

LEGAL FRAMEWORK FOR THE EUROSISTEM NATIONAL CENTRAL BANK

Andres Tupits

Submitted in fulfillment of the requirements for the degree of
Doctor of Philosophy (PhD)
of the University of London

Supervised by
Professor Rosa Maria Lastra
Centre for Commercial Law Studies
Queen Mary College
University of London

September 2010

The views expressed in this paper are those of the author and do not necessarily reflect those of the European Central Bank or Eesti Pank.

ABSTRACT

This thesis analyses legal issues related to the participation in the Eurosystem by a national central bank (NCB). My aim is to develop principles that could be used for a national central bank law for a European Union Member State that has adopted the euro.

The transfer of monetary policy to the supranational level has substantially changed the European central banking framework and confronted the NCBs with their new role as members of the Eurosystem.

This membership has affected the governance structures of NCBs, with the emphasis on Governors and their independence. Most of the changes relate to the fulfilment of tasks of the Eurosystem and the level of independence needed by the NCBs to carry out these tasks. I have found that although there are differences amongst the Member States, the understanding of central bank independence is fairly similar throughout the EU.

The accountability of the NCBs is driven not by the EU but by national rules, which is why the extent of reporting commitments varies between the Member States. The same is true of transparency, with some NCBs tending to be more open towards the general public than the others. However, it remains debatable whether there should be a harmonisation of rules on transparency and accountability at the EU level and whether the establishment of such harmonised rules would set higher standards than the current average.

A debate on whether the prudential supervision of credit institutions should be a European rather than a national matter has been going on for a number of years, and I would like to add to the discussion as far as the financial stability and ESCB-related tasks are concerned.

Finally, on the basis of the Estonian NCB Statute, I suggest amendments reflecting best practices for central bank tasks, independence and accountability.

Andres Tupits

Frankfurt am Main, 8 September 2010

Keywords: National central banks, Eurosystem, central bank independence, accountability, transparency, supervision

Table of Contents

TABLE OF CONTENTS	1
TABLE OF LEGAL ACTS	6
TABLE OF CASES	26
LIST OF ABBREVIATIONS	28
ACKNOWLEDGEMENTS	30
1 INTRODUCTION	31
1.1 Background	31
1.2 Literature review	34
1.3 Method and the way forward	36
2 CENTRAL BANKING IN THE EUROPEAN UNION	39
2.1 Overview of the history of European monetary integration	39
2.2 The Eurosystem and the ESCB	41
2.2.1 Legal background	41
2.2.2 Eurosystem NCBs	46
2.2.3 Non-Eurosystem NCBs	49
2.3 The functioning of European Monetary Union	51
2.3.1 Decision-making bodies	51
2.3.1.1 ECB decision-making bodies	51
2.3.1.2 Overview of the NCBs' decision-making bodies	57
2.3.2 ESCB Committees	64

2.4	Conclusions of Chapter 2	68
3	A NATIONAL CENTRAL BANK IN THE EUROPEAN UNION	70
3.1	Interaction between central bank independence and accountability	70
3.2	Central bank independence	70
3.2.1	Functional independence	72
3.2.2	Institutional independence	77
3.2.2.1	Background to institutional independence	77
3.2.2.2	Prohibition on giving or taking of instructions	80
3.2.2.3	Prohibition on approving, suspending, annulling or deferring decisions	82
3.2.2.4	Prohibition on censoring draft decisions on legal grounds	83
3.2.2.5	Prohibition on participation in decision-making bodies of an NCB with a right to vote	83
3.2.2.6	Prohibition on ex ante consultations of an NCB decision	85
3.2.3	Personal independence	86
3.2.3.1	The concept of personal independence	86
3.2.3.2	Notion of Governor	88
3.2.3.3	Appointment procedure and term of office	91
3.2.3.4	Duty of loyalty	94
3.2.3.5	Duty of non-competition	99
3.2.3.6	Appointment of alternates	101
3.2.3.7	Grounds for dismissal	105
3.2.4	Financial independence	113
3.2.4.1	Budget determination	113
3.2.4.2	Accounting rules	115
3.2.4.3	Auditing	117
3.2.4.4	Distribution of profits, NCB's capital and financial provisions	119
3.2.4.5	Autonomy in staff matters	123
3.2.4.6	Financial liability for supervisory authorities	123
3.3	The Eurosystem's voice in a Member State	125
3.3.1	The notion of accountability	125
3.3.1.1	Material aspect of accountability	125
3.3.1.2	Formal aspect of accountability	127
3.3.2	Central bank transparency	135
3.3.3	Confidentiality and professional secrecy	138
3.4	Conclusions of Chapter 3	144

4	THE STABILITY OF THE FINANCIAL SYSTEM	150
4.1	Financial stability as a central banking task and its limitations	150
4.2	Financial stability as an ESCB-related task	151
4.2.1	Financial stability and the role of central banks	151
4.2.1.1	Contribution to financial stability	151
4.2.1.2	The role of the Eurosystem in banking supervision	154
4.2.1.3	Banking Supervision Committee	158
4.2.1.4	European Systemic Risk Board	159
4.2.2	Role of the ECB as a supervisory authority	164
4.2.2.1	History	164
4.2.2.2	Statutory provisions and applicability	165
4.2.2.3	Scope of the ECB's supervisory task	166
4.3	Limitations to the central banks' role in contributing to financial stability	170
4.3.1	Emergency liquidity assistance	170
4.3.1.1	Definition of ELA and its terms	170
4.3.1.2	Is this national or supranational task?	176
4.3.1.3	Compliance with disclosure requirements	179
4.3.1.4	Problems with applying the ELA criteria in real time	183
4.3.2	Monetary financing prohibition	185
4.3.2.1	Protection of the primary objective of monetary policy	185
4.3.2.2	Link between fiscal discipline and price stability	187
4.3.2.3	Prohibition to finance credit institutions other than in connection with central banking tasks	191
4.4	Conclusions of Chapter 4	193
5	EESTI PANK STATUTE	196
5.1	Introduction	196
5.2	1919-2010	196
5.3	Assessment of the Estonian NCB Statute as of 1 January 2011	199
5.3.1	Functional independence	199
5.3.1.1	Primary objective of Eesti Pank under the Constitution	199
5.3.1.2	Primary objective of Eesti Pank under its Statute	205
5.3.2	Institutional independence	206

5.3.3	Personal independence	207
5.3.3.1	Overview	207
5.3.3.2	Supervisory Board	207
5.3.3.3	Governor	211
5.3.3.4	Executive Board	213
5.3.4	Financial independence	215
5.3.4.1	Determination of budget	215
5.3.4.2	Accounting rules	215
5.3.4.3	Capital	215
5.3.4.4	Auditing	216
5.3.4.5	Distribution of profits	218
5.3.4.6	Autonomy in staff matters	219
5.3.5	Accountability and transparency	219
5.3.5.1	Relations with the Government	219
5.3.5.2	Reporting	219
5.3.6	Confidentiality and transparency	220
5.3.7	Contribution to financial stability	220
5.4	Conclusions of Chapter 5	224
	ANNEX: POSTSCRIPT	226
	ANNEX: LIST OF TABLES	234
	Table 2-1 NCB decision-making bodies	234
	Table 3-1 Functional independence	288
	Table 3-2 Prohibition on giving instructions	293
	Table 3-3 Prohibition on approving, suspending, annulling or deferring decisions	297
	Table 3-4 Prohibition on censoring decisions on legal grounds	299
	Table 3-5 Prohibition on participation in decision-making bodies of an NCB with a right to vote	300
	Table 3-6 Prohibition on ex ante consultation relating to an NCB's decision	303
	Table 3-7 The conditions required for the performance of the Governor	308
	Table 3-8 Appointment procedure and the term of office	336

Table 3-9 Appointment of an alternate under national law	352
Table 3-10 Grounds of dismissal and the procedure	361
Table 3-11 Budget rules	382
Table 3-12 Accounting rules	386
Table 3-13 Auditing rules	396
Table 3-14 Distribution of NCB profits	409
Table 3-15 Financial liability for supervisory authorities	420
Table 3-16 Autonomy in staff matters	422
Table 3-17 Accountability	436
Table 3-18 Transparency	454
Table 3-19 Professional secrecy	462
Table 4-1 Comparison of national financial stability provisions	481
Table 4-2 National and cross-border supervisory information sharing arrangements	493
Table 4-3 Emergency liquidity assistance	502
Table 5-1 Proposals	506
BIBLIOGRAPHY	519

Table of Legal Acts

Treaty on European Union

13(1) TEU	31, 43
16(6) TEU	48
17(6)(a) TEU.....	48
25 TEU.....	48
26 TEU.....	48
3 TEU.....	42, 76, 203
4(3) TEU	202
48(7) TEU	165
50(2) TEU	48

Treaty on the Functioning of the European Union

106 TFEU.....	186
113 TFEU.....	165
115 TFEU.....	165
118 TFEU.....	165
119 TFEU.....	42
120 TFEU.....	48
122(2) TFEU	189
123 TFEU.....	125, 154, 185, 186, 187, 188, 192
123(1) TFEU	185, 188
123(2) TFEU	185, 187
125 TFEU.....	187, 188, 189, 190

125(1) TFEU	187
125(2) TFEU	187
126(14) TFEU	165
127 TFEU.....	76, 77
127(1) TFEU	41, 73, 75, 76, 126, 203
127(2) TFEU	42, 47, 73, 122
127(3) TFEU	47
127(4) TFEU	35, 42, 45, 129, 155
127(5) TFEU	43, 47, 73, 151, 152, 153, 154, 178, 193, 194, 220, 485, 487
127(6) TFEU	150, 160, 165, 166, 167, 168, 169, 170, 194
128 TFEU.....	49, 201
129(1) TFEU	43, 51, 55, 169
129(3) TFEU	44
129(4) TFEU	42, 44
130 TFEU.....	34, 41, 43, 49, 77, 80, 81, 85, 88, 90, 108, 153, 169, 177, 178, 193, 203, 207
131 TFEU.....	34, 49, 203
132 TFEU.....	44, 49, 56, 166, 168
132(1) TFEU	44, 45, 48, 165, 166
133 TFEU.....	49
136(1)(b) TFEU	48
138(1) TFEU	50
138(2) TFEU	50
139 TFEU.....	56, 186
139(1) TFEU	49, 50
139(1)(e) TFEU	166
139(2) TFEU.....	49

139(2)(c) TFEU	73, 151, 166
140 TFEU.....	34, 35, 56
140(1) TFEU.....	34, 199
140(2) TFEU.....	198
140(3) TFEU.....	56
141 TFEU.....	55
142 TFEU.....	50
146(1) TFEU.....	48
148 TFEU.....	48
15(1) TFEU.....	138
15(3) TFEU.....	138, 139
153(2) TFEU.....	165
156 TFEU.....	48
168(2) TFEU.....	48
171(1) TFEU.....	48
172 TFEU.....	48
173(2) TFEU.....	48
175 TFEU.....	228
177 TFEU.....	228
181(2) TFEU.....	48
182(4) TFEU.....	165
192(2) TFEU.....	165
194(3) TFEU.....	165
203 TFEU.....	165
21(3) TFEU.....	165
219 TFEU.....	42, 49

22 TFEU.....	165
228(2) TFEU.....	107
23 TFEU.....	165
245(2) TFEU.....	107
247 TFEU.....	107
26(3) TFEU.....	48
262 TFEU.....	165
263 TFEU.....	133
264 TFEU.....	134
266 TFEU.....	134
267 TFEU.....	111
271(d) TFEU.....	46, 187
282 TFEU.....	41
282(1) TFEU.....	41
282(2) TFEU.....	41, 43, 73, 76, 126, 203
282(3) TFEU.....	41, 43, 77, 78
282(5) TFEU.....	35, 42, 45
283(1) TFEU.....	51
283(2) TFEU.....	50, 54, 86, 87, 88
284 TFEU.....	135
284(2) TFEU.....	128
284(3) TFEU.....	130
286(6) TFEU.....	107
288 TFEU.....	35, 44, 45
289(1) TFEU.....	45
289(2) TFEU.....	45

289(4) TFEU.....	44
292 TFEU.....	44
297(2) TFEU.....	45
308 TFEU.....	165
311 TFEU.....	165
314 TFEU.....	113
333 TFEU.....	165
345 TFEU.....	186
349 TFEU.....	165
5(1) TFEU.....	48
5(2) TFEU.....	48
64(3) TFEU.....	165
68 TFEU.....	48
77(3) TFEU.....	165
81(3) TFEU.....	165
87(3) TFEU.....	165
89 TFEU.....	165

