers, acting on consultation with (or on a recommendation from) the ECB, regarding exchange rate questions related to the single currency in Stage Three.

It is submitted that in this area national legislations should contemplate a system of compulsory involvement of NCBs in the adoption of decisions on formal exchange-rate matters by national governments, in a manner parallel to the system of Article 109(1). Such intervention by NCBs should have the purpose of opposing any decision which would undermine the paramount objective of price stability.

In this area, Article 109(2) provides for the possibility of the Council of Ministers issuing general orientations concerning the exchange rate policy vis-à-vis non-Community currencies; some present-day national legislations which especially purport to protect NCB independence would have to be adapted in all these cases where governments have a greater say in the implementation of exchange-rate policy than provided for in the Treaty with a view to Stage Three.

Article 105.6 of the Treaty reflects the possibility of supervisory functions being entrusted to the ECB. Moreover, Article 14.4 of the ESCB Statute permits NCBs to perform functions other than those entrusted to the ESCB. Most EU national legislations confer supervisory functions on NCBs, whilst a few provide for governmental (i.e. non-NCB) responsibilities (Germany, Belgium, Austria, Finland, Sweden, Denmark). Even in the cases of governmental responsibilities, however, NCBs have a role of cooperation, an interest for the stability of financial markets and the payment systems, and the need to obtain from the banking system data necessary to adequately perform monetary policy functions.

In the area of statistics, Article 5 imposes on NCBs the duty to assist the ECB in the collection of the necessary data, either from the competent national statistical authorities or directly from the economic agents. NCBs need to have the statutory capacity to perform these statistical functions, including the capacity to demand the cooperation of national statistical institutes or of economic agents in accordance with the provisions of Community legislation adopted pursuant to Article 5.4 of the ESCB Statute.

5 FINANCIAL INDEPENDENCE

The legal power to make and implement decisions on monetary policy to be vested on the ESCB in Stage Three requires a material and staffing capacity of NCBs which is operational. Independence requires sufficient economic capacity. An NCB could not be regarded as independent if its budget had to be approved by Government.

Moreover, the economic regime of the ECB foreseen in the Treaty is dependent on its member NCBs. Capital increases and further foreign reserve assets calls in the ECB are decided by its Governing Council and are to be subscribed and disbursed by NCBs. These decisions could not be adopted independently by the ECB if NCBs are economically dependent on national governments. ECB budgetary independence requires NCB budgetary independence.

Therefore, avoidance of governmental dependency requires budgetary autonomy in NCBs.

The definition of such budgetary autonomy in national legislations should take into account the fiscal responsibilities vested in parliaments by national constitutions. Therefore, this requirement of budgetary autonomy is only applicable vis-à-vis Government, and can be made compatible with final decisions of national parliaments on the budget of public administrations. However, due respect once more needs to be given to the provisions of Article 107 of the Treaty, in the sense that national parliaments should not *“seek to influence the members of the decision-making bodies”* of NCBs when deciding on their budgets.

An area closely related to NCBs budgetary status is accounting. NCBs will have to adapt its accounting system to the harmonised accounting system which will be employed by the ESCB. Present accounting practices by be enshrined in national legislation; that would need adequate amendment.

6 STATING THE PRINCIPLE OF INDEPENDENCE

Finally, it should be indicated as a concluding remark for this paper that, whatever the statutory framework of NCBs in the Member States, it would be convenient to legally declare the general principle that NCBs are independent from national governmental institutions. Independence is the result of several specific provisions, concerning the items that have been examined above, and therefore such a legal statement might be assumed to be redundant. Nevertheless, it is submitted that a legal statement of a general principle defining NCBs would give highly convenient interpretation criteria to other provisions of NCB statutes and to legal provisions in other areas in cases of conflict with NCB statutes.

7 CONCLUSIONS

- (a) Adaptation of national legislation and NCB statutes to Treaty requirements needs to be in place before the start of the so-called “interim period” or Stage Two B. An assessment of that adaptation must be made by the EMI and the Commission prior to the decision regarding which Member States qualify for Stage Three.
- (b) The prohibitions of Article 107 concerning governmental or Community instructions to NCBs should be explicitly recognised in national legislation.
- (c) Managerial and political accountability of NCBs should not give a right to Governments to dismiss or take action vis-à-vis decision making bodies of NCBs.

- (d) Governments might be granted the right to send representatives to decision-making bodies of NCBs, provided that such representatives do not have the capacity to vote, to delay adoption of decisions, to suspend effectiveness of such decisions or veto decisions.
- (e) National legislations should establish objectively the conditions for eligibility of NCB Governors, and provide for a method of appointment that does not give the Government an exclusive power.
- (f) National legislations should provide for a minimum fixed period of tenure of office for Governors, of not less than five years.
- (g) National legislations should provide for an objective system for anticipated dismissals of NCB Governors, and submit such dismissals to judicial review by the ECJ.
- (h) National legislations should provide a system for re-election of Governors that avoids exclusive dependence on Government.
- (i) The status of Governors should avoid economic personal dependence on Governments.
- (j) The status of other members of decision-making bodies of NCBs should be similar to the status of NCB Governors.
- (k) National legislations should vest responsibility for the formulation and implementation of monetary policy with the respective NCB, and provide NCBs with the legal means to implement by themselves monetary policy decisions.
- (l) National legislations should preclude administrative review by governmental bodies of legal acts adopted by NCBs.
- (m) National legislation should preclude Government from interfering in decisions related to the organisation, staff and means of the NCBs in the fields of monetary policy.
- (n) National legislation should preclude Government from interfering with NCBs in the field of monetary policy by way of decrees or similar secondary legislation.
- (o) Duties of cooperation of NCBs vis-à-vis governmental bodies in the fields of exchange rates and prudential supervision are consistent with Treaty provisions.

- (p) NCBs need to have the statutory capacity to perform the statistical functions foreseen in Article 5.1 of the ESCB Statute, in accordance with the provisions of Community legislation adopted pursuant to Article 5.4 of the ESCB Statute.
- (q) National budgetary laws should give a budgetary status to NCBs that avoids budgetary dependence on Government.
- (r) NCBs should be given the legal capacity to adapt accounting procedures to harmonised accounting procedures.
- (s) It is convenient that national legislations declare, at an appropriate level, the principle of independence of NCBs.