Treaty establishing the European Community

10 TEC.....	202
100(2) TEC.....	189
101 TEC.....	125, 154, 185, 186, 188
101(2) TEC.....	185
103 TEC.....	189, 190
103(1) TEC.....	187
103(2) TEC.....	187

105(1) TEC	41, 73, 203
105(2) TEC	42, 73
105(3) TEC	42
105(4) TEC	42, 73, 129
105(5) TEC	43, 73, 151, 152, 153, 154, 178, 193, 194, 220
105(6) TEC	150, 160, 164, 165, 166, 167, 168, 169, 170, 194
106 TEC	201
107(1) TEC	43, 170
108 TEC	43, 49, 80, 85, 88, 90, 93, 153, 169, 177, 178
109 TEC	49
110 TEC	166, 168
110(1) TEC	166
112(1) TEC	51
112(2)(b) TEC.....	86, 87, 88
113(2) TEC	128, 130
113(3) TEC	130
121(1) TEC	34
122(2) TEC	34
123(5) TEC	34
124(1) TEC	50
195(2) TEC	107
216 TEC	107
230 TEC	45
234 TEC	111
237(d) TEC	188
247(7) TEC	107

248 TEC	135
249 TEC	44
295 TEC	186
5(2) TEC	47
86 TEC	186

Protocol (No 4) on the statute of the European System of Central Banks and of the European Central Bank (the Statute)

10.1 of the Statute	51
10.2 of the Statute	52, 53, 95, 101, 104, 273
10.3 of the Statute	53, 95, 98, 101
10.4 of the Statute	141
11 of the Statute	54
11.1 of the Statute	87
11.2 of the Statute	88
11.7 of the Statute	88
12.1 of the Statute	43, 47, 48, 131, 207
12.3 of the Statute	53
14 of the Statute	47
14.1 of the Statute	49
14.2 of the Statute	49, 57, 88, 92, 93, 97, 105, 106, 108, 109, 110, 111, 112, 146, 212, 511, 514
14.3 of the Statute	32, 44, 48, 49, 51, 93, 94, 95, 176, 178, 179, 206
14.4 of the Statute	32, 48, 131, 152, 176, 177, 193, 206
15 of the Statute	56, 137
15.1 of the Statute	137
18.1 of the Statute	173

19.1 of the Statute	44
2 of the Statute 41, 73, 75, 76, 86, 87, 92, 101, 105, 108, 110, 115, 116, 126, 135, 150, 166, 168, 178, 186, 202, 203	
22 of the Statute	44
23 of the Statute	42
25.1 of the Statute	56, 155, 159, 170
25.2 of the Statute	44, 150, 164, 165, 166, 167, 168, 169, 194
26 of the Statute	56, 117
26.4 of the Statute	56
27.1 of the Statute	117, 118, 135, 147, 202, 216
29.2 of the Statute	52
29.3 of the Statute	52
3 of the Statute	42, 115, 122, 130, 165, 178, 202, 482, 485, 487
3.1 of the Statute	44
3.3 of the Statute	43, 151, 152, 153, 154, 178, 193, 194, 220
30 of the Statute	42
31 of the Statute	42
31.3 of the Statute	48
32.2 of the Statute	48
32.6 of the Statute	48
34 of the Statute	44, 166
34.1 of the Statute	45, 48, 56, 166
35.1 of the Statute	133
35.6 of the Statute	46, 78
36 of the Statute	56
37 of the Statute	95

37.1 of the Statute	70, 99, 140, 141, 143, 149, 220
37.2 of the Statute	143
4 of the Statute	42, 45, 56, 88, 111, 116, 129, 137, 140, 147, 155, 215, 218, 399, 517
4(a) of the Statute.....	35
40 of the Statute	44
40.2 of the Statute	53
40.3 of the Statute	53
41 of the Statute	42, 44
42.1 of the Statute	49, 56, 73, 116, 151, 166
42.2 of the Statute	49
43 of the Statute	35, 36, 44, 55
44 of the Statute	55
45.4 of the Statute	44
46 of the Statute	55, 170
46.1 of the Statute	35, 36
47 of the Statute	44
5 of the Statute	56
5.2 of the Statute	49
7 of the Statute	43, 49, 77, 80, 81, 85, 88, 90, 93, 153, 169, 177, 178, 193, 207
9.2 of the Statute	47
9.3 of the Statute	51

Other Protocols and Treaties

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the

Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L 236, 23.9.2003, p. 33.....	50, 200
Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded, OJ L 157, 21.6.2005, p. 203.....	50
European Convention for the Protection of Human Rights and Fundamental Freedoms.....	110
Protocol (No 13) on the convergence criteria	35
Protocol (No 15) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland.....	50, 73, 78, 151, 155, 166, 173, 176, 179, 186
Protocol (No 16) on certain provisions relating to Denmark.....	50, 76, 151, 173, 186
Protocol (No 2) on the application of the principles of subsidiarity and proportionality	134
Protocol (No 37) on the financial consequences of the expiry of the ECSC Treaty and on the Research fund for Coal and Steel.....	48
Single European Act, OJ L 169, 29.07.1987, p. 1	40

Secondary EU Law (binding legal acts)

Commission Decision NN 36/08 of 31 July 2008 Roskilde Bank, OJ C 238, 17.9.2008, p. 5	184
Commission Decision NN 70/07 of 5 December 2007 Rescue aid Northern Rock, OJ C 43, 16.2.2008, p. 1.....	183
Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (Text with EEA relevance) OJ L 339, 24.12.2003, p. 70	180
Council Decision 2010/416/EU of 13 July 2010 in accordance with Article 140(2) of the Treaty on the adoption by Estonia of the euro on 1 January 2011, OJ L 196, 28.7.2010, p. 24.....	199, 202

Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, OJ L 189, 3.7.1998, p. 42.....	35, 42
Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (Codified version), OJ L 343, 22.12.2009, p. 51.....	229
Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty, OJ L 332, 21.12.1993, p. 1.....	185, 187, 192, 223
Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community, OJ L 188, 18.7.2009, p. 93.....	229
Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12.5.2010, p. 1	189, 190, 226
Council Regulation (EU) No 670/2010 of 13 July 2010 amending Regulation (EC) No 974/98 as regards the introduction of the euro in Estonia OJ L 196, 28.7.2010, p. 1.....	202
Council Regulation (EU) No 671/2010 of 13 July 2010 amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Estonia OJ L 196, 28.7.2010, p. 4.....	202
Decision ECB/1998/14 of 1 December 1998 laying down the measures necessary for the paying-up of the capital of the European Central Bank by the non-participating national central banks, OJ L 110, 28.4.1999, p. 33	57
Decision ECB/1998/NP15 of 1 December 1998 concerning the performance by the European Central Bank of certain functions relating to medium-term financial assistance for Member States' balances of payments, OJ L 55, 24.2.2001, p. 76.	57
Decision ECB/2003/14 of 7 November 2003 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility, OJ L 297, 15.11.2003, p. 35;	57
Decision ECB/2004/10 of 23 April 2004 laying down the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks, OJ L 205, 9.6.2004, p. 19; (6) Decision ECB/2003/19 of 18 December 2003 laying down	

the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks, OJ L 9, 15.1.2004, p. 31;	57
Decision ECB/2004/12 of 17 June 2004 adopting the Rules of Procedure of the General Council of the European Central Bank, OJ L 230, 30.6.2004, p. 61	44
Decision ECB/2004/12 of 17 June 2004 adopting the Rules of Procedure of the General Council of the European Central Bank, OJ L 230, 30.6.2004, p. 61.	57
Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the ECB, OJ L 80, 18.03.2004, p. 33, as amended.....	65, 67, 68, 140, 158
Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents, OJ L 80, 18.3.2004, p. 42	139, 140, 164
Decision ECB/2006/17 of 10 November 2006 on the annual accounts of the European Central Bank OJ L 348, 11.12.2006, p. 38	67
Decision ECB/2006/26 of 18 December 2006 laying down the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks, OJ L 24, 31.1.2007, p. 15;	57
Decision ECB/2007/1 of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank, OJ L 116, 4.5.2007, p. 64.	55
Decision ECB/2007/5 of 3 July 2007 laying down the Rules on Procurement, OJ L 184, 14.7.2007, p. 34, as amended.....	55
Decision ECB/2007/7 of 24 July 2007 concerning the terms and conditions of TARGET2-ECB, OJ L 237, 8.9.2007, p. 71, as amended.	55
Decision ECB/2008/28 of 15 December 2008 laying down the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks, OJ L 21, 24.1.2009, p. 81.	57
Decision ECB/2008/29 of 18 December 2008 to postpone the start of the rotation system in the Governing Council of the European Central Bank, OJ L 3, 7.1.2009, p 4	53
Decision ECB/2008/3 of 15 May 2008 on security accreditation procedures for manufacturers of euro secure items for euro banknotes, OJ L 140, 30.5.2008, p. 26	68
Decision ECB/2009/17 of 19 June 2009 amending Decision ECB/2003/14 concerning the administration of the borrowing-and-lending operations concluded by the European	

Community under the medium-term financial assistance facility, OJ L 190, 22.7.2009, p. 11.....	57
Decision ECB/2009/6 of 19 March 2009 on the establishment of the TARGET2-Securities Programme Board, OJ L 102, 22.4.2009, p. 12	68
Decision ECB/2010/17 of 14 October 2010 concerning the administration of the borrowing and lending operations concluded by the Union under the European financial stabilisation mechanism, OJ L 275, 20.10.2010, p. 10	226
Decision ECB/2010/9 of 29 July 2010 on access to and use of certain TARGET2 data, OJ L 211, 12.8.2010, p. 45.....	68
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements OJ L 168, 27.6.2002, p. 43	173
Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96, 12.4.2003, p. 16, as amended	179, 180, 183, 195
Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Text with EEA relevance) OJ L 345, 31.12.2003, p. 64, as amended.....	179, 181, 183, 195
Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), OJ L 177, 30.6.2006, p. 1.....	142, 183
Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems OJ L 166, 11.6.1998, p. 45	173
Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978, p. 11, as amended	179, 183
Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template, OJ L 354, 30.11.2004, p. 34 ...	68

Guideline ECB/2004/18 of 16 September 2004 on the procurement of euro banknotes, OJ L 320, 21.10.2004, p. 21.....	67, 68
Guideline ECB/2006/16 10 November 2006 on the legal framework for accounting and financial reporting in the European System of Central Banks, OJ L 348, 11.12.2006, p. 1	67, 116
Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2), OJ L 237, 8.9.2007, p. 1	68
Guideline ECB/2008/8 of 11 September 2008 on data collection regarding the euro and the operation of the Currency Information System 2, OJ L 346, 23.12.2008, p. 89.....	68
Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OJ L 243, 11.9.2002, p. 1	117
Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts, OJ L 193, 18.7.1983, p. 1, as amended	179, 183

Secondary EU Law (non-binding legal acts)

Communication from the Commission — Guideline on the details of the various categories of variations to the terms of marketing authorisations for medicinal products for human use and veterinary medicinal products OJ C 17, 22.1.2010, p. 1	48
Communication from the Commission — Guideline on the operation of the procedures laid down in Chapters II, III and IV of Commission Regulation (EC) No 1234/2008 concerning the examination of variations to the terms of marketing authorisations for medicinal products for human use and veterinary medicinal products, OJ C 323, 31.12.2009, p. 9 ...	48
Council Recommendation of 16 February 2010 on the appointment of the Vice-President of the European Central Bank, OJ C 52, 2.3.2010, p. 1	86
ECB Opinion CON/00/30 of 5 December 2000 at the request of the Presidency of the Council of the European Union on a proposal to amend Article 10.2 of the Statute of the European System of Central Banks and of the European Central Bank, OJ C 362, 16.12.2000, p. 13	54

ECB Opinion CON/2001/10 of 25 May 2001 at the request of the Austrian Ministry of Finance on a draft Article of the Federal law establishing and organising the financial market supervisory authority and amending the laws relating to banking, securities supervision, investment funds, equities funds, savings banks, building societies, mortgage banks, mortgage bonds, the IAPL, the stock exchange (1989), insurance supervision, motor vehicle third party liability insurance (1994), pension funds, capital markets, the Commercial Code, companies limited by shares, limited liability companies and the National Bank (1984).....	124, 152, 156
ECB Opinion CON/2001/35 of 8 November 2001 at the request of the German Ministry of Finance on a draft law establishing an integrated financial services supervision.....	152, 156
ECB Opinion CON/2002/16 of 5 June 2002 at the request of the Irish Department of Finance on a draft Central Bank and Financial Authority of Ireland Bill of 2002.....	124
ECB Opinion CON/2002/22 of 2 September 2002 at the request of the Swedish Ministry of Finance on a draft legislative proposal establishing the National Audit	135
ECB Opinion CON/2003/22 of 15 October 2003 at the request of the Finnish Ministry of Finance on a draft government proposal to amend the Suomen Pankki Act and other related acts	116, 121, 122
ECB Opinion CON/2003/23 of 24 October 2003 at the request of the Ministry of Finance of the Netherlands on a draft law on provisions concerning the merger of De Nederlandsche Bank and the Pensions and Insurance Supervisory Authority Foundation.....	124, 155
ECB Opinion CON/2003/27 of 2 December 2003 at the request of the Austrian Federal Ministry of Finance on a draft Federal law on the National Foundation for Research, Technology and Development	188
ECB Opinion CON/2004/16 of 11 May 2004 at the request of the Italian Ministry of Economic Affairs and finance on a draft law on the protection of savings.....	92, 112, 192
ECB Opinion CON/2004/24 of 19 November 2003 at the request of the Irish Department of Finance on a draft Central Bank and Financial Services Authority of Ireland Bill (No. 2) 2003.....	155
ECB Opinion CON/2004/31 of 22 September 2004 at the request of Národná banka Slovenska on a draft law on supervision of the financial market and on amendments to certain laws	192

ECB Opinion CON/2004/7 of 20 February 2004 at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council, in order to establish a new financial services committee organisational structure (COM(2003) 659 final), OJ C 58, 6.3.2004, p. 23	68, 158
ECB Opinion CON/2005/1 of 3 February 2005 at the request of the Italian Ministry of Economic Affairs and Finance on a draft law amending Law Decree No 7 of 25 January 1999, as converted by Law No 74 of 25 March 1999, concerning urgent provisions on Italian participation in the International Monetary Fund's interventions to confront severe financial crises of its member countries.....	187
ECB Opinion CON/2005/24 of 15 July 2005 at the request of the Ministry of Finance of the Czech Republic on a draft law on the integration of financial market supervisors ...	124, 125
ECB Opinion CON/2005/26 of 4 August 2005 at the request of Národná banka Slovenska on a draft law amending the Act No 566/1992 Coll. on Národná banka Slovenska, as amended	108
ECB Opinion CON/2005/50 of 1 December 2005 at the request of Národná banka Slovenska on a draft law amending the Act No 118/1996 Coll. on the protection of bank deposits and on amendments to certain laws, as last amended.....	187
ECB Opinion CON/2005/59 of 30 December 2005 at the request of the Estonian Parliament on a draft law amending the Eesti Pank Act.....	213, 214, 217
ECB Opinion CON/2006/15 of 9 March 2006 at the request of the Polish Minister of Finance on a draft law on the supervision of financial institutions	124, 143, 152, 155, 156, 157
ECB Opinion CON/2006/17 of 13 March 2006 on a draft law amending the Law on Banka Slovenije	109
ECB Opinion CON/2006/19 of 3 April 2006 at the request of Latvijas Banka on a draft law amending the Law on Latvijas Banka.....	108
ECB Opinion CON/2006/23 of 22 May 2006 at the request of the Central Bank of Malta concerning a draft law amending the Central Bank of Malta Act	131
ECB Opinion CON/2006/32 of 22 June 2006 at the request of the French Senate on a draft law on the Banque de France	51

ECB Opinion CON/2006/33 of 28 June 2006 at the request of the Cypriot Ministry of Finance on a draft law amending the Central Bank of Cyprus Laws of 2002 and 2003 ...	135
ECB Opinion CON/2006/4 of 27 January 2006 at the request of the Central Bank of Cyprus on a draft law amending the Central Bank of Cyprus Laws of 2002 and 2003	135
ECB Opinion CON/2006/44 of 25 August 2006 at the request of the Banca d'Italia on the amended Statute of the Banca d'Italia	135
ECB Opinion CON/2006/50 of 26 October 2006 at the request of the Cypriot Ministry of Finance on a draft law amending the Central Bank of Cyprus Laws of 2002 and 2003 ...	135
ECB Opinion CON/2006/55 of 6 December 2006 at the request of the Hungarian Ministry of Finance on a draft law amending the Law LVIII of 2001 on Magyar Nemzeti Bank and the Law XI of 1987	80, 97
ECB Opinion CON/2007/33 of 5 November 2007 at the request of the Austrian Ministry of Finance on a draft law amending the Law on banking, the Law on savings banks, the Law on the Financial Market Supervisory Authority and the Law on the Oesterreichische Nationalbank	143, 155, 156
ECB Opinion CON/2008/10 of 21 February 2008 at the request of the Italian Ministry of Economic Affairs and Finance on the Law on the State annual and pluriannual budget .	114, 123
ECB Opinion CON/2008/14 of 25 March 2008 at the request of Riigikogu on a draft law amending the Law on Eesti Pank	89, 118, 217, 220
ECB Opinion CON/2008/16 of 4 April 2008 at the request of the Finnish Ministry of Finance on a draft government proposal for a law on the Financial and Insurance Supervisory Authority and certain related draft laws	124, 125, 155, 156
ECB Opinion CON/2008/17 of 15 April 2008 at the request of the Luxembourg Minister for the Treasury and the Budget on a draft law improving the legislative framework for Luxembourg as a financial centre and on a draft law relating to social insurance contributions	121
ECB Opinion CON/2008/44 of 3 October 2008 at the request of the Irish Minister for Finance on a draft Credit Institutions (Financial Support) Bill 2008	192

ECB Opinion CON/2008/46 of 8 October 2008 at the request of the Belgian Ministry of Finance on a preliminary draft law on measures promoting financial stability and in particular establishing a State guarantee for the provision of credit in the context of financial stability.....	171, 177, 192
ECB Opinion CON/2008/48 of 15 October 2008 at the request of the Irish Minister for Finance on a draft Credit Institutions (Financial Support) Scheme 2008.....	192
ECB Opinion CON/2008/58 of 23 October 2008 at the request of the Banca d'Italia on behalf of the Italian Ministry for Economic Affairs and Finance on two Decree-Laws containing urgent measures to guarantee the stability of the banking system and the continuity of the provision of credit.....	171, 192
ECB Opinion CON/2008/63 of 7 November 2008 on a draft Commission decision establishing the Committee of European Banking Supervisors, OJ C 45, 24.2.2009, p. 1.68, 158	
ECB Opinion CON/2008/80 of 28 November 2008 at the request of the Polish Minister for Finance on a draft law on the provision of State Treasury support to financial institutions	192
ECB Opinion CON/2008/9 of 21 February 2008 at the request of the German Ministry of Finance on a draft law amending the Law on the Deutsche Bundesbank	114, 123
ECB Opinion CON/2009/13 of 16 February 2009 at the request of the Bulgarian Ministry of Justice on a draft law supplementing the Law on Administration.....	88
ECB Opinion CON/2009/26 of 24 March 2009 at the request of Lietuvos bankas on behalf of the Ministry of Finance of Lithuania on a draft law amending the Law on Lietuvos bankas as regards the rules on the distribution of the profits of Lietuvos bankas	123
ECB Opinion CON/2009/49 of 27 May 2009 on measures to mitigate financial turmoil	192
ECB Opinion CON/2009/53 of 24 June 2009 on the distribution of Latvijas Banka's profits	120
ECB Opinion CON/2009/59 of 14 July 2009 on the taxation of the Banca d'Italia's gold reserves	123, 187
ECB Opinion CON/2009/63 of 24 July 2009 on an amended draft legislative provision on the taxation of the Banca d'Italia's gold reserves.....	123

ECB Opinion CON/2009/83 of 29 October 2009 on the distribution of Lietuvos bankas profits	120, 188
ECB Opinion CON/2009/85 of 27 October 2009 on Národná banka Slovenska's independence.....	122
ECB Opinion CON/2009/88 of 26 October 2009 on a proposal for a regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board and a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board, OJ C 270, 11.11.2009, p. 1.....	160, 192
ECB Opinion CON/2009/89 of 4 November 2009 on the composition of the Board of the Central Bank and Financial Services Authority of Ireland and the membership of the Irish Financial Services Regulatory Authority.....	151, 152, 155, 156
ECB Opinion CON/2010/19 of 4 March 2010 on a Council recommendation on the appointment of the Vice-President of the European Central Bank, OJ C 58, 10.3.2010.....	87
ECB Opinion CON/2010/20 of 5 March 2010 on amendments to the Law on and Statute of Eesti Pank.....	198
ECB Opinion CON/2010/27 of 29 March 2010 on a new legal framework concerning integrity and prevention of corruption as regards its application to Banka Slovenije and its decision-making bodies	97
ECB Opinion CON/2010/37 of 7 May 2010 on an amendment to the rules securing the continuation of office of the President of Narodowy Bank Polski	102
ECB Opinion CON/2010/48 of 17 June 2010 on a draft law relating to the restructuring of the Central Bank and Financial Services Authority of Ireland.....	231
ECB Opinion CON/2010/5 of 8 January 2010 on three proposals for regulations of the European Parliament and of the Council establishing a European Banking Authority, a European Insurance and Occupational Pensions Authority and a European Securities and Markets Authority, OJ C 13, 20.1.2010, p. 1.....	192
ECB Opinion CON/2010/52 of 5 July 2010 on a proposal for a Council regulation amending Regulation (EC) No 974/98 as regards the introduction of the euro in Estonia and on a proposal for a Council regulation amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Estonia, OJ C 190, 14.7.2010, p. 1	199

ECB Opinion CON/2010/56 of 12 July 2010 on amendments to the Law on the Magyar Nemzeti Bank introducing salary reductions	123, 230
ECB Opinion CON/2010/59 of 29 July 2010 on the careers of Deutsche Bundesbank civil servants	123
ECB Opinion CON/2010/6 of 11 January 2010 on a proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2004/109/EC, OJ C 19, 26.1.2010, p. 1.....	182
ECB Opinion CON/2010/69 of 26 August 2010 on further measures for the restoration of budgetary balance	123
ECB Opinion CON/2010/80 of 12 November 2010 on Banco de Portugal's staff remuneration and the budget.....	230
ECB Opinion CON2010/42 of 18 May 2010 on the legal status of Lietuvos bankas's assets, terms of office and remuneration of Board members, immunity of foreign reserves of foreign central banks and annual financial statements of Lietuvos bankas	123
EMI Opinion CON/1998/25 of 10 June 1998 on a draft law amending the Statute of Sveriges Riksbank	109
EMI Opinion CON/97/10 of 30 May 1997 at the request of the German Minister of Finance on the Draft 6th Act amending the Bundesbank Act	93
EMI Opinion CON/97/30 of 15 December 1997 at the request of the Austrian Ministry of Finance on a draft law amending the Central Bank Act and other related laws.....	131
EMI Opinion CON/98/06 of 12 February 1998 at the request of the Finnish Ministry of Finance for an opinion on draft legislative proposals concerning the Act on the Bank of Finland	108
Recommendation, under Article 10.6 of the Statute of the European System of Central Banks and of the European Central Bank, for a Council Decision on an amendment to Article 10.2 of the Statute of the European System of Central Banks and of the European Central Bank (ECB/2003/1), OJ C 29, 7.2.2003, p. 6	54

Agreements and Memoranda of Understanding

Agreement between the European Police Office (Europol) and the European Central Bank (ECB), OJ C 23, 25.1.2002, p. 9	142
Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Members States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union, OJ C 73, 25.3.2006, p. 21, as last amended on 14 December 2007, OJ C 319, 29.12.2007, p. 7.....	75
Code of Conduct for the Members of the Governing Council, OJ C 123, 24.5.2002, p. 9	94
Memorandum of Understanding between HM Treasury, the Bank of England and the Financial Services Authority.....	153, 172, 505
Memorandum of Understanding on Co-operation between the Financial Supervisory Authorities, Central Banks and Finance Ministries of the EU on Cross-Border Financial Stability of 1 June 2008	142, 143, 177, 181

References to the Estonian Constitutional Acts

Article 111 of the First Act	201, 202, 203, 204, 205, 224
Article 112 of the First Act	206, 219
Article 156 (1) of the First Act	199
Article 2 of the Third Act.....	200, 203, 205
Article 65 of the First Act	209
Article 78 of the First Act	209

Table of Cases

Cases before the Court of Justice of the European Union

Case 11/70, Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel [1970] ECR 1125	203
--	-----

Case 167/73 Commission of the European Communities v French Republic [1974] ECR 359	203
Case 66/82 Fromançais SA v Fonds d'orientation et de régularisation des marchés agricoles (FORMA) [1983] ECR 395	134
Case C-11/00 Commission v ECB [2003] ECR I-7147.....	42, 43, 71, 72, 113, 134
Case C-185/96 Commission of the European Communities v the Hellenic Republic. – ECR [1998] I-6601	203
Case C-41/00 P Interporc v Commission [2003] ECR I-2125	140
Case C-58/08 The Queen, on the application of Vodafone Ltd and Others v Secretary of State for Business, Enterprise and Regulatory Reform [2010] ECR not yet reported.....	133
Case C-65/93 European Parliament v Council of the European Union [1995] ECR I-643.....	42
Case T-191/99 David Petrie, Victoria Jane Primhak, David Verzoni and Others v Commission of the European Communities [2001] ECR II 3677	139
Case T-198/03 Bank Austria Creditanstalt AG v Commission, [2006] Page II-1429.....	139
Case T-309/97 The Bavarian Lager Company Ltd v Commission of the European Communities [1999] ECR II-3217.....	139
Case T-93/04 Kallianos v Commission [2006] ECR II-0000.....	140
Joined Cases 212/80 to 217/80 Meridionale Industria Salumi and Others [1981] ECR 2735	133
Joined Cases C-174/98 P and C-189/98 P Netherlands and van der Wal v Commission [2000] ECR I-1	140
Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 ABNA and Others [2005] ECR I-10423.....	133
Joined Cases T-110/03, T-150/03 and T-405/03 Sison v Council [2005] ECR II-1429	140
 Cases before the Supreme Court of Estonia	
Opinion 3-4-1-3-06, 11 May 2006, RT III 2006, 19, 176.....	204

List of Abbreviations

AMICO	Accounting and Monetary Income Committee
BANCO	Banknote Committee
BIS	Bank for International Settlements
BSC	Banking Supervision Committee
BUCOM	Budget Committee
CBC	Central Bank of Cyprus
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
EBA	European Banking Authority
ECCO	Communications Committee
ECOFIN	Economic and Financial Affairs Council
ECU	European Currency Unit
EFC	Economic and Financial Committee
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EIOPA	European Insurance and Occupational Pensions Authority
ELA	Emergency liquidity assistance
EMI	European Monetary Institute
EMS	European Monetary System
EMU	European Monetary Union
ERM	Exchange rate mechanism
ESAs	European Supervisory Authorities
ESCB	European System of Central Banks
ESFS	European System of Financial Supervisors
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
FCD	Financial Collateral Directive
HRC	Human Resources Conference
IAC	Internal Auditors Committee
IMF	International Monetary Fund

IRC	International Relations Committee
ITC	Information Technology Committee
LEGCO	Legal Committee
LOLR	Lender of last resort
MAD	Market Abuse Directive
MOC	Market Operations Committee
MPC	Monetary Policy Committee
NCB	National central bank
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
PSSC	Payment and Settlement Systems Committee
SFD	Settlement Finality Directive
STC	Statistics Committee
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
WGEM	Working Group on Econometric Modelling
WGF	Working Group on Forecasting
WGPF	Working Group on Public Finance

Acknowledgements

I am grateful to many people for help, both direct and indirect, in writing this thesis. During the slow and often interrupted evolution of this thesis I have accumulated many debts, only a proportion of which I have space to acknowledge here.

A debt of gratitude is owed to Professor Rosa Maria Lastra of Queen Mary College, University of London, for helping me at different stages of my academic career. I am equally thankful to Professor Lars Gorton of Faculty of Law, University of Lund, for his patience during the early stages of this thesis.

I also recognize the support of Dr. Antonio Sáinz de Vicuña, Director General of Legal Services, Dr. Chiara Zilioli, Christian Kroppenstedt, Niall Lenihan, and Dr. Peter Rennpferdt of the European Central Bank, without whose generous backing and encouragement this work would not have been possible. I am also grateful to Andres Lipstok, Governor of Eesti Pank, as well as Märten Ross of Eesti Pank and Peter Lõhmus of the European Commission for their help at different stages of the academic research.

To all the above individuals, and to several colleagues at the European Central Bank and Eesti Pank whose names I cannot continue listing and who have assisted me one way or another, especially in challenging me with alternative views, I feel very much indebted.

However, none of the above can be held responsible for mistakes, errors of judgement, misrepresentation of the facts or at other failings of this work, for which I accept responsibility.

At last, but not least, I would like to thank my family for their support.

1 Introduction

1.1 Background

The European System of Central Banks (ESCB) was established by former Article 8 of the Treaty establishing the European Community (TEC) and Article 1 of the Statute of the European System of Central Banks and of the European Central Bank (the Statute),¹ which entered into force on 1 November 1993. Under the Treaty on European Union (TEU), the European Central Bank (ECB) is one of the Union's institutions as set forth in Article 13(1) TEU. This status is further affirmed by the Treaty on the Functioning of the European Union (TFEU). The fact that provisions governing the ESCB and the ECB are to be found in TFEU as well as the Statute has led some scholars to point out that the dispersal of the institutional and operational rules has resulted in a legal basis that includes unnecessary repetitions and at times makes difficult reading.²

Since the establishment of the ESCB and the Eurosystem the traditional roles as well as the governance of NCBs have also been altered in order to reflect the obligations of the national central banks (NCBs) in the Eurosystem under the Treaties and the Statute. NCBs belonging to the Eurosystem are the following:

- 1) Nationale Bank van België / Banque Nationale de Belgique;
- 2) Deutsche Bundesbank;
- 3) Eesti Pank (as from 1 January 2011);
- 4) Bank of Greece;
- 5) Banco de España;
- 6) Banque de France;
- 7) Central Bank of Ireland;
- 8) Banca d'Italia;
- 9) Central Bank of Cyprus;
- 10) Banque centrale du Luxembourg;
- 11) Central Bank of Malta;
- 12) De Nederlandsche Bank;

¹ Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank.

² See Kapteyn & VerLoren van Themaat, 2008, p. 944.

- 13) Oesterreichische Nationalbank;
- 14) Banco de Portugal;
- 15) Banka Slovenije;
- 16) Národná banka Slovenska;
- 17) Suomen Pankki - Finlands Bank.

The aim of this thesis is to list and describe the mandatory legal provisions in the Statute of a Eurosystem NCB; as an example of the practical applicability of these findings, amendments to the Statute for the Estonian central bank will be proposed, assuming that Estonia adopts the euro on 1 January 2011.

The purpose of this thesis is to study how practical needs combined with uniform Eurosystem decision-making would force the NCBs to align their Statutes more closely, bearing in mind that under Article 14.3 of the Statute the NCBs are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. However, it is arguable whether there is a need for a “one size fits all” approach towards the legislation governing the NCBs in the ESCB³. Basically, any Eurosystem NCB Statute would be influenced by the Treaty and the Statute as well as the national implementing provisions of the Statute to make the Eurosystem function. There will therefore always be some similarities and some differences since the NCBs will also continue to carry out their national functions, which are performed on the responsibility and liability of the NCBs as referred to in Article 14.4 of the Statute, alongside the ESCB-related tasks.

With regard to the objective and tasks, my intention is not to analyse the compatibility of the NCB Statutes with the Treaties and the Statute. Instead, with regard to the status of NCBs, I intend to examine the institutional and financial structure of NCBs, as well as their accountability and transparency as set forth in their respective NCB Statutes. I have therefore analysed and systematised all the NCB Statutes in the 27 EU Member States (Eurosystem NCBs, Bulgarian National Bank, Česká národní banka, Denmark's Nationalbank, Eesti Pank (until 31 December 2010), Latvijas Banka, Lietuvos bankas, Magyar Nemzeti Bank, Narodowy Bank Polski, Banca Națională a României, Sveriges Riksbank, Bank of England) in order to find parallels or common

³ After all, legal provisions are necessary but not sufficient to ensure central bank independence. Amtenbrink also discusses the possibility for a model central bank law but remains sceptical about it (Amtenbrink, *The Three Pillars of Central Bank Governance - Towards a Model central Bank Law or a Code of Good Governance?*, 2005).

provisions. In addition, the Convergence Reports of the Commission and the ECB as well as ECB legal opinions provide valuable insight on something that may be regarded as best practices when addressing these issues.

The selection of Estonia as a testing ground for the applicability of the findings of this research is not incidental. Estonia is at present a Member State with a derogation and has to adapt its legislation in order to adopt the euro. By using the findings of this research, I can then propose possible amendments for the Estonian NCB Statute. Therefore, this thesis will not present a classical model central bank law that can be observed in isolation, but rather an example of how the provisions arising out of the Treaties and the Statute could be implemented at the national level so that the NCB Statute complies with the Treaties and the Statute and facilitates the functioning of the Eurosystem

In this regard, the practical part of the thesis will be somewhat similar to the advice that is often given by the International Monetary Fund (IMF) to countries that are willing to reform their central bank statutes. However, although the IMF has advised numerous countries, there is no model central bank law published by the IMF as the central bank statutes tend to be tailor-made for each country. As far as I am aware, the IMF has not advised Estonia on matters relating to Eurosystem participation and subsequent amendment of its central bank law.

This research is also different from the surveys conducted by the Bank for International Settlements (BIS),⁴ since the target group is limited to the EU Member States only and the questions addressed are related to the functioning of the Eurosystem. As far as I am aware, the BIS has not carried out a survey of that scale and extent and has not created a database that is similar to the tables attached to this thesis.

The main addressees of this research are mostly legal counsels working for the NCBs in the ESCB as well as academic audiences interested in the functioning of monetary unions. The findings of this research could hopefully be useful for any monetary union with organisational and decision-making structures similar to those of the

⁴ It should be noted that the surveys conducted by the BIS are not usually available to the general public. Much of the central bank governance information that is available at the BIS can be accessed (by registered users) on the password-protected platform.

Eurosystem. Most of the relevant definitions are described in Section 2.2 of this paper.

1.2 Literature review

While the creation of the ECB has attracted considerable scientific attention,⁵ the new role of the NCBs has previously not been subject to EU-wide research.⁶ There are thus very few authors, such as Lastra, Smits, van den Berg and Zilioli, who have specifically addressed legal issues relating to NCBs in the context of the Eurosystem/ESCB.⁷

Regarding central bank independence, I will assess the NCB Statutes of all 27 Member States.

This assessment follows the concept of central bank independence as defined in the Convergence Reports of the Commission and the ECB. Under Article 140 TFEU [former Article 121(1) TEC, Article 122(2) TEC, and Article 123(5) TEC], at least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB shall report to the Council on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between the national legislation of each of these Member States, including the statutes of its national central bank, and Articles 130 and 131 TFEU and the Statute. These reports also have to examine the achievement of a high degree of sustainable convergence in the Member State concerned by reference to the fulfilment of the convergence criteria (price stability, government budgetary position, exchange rate stability, long-term interest rates), and take account of several other factors mentioned in the final sub-paragraph of Article 140(1) TFEU. The four

⁵ See, for example, Amtenbrink, *A Comparative Study of the European Central Bank*, 1999; Amtenbrink & de Haan, *The European Central Bank: an Independent Specialised Organisation of Community Law - A Comment*, 2002; Goodhart C. A., *European Monetary Union: A Progress Report*, 1994, Goodhart C. , *The Draft Statute of the European System of Central Banks: A Commentary*, 1990; Krauskopf & Steven, 2009; Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006; Proctor, 2005; Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000; Torrent, 1999; van den Berg, 2005; Zilioli & Selmayr, *The European Central Bank: An independent specialised organisation of community law*, 2000, Zilioli & Selmayr, *The Law of the European Central Bank*, 2001.

⁶ There have been publications addressing the NCBs as members of the ESCB for example by Hochreiter (2000). Also, in a language other than English: Tupits, *Ühisraha euro kasutuseelvõtu riigiõiguslikud aspektid*, 2005; Tupits, *Tingimused kandidaatriigi keskpangale Euroopa Liiduga liitumisel*, 2001.

⁷ See for example Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006; Zilioli & Selmayr, *The Law of the European Central Bank*, 2001. To some extent also the topic has been covered by Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000; van den Berg, 2005.

convergence criteria are further developed in a Protocol (No 13) on the convergence criteria.

Although the wording of Article 140 TFEU may suggest that there would be one report prepared by the two Institutions, in fact each of them prepares reports of its own,⁸ despite the fact that differences between the two reports are not substantial. Under Article 43 of the Statute, read in conjunction with Article 46.1 of the Statute, the General Council shall give advice in the preparations for the abrogation of the derogations specified in Article 140 TFEU.

Equally relevant for this study has been the analysis of various ECB opinions on draft national legislation,⁹ which has helped to clarify which draft national law provisions the ECB considers incompatible with the Treaties and the Statute. It has been described as a preventive system to forestall problems with potentially incompatible or inconsistent national legislation.¹⁰ The consultation procedure has a number of advantages, such as (1) being a vehicle for sharing information and expertise; (2) keeping the ECB informed about legislative developments in the Member States within the ECB's fields of competence;¹¹ (3) enabling the ECB to formulate its own position in the European Union or internationally when similar matters are discussed; (4) harmonising Member States' legislation within the ECB's fields of competence and contributing to enhancing the quality of national legislation.¹² ECB Opinions shall

⁸ The Convergence Reports by the Commission are made available at http://ec.europa.eu/economy_finance/publications/european_economy/convergence_reports_en.htm, while the ECB Convergence Reports are accessible at <http://www.ecb.int/pub/convergence/html/index.en.html> (visited on 4 September 2010).

⁹ The ECB Opinions are available at: <http://www.ecb.int/ecb/legal/opinions/html/index.en.html> (visited on 4 September 2010); an Opinion is a legal act under Article 288 TFEU and it has binding force. The ECB can deliver opinions under the fourth indent of Article 132(1) TFEU and of Article 34.1 of the Statute in order to carry out the tasks entrusted to the ESCB in accordance with the provisions of the Treaties and under the conditions laid down in the Statute. The ECB must be consulted by the Union institutions and the Member States on draft legislative provisions in its fields of competence, pursuant to Article 127(4) TFEU, Article 282(5) TFEU and Article 4 of the Statute. Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, OJ L 189, 3.7.1998, p. 42, expressly requires that the Member States take the measures necessary to ensure compliance with this obligation. Pursuant to Articles 4 and 7 of Protocol No 15 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, such duty of consultation shall not apply to the United Kingdom.

¹⁰ See "Guide to Consultation of the European Central Bank by National Authorities Regarding Draft Legislative Provisions" (European Central Bank, 2005, pp. 10-11). ECB opinions may also constitute a source which the Court of Justice (in proceedings related to the compatibility with the Treaties of the legislative provisions concerned) or national courts (in proceedings on the interpretation or validity of the legislative provisions concerned) can take into account, as stated in the Guide.

¹¹ Note the linguistically different approach between Article 127(4) TFEU and Article 4(a) of the Statute on the one hand ('*in its fields of competence*'), and Article 282(5) TFEU on the other hand ('*within the areas falling within its responsibilities*'), to which the legal literature has paid no attention so far.

¹² See footnote 10.

be adopted by the Governing Council, except under the second paragraph of Article 43 of the Statute and the first indent of Article 46.1 of the Statute, in which case the General Council shall adopt opinions.

However, due to the fact that the ECB updates its Convergence Reports with the findings referred to in the ECB Opinions, and there is no similar instrument adopted by the Commission, I have mostly relied on the Convergence Reports prepared by the ECB and the ECB's Opinions.

1.3 Method and the way forward

My intention is to analyse the provisions of NCB Statutes in order to find any parallels and to derive principles that are common to all ESCB Members. My interest targets the implementation of the Treaties as well as the Statute; however, the functioning of the Governing Council and General Council in the case of Governor's absence and the financial and reporting regime of an NCB will also be assessed.

For this study, I have used the NCB Statutes that have been either drafted and enacted in English or translated into the English language and are as such publicly available on the websites of the respective NCBs. The reference to an 'NCB Statute' will be used as a notion for a legislative instrument that governs the NCB.

I have analysed mostly the NCB Statutes in a comparative manner and only exceptionally other legislation has also been referred to (e.g. national Constitutions or other laws). Therefore, the aim of this study is not to analyse whether the NCB Statutes are compatible with the Treaty and the Statute, although obvious conflicts will be highlighted. Moreover, as the legal instruments are authentic only in the official languages of the Member States, there is always a possibility that some of the meaning of the original provisions may have been lost in translation. Furthermore, the possibility cannot be ruled out that some of the provisions may be outdated. The NCB Statutes will be referred to using the format '[Member State's] NCB Statute', for example 'Estonian NCB Statute' for the *Law on Eesti Pank* or 'German NCB Statute' for the *Law on the Deutsche Bundesbank*.

The legal provisions will be extracted from the NCB Statutes and placed into comparative tables for further assessment. The methodology I am going to use is to refer to a general provision as 'Article', followed by Article number in the respective

NCB Statute. For the comparative study, I am going to include the actual text of the Article. In some cases, also assessments are included.

The comparative tables represent various topics that have been highlighted in either the ECB Convergence Reports or ECB opinions. These comparative tables, annexed to this paper, did not exist prior to the launch of this study.

Chapter 2 will describe the functioning of the European Monetary Union (EMU), describing the legal basis for its functioning and explaining the differences between the ECB, the ESCB and the Eurosystem as well as the Executive Board, Governing Council and the General Council of the ECB. The reasons for referring to some national central banks as either 'Eurosystem NCB' or 'non-Eurosystem NCB' will become apparent from this discussion. I will also explain the structure of ESCB committees and their roles vis-à-vis the Executive Board and the Governing Council of the ECB. For the purposes of this thesis, the tasks of the Eurosystem will not be analysed separately.

Chapter 3 will address central bank independence and accountability and will explain how this affects both Eurosystem NCBs and non-Eurosystem NCBs. The NCB Statutes will be analysed with regard to their functional, institutional, personal and financial independence as well as their accountability and transparency regimes and the rules on professional secrecy.

Chapter 4 will address the issue of the stability of the financial system. In this respect, I will pay further attention to the financial stability and the role of central banks, and their role in the architecture of future EU-wide supervision. Furthermore, emergency liquidity assistance and the monetary financing prohibition will be discussed.

The purpose of Chapter 5 is to address the objective of this thesis as laid down in Section 1.1 – to provide concrete drafting suggestions for the statute of the central bank of Estonia, Eesti Pank, as a member of the Eurosystem. For this purpose, the research conducted in all previous Chapters will be brought together to assess the Estonian NCB Statute and pinpoint the areas of further development.

Each chapter will be concluded by a summary. The tables (annexes) containing references to the NCB Statutes can be found at the end of this Thesis.

For the reason outlined in Section 1.1, the NCB Statutes of all EU Member States have been analysed in the light of any legislative amendments enacted before 1

January 2010. Legislative changes made after that date have been reflected in footnotes where appropriate. Union law has been taken into account until 1 September 2010. The suggestions for amendments to the Estonian NCB Statute will be based on the version of the law as it will stand on 1 January 2011.

2 Central banking in the European Union

2.1 Overview of the history of European monetary integration

A monetary union or single currency was originally not in the mind of the authors of the Treaty establishing the European Atomic Energy Community that entered into force on 1 January 1958; the aims and objectives of the original treaties were much more limited. At the time, all signatories to the Treaty were part of the Bretton Woods system whereby exchange rates were fixed with regard to the US dollar. The first discussion on monetary integration at the Community level was initiated by the Marjolin Memorandum of 1962.¹³ The outcome of the Memorandum was the creation of a Committee of Governors of the central banks of the Member States of the EEC (the Committee of Governors)¹⁴ in 1964. From an institutional point of view, the creation of the Committee of Governors was an important step. The Committee of Governors developed and managed the framework for monetary cooperation.¹⁵

In 1969 the European Commission submitted a plan (*the Barre Plan*) to create a distinct monetary identity in the Community. The resulting *Werner Report*,¹⁶ which was published in 1970, proposed creating economic and monetary union in several stages by 1980.

However, the efforts, such as the creation of the Community system for the progressive narrowing of the fluctuation margins of the members' currencies ("Snake") after the collapse of the Bretton Woods system, and the European Monetary Cooperation Fund, were not a success.¹⁷ In March 1979 the process of monetary integration was launched again with the creation of the European Monetary System (EMS) with the introduction of the European Currency Unit (ECU).¹⁸

¹³ See Scheller, 2006, pp. 15-17.

¹⁴ The Committee of Governors was given a mandate (http://www.ecb.eu/ecb/history/archive/pdf/released/Presidents_note_on_organisation_CoG_14_12_1964_EN.pdf) which was later expanded and had its own Rules of Procedure (http://www.ecb.eu/ecb/history/archive/pdf/released/Rules_of_Procedure_12_10_1964_EN.pdf), visited on 6 September 2010.

¹⁵ The most widely known contribution by the Committee of Governors is the "Introductory Report on the draft Statute of the European System of Central Banks and of the European Central Bank" of 27 November 1990. The archives of the Committee of Governors were recognised as part of the ECB archives by the Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents, OJ L 80, 18.3.2004, p. 42.

¹⁶ Pierre Werner, who chaired the group of experts, was the Prime Minister of Luxembourg at the time.

¹⁷ See Scheller, 2006, p. 18.

¹⁸ The ECU remained an artificial currency serving as a unit of account. The ECU was composed of the currencies of the Member States.

However, the issue was placed to the political agenda with the signing of the Single European Act. The main purpose of the Single European Act was to introduce the single market as a Community objective. As a follow-up, a committee, headed by Jacques Delors,¹⁹ was set up by the European Council at its meeting in Hanover on 27 and 28 June 1988 in order to study and propose concrete stages leading to economic and monetary union in Europe. In response to this mandate the Committee prepared a “Report on economic and monetary union in the European Community”, which was submitted to the Heads of State or Government in April 1989. The Delors Committee Report²⁰ recommended that EMU should be approached in three stages:

- 1) the completion of the internal market;
- 2) the creation of the European System of Central Banks (ESCB);
- 3) the adoption of a common currency.²¹

With the adoption of the Treaty on European Union, which came into force on 1 November 1993, the legal foundations for progress towards EMU were laid down. Subsequently, the TEC was amended and the Statute was introduced.²²

In order to prepare for Stage Three, the European Monetary Institute (EMI) was created on 1 January 1994 and the Committee of Governors ceased to exist.²³ The roadmap to the single currency was adopted by the Madrid European Council in December 1995.²⁴ In accordance with the Council presidency conclusions, the Member States implemented policies to fulfil economic convergence criteria and revised their national legislation extensively in order to comply with the requirements on legal convergence.²⁵

On 25 May 1998 the President, Vice-President and the four other members of the ECB’s Executive Board were formally appointed with effect from 1 June 1998, when the European Central Bank (ECB) was established as the legal successor of the EMI.²⁶

¹⁹ Jacques Delors was the President of the Commission at that time.

²⁰ Delors, Thygesen, Lamfalussy, & Boyer, 1989.

²¹ See Craig & de Burca, 2008, pp. 729-741.

²² The Statute was in fact largely modelled on the Bundesbank’s structure at that time. See Goodhart C. A. (European Monetary Union: A Progress Report, 1994, p. 7) and van den Berg (2005).

²³ See Scheller, 2006, p. 22.

²⁴ Madrid European Council 15 and 16 December 1995 Presidency Conclusions. Available at http://www.europarl.europa.eu/summits/mad2_en.htm#annex1 (visited on 6 September 2010).

²⁵ See publications by the European Monetary Institute (Progress Towards Convergence: Report prepared in accordance with Article 7 of the EMI Statute), (Progress towards convergence (EMI) 1996) and (Convergence Report (EMI) 1998); as well as the Commission (Report on progress towards convergence and recommendation with a view to the transition to the stage three of economic and monetary union COM(1998) final).

²⁶ See Scheller, 2006, p. 25; see also Article 123(2) TEC establishing the legal succession.

The third stage of EMU began on 1 January 1999 with the irrevocable fixing of the conversion rates, and the euro banknotes and coins were introduced on 1 January 2002.²⁷

2.2 The Eurosystem and the ESCB

2.2.1 Legal background

Depending on the applicable rules of law, a central bank may be vested with rights and powers that range from a very narrow to a very broad list. There are also considerable differences in the organisation of central banks and the relationship with the authorities of the territory within which they operate. Traditionally, a central bank is governed by national law, but may also be governed by international law. The law governing central banking in the European Union consists of different elements originating from supranational and national levels.

Pursuant to Article 282(1) TFEU the ECB, together with the NCBs, shall constitute the ESCB – currently 27 NCBs and the ECB. The ECB, together with the NCBs of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union. Pursuant to Article 282(2) TFEU, the ESCB shall be governed by the decision-making bodies of the ECB. The primary objective of the ESCB shall be to maintain price stability.²⁸ Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives.

The ESCB has no legal personality and no decision-making powers of its own. Instead, Article 282(3) TFEU provides that the ECB shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances.²⁹ Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence. In this respect, Article 282 TFEU summarises Articles 127 to 130 TFEU.

Article 127(1) TFEU [former Article 105(1) TEC] together with Article 282(2) TFEU and Article 2 of the Statute state that the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Union with a view to contributing to the achievement of the

²⁷ See also Scheller, 2006, pp. 25-28.

²⁸ ECB has defined 'price stability' as a year-on-year increase below 2% in the Harmonised Index of Consumer Prices (HICP) for the euro area (Scheller, 2006, p. 80). Price stability does not mean securing the stability of the euro as has been suggested by some authors (Kapteyn & VerLoren van Themaat, 2008, p. 943).

²⁹ In this regard, Article 282(3) TFEU establishes institutional (legal personality), functional (independent in the exercise of its powers) and financial (independent in the management of its finances) independence for the ECB.

objectives of the Union as laid down in Article 3 TEU. 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 TFEU.

Under Article 127(2) TFEU [former Article 105(2) TEC] and Article 3 of the Statute, the basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Union,³⁰
- to conduct foreign exchange operations consistent with the provisions of Article 219 TFEU,³¹
- to hold and manage the official foreign reserves of the Member States,³²
- to promote the smooth operation of payment systems.³³

Furthermore, under Article 127(4) TFEU [former Article 105(4) TEC], Article 282(5) TFEU and Article 4 of the Statute the ECB shall be consulted:

- on any proposed Union act in its fields of competence,³⁴
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 129(4) TFEU and Article 41 of the Statute.³⁵

In addition, under Article 127(4) TFEU [former Article 105(4) TEC] and Article 4 of the Statute, the ECB may submit opinions to the appropriate Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.

³⁰ Monetary policy instruments are laid down in Articles 17-20 of the Statute and relevant legal acts of the ECB and include conducting open market and credit operations, holding minimum reserves with the ECB and NCBs and other instruments of monetary control.

³¹ Foreign exchange operations are also regulated in Articles 23 and 31 of the Statute and relevant legal acts of the ECB .

³² This shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances; see Article 127(3) TFEU [former Article 105(3) TEC]. The holding and managing of official foreign reserves is further regulated by the third indent of Article 3 of the Statute and Article 30 of the Statute and relevant legal acts of the ECB.

³³ Clearing and payment systems are regulated in Article 22 of the Statute and relevant legal acts of the ECB.

³⁴ The provision to consult the ECB on any proposed act in its field of competence is intended essentially to ensure that the legislature adopts the act only when the body has been heard, which by virtue of the specific functions that it exercises in the Union framework in the area concerned and by virtue of the high degree of expertise that it enjoys, is particularly well placed to play a useful role in the legislative process envisaged; see Case C-11/00, paragraph 110. In such instances, consulting the ECB forms part of the applicable Union decision-making procedure and its participation has to be considered as an important element in the institutional balance at the Union level (Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, p. 212). The participation of the ECB constitutes an ‘essential procedural requirement’ whose non-observance by the Union institutions can render the Union act void, subject to a judgement to that effect by the Court of Justice by analogy with Case C-65/93 *European Parliament v Council of the European Union* [1995] ECR I-643 (Kapteyn & VerLoren van Themaat, 2008, pp. 969-970).

³⁵ See Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, OJ L 189, 3.7.1998, p. 42, and footnotes 9 and 10. Pursuant to Articles 4 and 7 of Protocol No 15 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, such duty of consultation shall not apply to the United Kingdom.

Pursuant to Article 127(5) TFEU [former Article 105(5) TEC] and Article 3.3 of the Statute 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.³⁶

Article 129(1) TFEU [former Article 107(1) TEC] as well as Article 282(2) TFEU establishes that the ESCB shall be governed by the decision-making bodies of the European Central Bank, which shall be the Governing Council and the Executive Board.

Finally, Article 130 TFEU [former Article 108 TEC] and Article 7 of the Statute establish that 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.³⁷

ECB is also one of the Union institutions³⁸ set forth in Article 13(1) TEU,³⁹ and Krauskopf and Steven have argued that the ECB is not the central bank of the Union.⁴⁰ Pursuant to Article 12.1 of the Statute, the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB. Therefore, the ESCB rather a partly decentralised structure, with central coordinating organs and separate operational entities for different parts of the monetary area.

³⁶ See Chapter 4 regarding the extent of these provisions.

³⁷ The Court of Justice has noted that the outside influences from which that provision seeks to shield the ECB and its decision-making bodies are those likely to interfere with the performance of the tasks which the Treaties and the Statute assign to the ECB; it essentially seeks to shield the ECB from all political pressure in order to enable it effectively to pursue the objectives attributed to its tasks, through the independent exercise of the specific powers conferred on it for that purpose by the TFEU and the Statute; see Case C-11/00, paragraph 134. However, at that time Article 282(3) TFEU did not exist and one may argue that Case C-11/00 recognised the principles that were present at the time of the establishment of the ESCB and the ECB.

³⁸ This fact was first recognised by the Court of Justice in the Case C-11/00, paragraph 63.

³⁹ The precise nature of the ECB used to prompted much controversy in the literature: Zilioli and Selmayr have argued that the ECB is 'an independent specialised organisation of Community law' (Zilioli & Selmayr, *The Law of the European Central Bank*, 2001, p. 31), and 'a new Community' (Zilioli & Selmayr, *The Law of the European Central Bank*, 2001, pp. 29-30) where the legislations subsist at the same regulatory level. Some clarity into the topic was brought by the Case C-11/00 *Commission v ECB* [2003] ECR I-7147. The earlier academic literature arguing with the concept presented by Zilioli and Selmayr includes (Torrent, 1999); (Amentbrink & de Haan, *The European Central Bank: an Independent Specialised Organisation of Community Law - A Comment*, 2002, pp. 65-67).

⁴⁰ Krauskopf & Steven, 2009.

The institutional aspect of monetary union requires monetary powers to be pooled in the ESCB and in order for the ESCB to function properly the participants of the system have to be independent of any outside influence. This implies that there has to be subordination in the group, which is reflected in Article 14.3 of the Statute, specifying that the national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB.⁴¹ 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.

Pursuant to Article 132(1) TFEU and Article 34 of the Statute and in accordance with Article 132 TFEU, the ECB shall:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1 , first indent, Articles 19.1 , 22 or 25.2 of the Statute and in cases which shall be laid down in the acts of the Council referred to in Article 129(4) TFEU and Article 41 of the Statute;⁴²
- take decisions necessary for carrying out the tasks entrusted to the ESCB under the Treaties and the Statute;⁴³
- make recommendations⁴⁴ and deliver opinions;⁴⁵

⁴¹ Some scholars have noted that the ESCB includes features of both a centralised and a decentralised system, but the emphasis lies on the former (Kapteyn & VerLoren van Themaat, 2008, pp. 946-947).

⁴² The ECB regulations, which are adopted by the Governing Council, shall have general application and be binding in their entirety and directly applicable in all Member States, with the exception of the Member States with a derogation and the UK as explained in Section 2.2.3.

⁴³ The ECB decisions referred to in Article 132(1) TFEU and Article 34.1 of the Statute have to be understood as enabling the Executive Board or Governing Council (or the General Council in limited occasions) to act in order to carry out the tasks entrusted to the ESCB under the Treaties and the Statute and should be used when any other ECB legal instrument, for example regulation, recommendation, opinion, (guideline or instruction) cannot be used. Under Article 288 TFEU (former Article 249 TEC) a decision shall be binding in its entirety; a decision which specifies those to whom it is addressed shall be binding on them only. For the exception of the Member States with a derogation and the UK, please see the discussion in Section 2.2.3. Article 17.4 of the ECB Rules of Procedure foresees that the ECB decisions shall be adopted by the Governing Council or the Executive Board in their respective domain of competence and shall be signed by the President. It further provides that ECB decisions imposing sanctions on third parties shall be signed by the President, the Vice-President or any two other members of the Executive Board. It is also a requirement under Article 17.4 of the ECB Rules of Procedure that, *inter alia*, ECB decisions shall state the reasoning on which they are based. The adoption of decisions by the General Council is not foreseen in the ECB Rules of Procedure. The General Council can adopt decisions under Article 45.4 and 47 of the Statute as further stipulated in Article 9(1) of the Rules of Procedure of the General Council (see Decision ECB/2004/12 of 17 June 2004 adopting the Rules of Procedure of the General Council of the European Central Bank, OJ L 230, 30.6.2004, p. 61), which shall then be signed by the President.

⁴⁴ The ECB recommendations under the third indents of Article 132(1) TFEU and of Article 34.1 of the Statute are an instrument of legislative initiative which, pursuant to Article 288 TFEU, shall have no binding force. The use of ECB recommendations has been foreseen in Articles 129(3) , 129(4) , 289(4) and 292 TFEU as well as in Article 27.1 and Article 40 of the Statute. For the exception of the Member States with a derogation and the UK, please see the discussion in Section 2.2.3. Pursuant to Article 17.4 of the ECB Rules of Procedure, ECB recommendations shall be adopted by the Governing Council or the Executive Board in their respective domain of competence and shall be signed by the President. It further specifies that the recommendations for secondary Union legislation under Article 41 shall be adopted by the Governing Council. The adoption of recommendations by the General Council is not foreseen in the ECB Rules of Procedure. The General Council can adopt recommendations under Article 43 of the Statute as further stipulated in Article 9(1) of the Rules of Procedure of the General Council, which shall then be signed by the President.

and the ECB may decide to publish its decisions, recommendations and opinions.

The legal acts of the ECB are adopted neither by ordinary legislative procedure under Article 289(1) TFEU nor special legislative procedure under Article 289(2) TFEU and therefore constitute non-legislative legal acts.⁴⁶

The procedural requirements for non-legislative acts are established in Article 297(2) TFEU; pursuant to the first paragraph, non-legislative acts adopted in the form of regulations, directives or decisions, when the latter do not specify to whom they are addressed, shall be signed by the President of the institution which adopted them.

The second paragraph of Article 297(2) TFEU specifies that regulations and directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

The third paragraph of Article 297(2) TFEU provides that other directives, and decisions which specify to whom they are addressed, shall be notified to those to whom they are addressed and shall take effect upon such notification.

The legal instruments adopted by the ECB under Article 132(1) TFEU and Article 34.1 of the Statute are subject to judicial accountability.⁴⁷

⁴⁵ An Opinion is a legal act under Article 288 TFEU and it shall have no binding force. The ECB delivers opinions based mostly on Article 127(4) TFEU, Article 282(5) TFEU and Article 4 of the Statute.

⁴⁶ Dougan lists them as falling within the ‘non-legislative legal acts adopted directly under the Treaties’. However he considers that the ECB adopts legal acts in the field of monetary policy and does not explore them any further (Dougan, 2008, p. 644).

⁴⁷ The first paragraph of Article 263 TFEU [former Article 230 TEC] provides that the Court of Justice of the European Union (Court of Justice) 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. Under the second paragraph, the Court of Justice 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. Furthermore, under the third paragraph the Court of Justice 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. Under the fourth paragraph, 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. Pursuant to the fifth paragraph, 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 sixth paragraph of Article 263 TFEU establishes that 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 271(d) TFEU and Article 35.6 of the Statute provide the ECB with further control mechanisms as these Articles enable the ECB to open infringement proceedings directly against a national central bank which it considers to have acted in breach of the Treaties or the Statute.⁴⁸ It concerns the fulfilment by national central banks of obligations under the Treaties and the Statute and in this connection the powers of the Governing Council in respect of national central banks under Article 271(d) TFEU shall be the same as those conferred upon the Commission in respect of Member States by Article 258 TFEU. If the ECB Governing Council considers that an NCB has failed to fulfil an obligation under the Treaty and the Statute, it shall deliver a reasoned opinion on the matter after giving the NCB concerned the opportunity to submit its observations. If the NCB concerned does not comply with the opinion within the period laid down by the ECB Governing Council, the latter may bring the matter before the Court of Justice of the European Union. Under Article 271(d) TFEU and Article 35.6 of the Statute, the Court of Justice shall have jurisdiction in disputes concerning the fulfilment by NCBs of obligations under the Treaty and the Statute. If the Court of Justice finds that an NCB has failed to fulfil an obligation under the Treaties, that bank shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

However, it should be borne in mind that it is the ECB, and not the Eurosystem or ESCB which from a formal point of view is in the driving seat with regard to deciding monetary policy; second, the NCBs have a role in the implementation of monetary policy, but they are subject in a clear hierarchy to the authority of the ECB; third, all legal acts adopted on the basis of Treaty provisions are acts of the ECB and not of the ESCB or Eurosystem.⁴⁹

2.2.2 Eurosystem NCBs

The Member States that have adopted the euro participate in the monetary union with all rights and obligations foreseen in the Treaties and the Statute. Full participation in the third stage of Economic and Monetary Union means that the participating Member States have limited their sovereign rights in the field of monetary policy, have submitted their national central banks to

⁴⁸ Zilioli and Selmayr note that this is the only instance in Community law where a 'national' authority can directly be sued before the Court of Justice, which is normally only competent to settle disputes between the Community institutions and the Member States (Zilioli & Selmayr, *The Law of the European Central Bank*, 2001, p. 77). In accordance with Article 139 TFEU, Article 42 of the Statute and Protocol No 16 and Protocol No 15 there are no derogations and the above provisions of TFEU and the Statute are applicable to all NCBs in the ESCB.

⁴⁹ See Louis, *Monetary policy and central banking in the Constitution*, 2005, p. 35.

the governance of the ECB and transferred national competences in this field entirely to a supranational level.⁵⁰

From the very beginning, there was a tendency to refer to the respective NCBs and the ECB as the 'Eurosystem'.⁵¹ Hanspeter Scheller has outlined three reasons why a system was established and not a single central bank:

- 1) the establishment of a single central bank for the whole euro area would not have been acceptable on political grounds;
- 2) the Eurosystem approach builds on the experience of the NCBs, preserves their institutional set-up, infrastructure and operational capabilities and expertise;
- 3) given the large geographic extent of the euro area, it was deemed appropriate to give credit institutions an access point to central banking in each participating Member State.⁵²

This system has been set up taking full account of the principle of decentralisation.⁵³

Pursuant to Article 9.2 of the Statute, the ECB shall ensure that the tasks conferred upon the ESCB under Article 127(2) TFEU, Article 127(3) TFEU and Article 127(5) TFEU are implemented either by its own activities pursuant to the Statute or through the NCBs pursuant to Article 12.1 and Article 14 of the Statute.

Under Article 12.1 of the Statute the Governing Council shall adopt the guidelines⁵⁴ and take the decisions necessary to ensure the performance of the tasks entrusted to the ESCB under

⁵⁰ See Zilioli & Selmayr, *The European Central Bank: An independent specialised organisation of community law*, 2000, p. 604. For different interpretations, see Torrent, 1999; Amtenbrink & de Haan, *The European Central Bank: an Independent Specialised Organisation of Community Law - A Comment*, 2002.

⁵¹ Although in active use since November 1998, the legal notion was introduced for the first time in Article 1 of the Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the ECB, OJ L 80, 18.03.2004, p. 33, as amended (ECB Rules of Procedure). The notion 'Eurosystem' was adopted by the Governing Council of the ECB in November 1998 in order to help general public to understand the complex structure of the European central banking system more easily. See Scheller, 2006, p. 42.

⁵² See Scheller, 2006, p. 42.

⁵³ The principle of decentralisation should not be confused with the principle of subsidiarity. Zilioli and Selmayr argue that there is no room for subsidiarity as foreseen in [former] Article 5(2) TEC because no concurrent competences are assigned to NCBs, but all tasks entrusted to the ESCB are subject to the decision-making of the ECB and are its exclusive competence. See Zilioli & Selmayr, *The Law of the European Central Bank*, 2001, p. 70.

these Treaties and this Statute. The Governing Council shall formulate the monetary policy of the Union including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and shall establish the necessary guidelines for their implementation.

The Executive Board shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council. In doing so, the Executive Board shall give the necessary instructions to national central banks. In addition, the Executive Board may have certain powers delegated to it where the Governing Council so decides.

To the extent deemed possible and appropriate and without prejudice to the provisions of Article 12.1 of the Statute, the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB.

Under Article 14.3 of the Statute, the NCBs are an integral part of the ESCB and shall act in accordance with the guidelines and instructions⁵⁵ 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 [related] information be given. Pursuant to Article 14.4 of the Statute, the Eurosystem NCBs may perform non-Eurosystem functions on their own responsibility, provided that these functions do not interfere with the tasks and objectives of the Eurosystem. These functions vary and appear to be related to the contribution to financial

⁵⁴ Guidelines are not referred to in Article 132(1) TFEU and Article 34.1 of the Statute as legal acts. The notion of ‘guidelines’ has been used in Articles 12.1, 14.3, 31.3, 32.2, and 32.6 of the Statute. It appears that no other EU Institution but the ECB would publish guidelines as a separate legal act, e.g. not a regulation, directive, recommendation or opinion but a ‘guideline’. The Commission on the other hand publishes its ‘guidelines’ in the form of a communication (see, for example Communication from the Commission — Guideline on the details of the various categories of variations to the terms of marketing authorisations for medicinal products for human use and veterinary medicinal products OJ C 17, 22.1.2010, p. 1, or Communication from the Commission — Guideline on the operation of the procedures laid down in Chapters II, III and IV of Commission Regulation (EC) No 1234/2008 concerning the examination of variations to the terms of marketing authorisations for medicinal products for human use and veterinary medicinal products, OJ C 323, 31.12.2009, p. 9). The publication of guidelines is at the ECB’s discretion and a number of them have been published in the Official Journal. One should not confuse the notion ‘guideline’ in the Statute with, for example, strategic guidelines referred to in Article 16(6) TEU, working arrangements for the Commission set forth in Article 17(6)(a) TEU, common foreign and security policy guidelines under Articles 25 and 26 TEU, guidelines regarding the withdrawal from the Union under Article 50(2) TEU, guidelines for broad economic policies pursuant to Article 5(1), 120, 121 and 136(1)(b) TFEU, guidelines for employment policies under Article 5(2), 146(1) and 148 TFEU, guidelines for the internal market set forth in Article 26(3) TFEU, strategic guidelines for legislative planning within the area of freedom, security and justice under Article 68 TFEU, social policy under Article 156 TFEU, public health under Article 168(2) TFEU, trans-European networks under Article 171(1) and 172 TFEU, industry under 173(2) TFEU, research and technological development under Article 181(2) TFEU, multiannual financial guidelines for managing the assets of the Research Fund for Coal and Steel and technical guidelines for the research programme of the Research Fund for Coal and Steel under Protocol (No 37) on the financial consequences of the expiry of the ECSC Treaty and on the Research fund for Coal and Steel.

⁵⁵ Instructions are not referred to in Article 132(1) TFEU and of Article 34.1 of the Statute as legal acts. However, Article 17.6 of the ECB Rules of Procedure establishes that ECB Instructions shall be adopted by the Executive Board, and thereafter notified, in one of the official languages of the European Union, and signed on the Executive Board’s behalf by the President or any two Executive Board members. Notification of the national central banks may take place by means of telefax, electronic mail or telex or in paper form. Any ECB Instruction that is to be officially published shall be translated into the official languages of the European Union.

stability as discussed in Chapter 4 or involve acting as an agent for the respective Member State.⁵⁶

2.2.3 Non-Eurosystem NCBs

The non-Eurosystem NCBs are responsible for their respective national monetary policies and do not participate in the conduct of the single monetary policy. The non-Eurosystem NCBs contribute to the collection of statistical information under Article 5.2 of the Statute and the ECB's advisory functions. The non-Eurosystem NCBs are subject to Article 130 TFEU [former Article 108 TEC] and Articles 7 and 14.2 of the Statute. However, since Article 14.3 of the Statute does not apply to the non-Eurosystem NCBs, under Article 42.1 of the Statute, the latter are not subject to the guidelines and instructions of the ECB.

The non-Eurosystem NCBs are a phenomenon under EU law. Article 14.1 of the Statute provides that in accordance with Article 131 TFEU [former Article 109 TEC], each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with these Treaties and this Statute. However, Article 139(1) TFEU sets forth that Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall be referred to as "Member States with a derogation".

Under Article 139(1) TFEU and Article 42.2 of the Statute the NCBs of Member States with a derogation shall retain their powers in the field of monetary policy according to national law. Pursuant to Article 139(2) TFEU the exceptions that apply to Member States with a derogation include, among others:

- 1) the objectives and tasks of the ESCB (Article 127(1) to (3) and (5) TFEU);⁵⁷
- 2) issue of the euro (Article 128 TFEU);
- 3) acts of the European Central Bank (Article 132 TFEU);
- 4) measures governing the use of the euro (Article 133 TFEU);
- 5) monetary agreements and other measures relating to exchange rate policy (Article 219 TFEU);

⁵⁶ Lastra has pointed out that 'some NCBs have exclusive responsibility for banking supervision (e.g. Spain or Italy), while others either share supervisory responsibilities with other bodies (e.g. France) or have limited supervisory responsibilities (e.g. in Germany, where BaFin is formally in charge of supervision)', see Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 211. These functions are not part of the ESCB-related tasks (Doherty & Lenihan, 2005, pp. 214-215). Arguably, as will be discussed in Section 4.3.1, the provision of emergency liquidity assistance also falls within the scope of Article 14.4 of the Statute (see also Lastra R. M., 2010, p. 65).

⁵⁷ This exception is, however, not absolute; see the discussion in Section 3.2.1.

- 6) appointment of members of the Executive Board of the European Central Bank (Article 283(2) TFEU);
- 7) decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Article 138(1) TFEU);
- 8) measures to ensure unified representation within the international financial institutions and conferences (Article 138(2) TFEU); and
- 9) under Chapter IX of the Statute (Transitional and other provisions for the ESCB), Member States with a derogation and their national central banks are excluded from rights and obligations within the ESCB.

Pursuant to Article 142 TFEU [former Article 124(1) TEC], each Member State with a derogation shall treat its exchange rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the exchange rate mechanism.

Zilioli and Selmayr differentiate between the non-Eurosystem NCBs,⁵⁸ referring to some of them as having a special status (Denmark and the United Kingdom).⁵⁹ Indeed, Denmark and the United Kingdom occupy a special position outside the euro area.⁶⁰ The legal basis for the different treatment of the United Kingdom is Protocol No 15 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland which recognises that unless the United Kingdom notifies the Council that it intends to adopt the euro, it shall be under no obligation to do so,⁶¹ and for Denmark Protocol No 16 on certain provisions relating to Denmark, which refers to Denmark as a Member State with a derogation.⁶²

⁵⁸ The Member States with a derogation can also be called “pre-ins” in order to distinguish them from the Member States with a special status (“outs”), see Zilioli & Selmayr, *The Law of the European Central Bank*, 2001, p. 134. It is noted that each of the new Member States shall participate in Economic and Monetary Union from the date of accession as a Member State with a derogation within the meaning of Article 139(1) TFEU. See Article 4 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L 236, 23.9.2003, p. 33. For Bulgaria and Romania, see Article 5 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded, OJ L 157, 21.6.2005, p. 203; see the ECB Convergence Report of May 2010 (European Central Bank, 2010, p. 15).

⁵⁹ The interpretation under EU law on the notion of special status (“outs”) has been the subject of fierce academic debate regarding Denmark, see Zilioli & Selmayr, *The Law of the European Central Bank*, 2001, p. 137.

⁶⁰ See Kapteyn & VerLoren van Themaat, 2008, p. 941.

⁶¹ It has also been suggested that in some regards the United Kingdom can be compared to a Member State with a derogation, see Kapteyn & VerLoren van Themaat, 2008, p. 941.

⁶² The ECB is of the opinion that for as long as Denmark does not notify the EU Council that it intends to adopt the euro, no Danish legislation needs to be adapted. For the latest statement, see the ECB Convergence Report of May 2010 (p. 16). Pursuant to Article 2 of Protocol No 16, the procedure for the abrogation of the exemption shall only be initiated at the request of Denmark.

For the purposes of this thesis, both types of cases are referred to as ‘non-Eurosystem NCBs’.

2.3 The functioning of European Monetary Union

2.3.1 Decision-making bodies

2.3.1.1 ECB decision-making bodies

In accordance with Article 129(1) TFEU and Article 9.3 of the Statute, the decision-making bodies of the ECB shall be the Governing Council and the Executive Board.

Governing Council

Pursuant to Article 283(1) TFEU [former Article 112(1) TEC] and Article 10.1 of the Statute, 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.

The decision-making is centralised with the Governing Council and the Executive Board, while the implementation of decisions is decentralised under Article 14.3 of the Statute. Since the transfer of monetary policy powers to the ESCB, the ECB’s Governing Council has been, and still is, the consensus-based, collegial decision-making body defining the euro area’s monetary policy and, in particular, the body that adopts the guidelines and takes the decisions necessary to ensure the performance of the Eurosystem’s tasks.⁶³ The Governors of the Eurosystem NCBs are *ex officio* members of the Governing Council of the ECB.⁶⁴ Carel C. A. van den Berg points out that the ECB has taken most of its decisions on the basis of consensus, only in exceptional circumstances resorting to voting; consensus is not the same as unanimity, it refers to a willingness to accept a ‘majority’ view in which arguments are weighed and not votes.⁶⁵ Pursuant to Article 284(1) TFEU [former Article 113(1) TEC], 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, where the President of the Council also may submit a motion for deliberation to the Governing Council.

⁶³ See Paragraph 2.1 of the ECB Opinion CON/2006/32 of 22 June 2006 at the request of the French Senate on a draft law on the Banque de France, available at http://www.ecb.eu/ecb/legal/pdf/en_con_2006_32_f_sign.pdf.

⁶⁴ One of the earlier drafts even stipulated that the NCB Governors can be appointed only after consultation with the Council, see Goodhart C. , *The Draft Statute of the European System of Central Banks: A Commentary*, 1990, p. 4.

⁶⁵ See van den Berg, 2005, p. 405. Bénassy-Quéré and Turkish note that a consensus is sought and decisions are taken unanimously when possible (Bénassy-Quéré & Turkish, 2009, p. 32).

Under Article 10.2 of the Statute, each member of the Governing Council shall have one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors with a voting right shall be 15. The latter voting rights shall be assigned and shall rotate as follows:

- as from the date on which the number of governors exceeds 15, until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank's Member State in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights;

- as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the above criteria. The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights;

- within each group, the governors shall have their voting rights for equal amounts of time;

- for the calculation of the shares in the aggregate gross domestic product at market prices, Article 29.2 of the Statute shall apply. The total aggregated balance sheet of the monetary financial institutions shall be calculated in accordance with the statistical framework applying in the Union at the time of the calculation;

- whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29.3 of the Statute, or whenever the number of governors increases, the size and/or composition of the groups shall be adjusted in accordance with the above principles;

- the Governing Council, acting by a two-thirds majority of all its members, with and without a voting right, shall take all measures necessary for the implementation of the above principles

and may decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.⁶⁶

Under Article 10.2 of the Statute, the right to vote shall be exercised in person. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 of the Statute may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules also provide that a member of the Governing Council who is prevented from attending meetings of the Governing Council for a prolonged period may appoint an alternate as a member of the Governing Council.⁶⁷

The provisions of Article 10.3 of the Statute are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under Articles 10.3, 40.2 and 40.3 of the Statute, in which case the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB:

- 1) the weights of the votes of the members of the Executive Board shall be zero;
- 2) a decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two-thirds of the subscribed capital of the ECB and represent at least half the shareholders.
- 3) if a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

As a general rule, under Article 10.2 of the Statute, the Governing Council shall act by a simple majority of the members having a voting right. In the event of a tie, the President shall have the casting vote. In order for the Governing Council to vote, there shall be a quorum of two-thirds of the members having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

The reason behind such a complicated procedure is that there was a danger that an expanded euro area would lead to a large Governing Council that was unlikely to be capable of acting. The Treaty of Nice in 2000 introduced an enabling clause – Article 10.6 of the Statute, allowing the Heads of State to amend by unanimity Article 10.2 of the Statute, either based on a recommendation of the ECB or on a recommendation by the Commission. The ECB therefore

⁶⁶ Note that the Governing Council has decided to postpone the rotation system; see Decision ECB/2008/29 of 18 December 2008 to postpone the start of the rotation system in the Governing Council of the European Central Bank, OJ L 3, 7.1.2009, p. 4.

⁶⁷ The ECB's practice seems to contradict the principle of the Governing Council membership's inalienability. Hanspeter Scheller claims that Article 10.2 of the Statute has also been used when a Governor relinquished office before the successor was appointed. See Scheller, 2006, p. 52; as well as footnote 325 for examples.

adopted a recommendation,⁶⁸ which limited the number of votes for governors to fifteen, while also introducing a rotation scheme, using a three group model with a first group of the five largest⁶⁹ Member States sharing four rotating votes, a second group consisting of half all euro area NCB Governors who share eight votes, and the remaining Governors sharing three votes.⁷⁰ Within these groups votes rotate on an equal basis. Carel C. A. van den Berg notes that this system keeps alive the *ad personam* concept and the one person, one vote system, allowing all Governors to speak, even if they do not have a vote.⁷¹ However, Belke and Styczynska claim the opposite, noting that the rotation model violates the fundamental principle of ‘one vote, one member’, which is intended to ensure that the Governing Council members participate personally and independently, and not as national shareholders.⁷²

Carel C. A. van den Berg concludes that the system could be described as containing three circles: the largest circle is the Governing Council, containing all voting and non-voting members; the next, smaller circle contains only those with a vote; and the innermost circle contains the Executive Board members who are responsible for the day-to-day management of the Eurosystem’s monetary policy.⁷³ It is interesting to note that while Belke and Styczynska claim that as a result of the reform, the voting power of the Executive Board would be considerably strengthened,⁷⁴ Fahrholz and Mohl arrive at different conclusions.⁷⁵ Moreover, a study conducted by Bénassy-Quéré and Turkish claims that moving from the ‘old’ rule to rotations has very little impact on the decisions made by the Governing Council in an enlarged euro area.⁷⁶

Executive Board

Article 283(2) TFEU and Article 11 of the Statute provide that the Executive Board shall comprise the President, the Vice-President and four other members.

⁶⁸ Recommendation, under Article 10.6 of the Statute of the European System of Central Banks and of the European Central Bank, for a Council Decision on an amendment to Article 10.2 of the Statute of the European System of Central Banks and of the European Central Bank (ECB/2003/1), OJ C 29, 7.2.2003, p. 6. See also ECB Opinion CON/00/30 of 5 December 2000 at the request of the Presidency of the Council of the European Union on a proposal to amend Article 10.2 of the Statute of the European System of Central Banks and of the European Central Bank, OJ C 362, 16.12.2000, p. 13.

⁶⁹ Large in terms of a weighted indicator based on GDP and a financial criterion.

⁷⁰ Although criticised by many authors for not coping with the requirements of efficiency, transparency and accountability the rotation system was chosen because it was the only way to reduce the gap between countries’ size and representation, while keeping the involvement of all national governors in the decision-making process (Bénassy-Quéré & Turkish, 2009, p. 34).

⁷¹ See van den Berg, 2005, p. 465.

⁷² See Belke & Styczynska, 2006, p. 867; see also Kapteyn & VerLoren van Themaat, 2008, p. 950.

⁷³ See van den Berg, 2005, p. 466.

⁷⁴ See Belke & Styczynska, 2006, p. 891.

⁷⁵ See Fahrholz & Mohl, 2004, p. 19.

⁷⁶ See Bénassy-Quéré & Turkish, 2009, p. 45.

The Executive Board is the operational decision-making body of the ECB and is responsible for the daily management of the bank. Under Article 11.6 of the Statute, which provides that the Executive Board shall be responsible for the current business of the ECB, several decisions have been adopted by the Executive Board.⁷⁷

The members of the Executive Board are appointed on a full-time basis by common accord of the governments of the euro area countries at the level of Heads of State or Government.⁷⁸ The appointment is preceded by a recommendation from the EU Council and consultations of the European Parliament and the Governing Council of the ECB.

General Council

Under Article 141 TFEU [former Articles 123(3) and 117(2) first five indents, TEC], as long as there are Member States with a derogation, and without prejudice to Article 129(1) TFEU, the General Council of the European Central Bank referred to in Article 44 of the Statute of the ESCB and of the ECB shall be constituted as a third decision-making body of the European Central Bank.

The institutional link between the Eurosystem and the non-euro area NCBs is ensured by the General Council under Article 44 of the Statute. The General Council comprises the President and Vice-President of the ECB and the Governors of all NCBs. An institutional link between the Eurosystem and the non-euro area NCBs is ensured by the General Council. The General Council comprises the President and Vice-President of the ECB and the Governors of all NCBs. The four other Executive Board members, as well as the President of the EU Council and a member of the European Commission may also participate in General Council meetings, but they do not have a right to vote. Under Article 141 TFEU [former Articles 123(3) and 117(2) first five indents, TEC] Article 43 of the Statute and Article 46 of the Statute, the tasks of the General Council are the following:

- 1) strengthening cooperation between the national central banks;
- 2) strengthening the coordination of the monetary policies of the Member States, with the aim of ensuring price stability;

⁷⁷ For example: (1) Decision ECB/2007/7 of 24 July 2007 concerning the terms and conditions of TARGET2-ECB, OJ L 237, 8.9.2007, p. 71, as amended;. (2) Decision ECB/2007/5 of 3 July 2007 laying down the Rules on Procurement, OJ L 184, 14.7.2007, p. 34, as amended. (3) Decision ECB/2007/1 of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank, OJ L 116, 4.5.2007, p. 64.

⁷⁸ The composition of the Executive Board has no national census. Until 2010, the practice of the appointments shows that the nationals of Germany, Italy, France and Spain tend to be appointed more often than those of Austria, Greece, the Netherlands, Portugal or Finland. As of 1 September 2010, there were no citizens of Belgium, Cyprus, Ireland, Luxembourg, Malta, Slovakia or Slovenia appointed.

- 3) monitoring the functioning of the exchange rate mechanism;
- 4) holding consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;
- 5) carrying out the former tasks of the European Monetary Cooperation Fund, which had subsequently been taken over by the European Monetary Institute;
- 6) giving advice in the preparations for the abrogation of the derogations specified in Article 140 TFEU and contributing to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the euro as referred to in Article 140(3) TFEU;
- 7) contributing to the advisory functions referred to in Articles 4 and 25.1 of the Statute;
- 8) contributing to the collection of statistical information as referred to in Article 5 of the Statute;
- 9) contributing to the reporting activities of the ECB as referred to in Article 15 of the Statute;
- 10) contributing to the establishment of the necessary rules for the application of Article 26 as referred to in Article 26.4 of the Statute;
- 11) contributing to all other measures necessary for the application of Article 29 as referred to in Article 29.4 of the Statute;
- 12) contributing to the laying down of the conditions of employment of the staff of the ECB as referred to in Article 36 of the Statute.

Although legal acts of the ECB under Article 132 TFEU and Article 34.1 of the Statute, should not, under Article 139 TFEU and Article 42.1 of the Statute, confer any rights or impose any

obligations on the Member State concerned, there are also legal acts adopted by the General Council.⁷⁹

2.3.1.2 Overview of the NCBs' decision-making bodies

This overview is based on the information extracted from Table 2-1 and aims at determining the position of the Governor in the NCBs' internal governance structure. The appointment of Governors of NCBs is regulated neither in TFEU nor in the Statute but has remained a national matter (see Section 3.2.3.3) except for the term of office of a minimum of five years as set forth in Article 14.2 of the Statute.

Austria - The organs of the Austrian NCB are the General Meeting, the General Council and the Governing Board, which is chaired by the Governor. The Governor's status as a member of the ECB Governing Council and General Council is specifically mentioned in Article 34(1) of the Austrian NCB Statute.

The General Meeting is entitled to receive a report from the General Council and approve the annual accounts. The General Council is a supervisory body at the Austrian NCB which is not involved in the daily management of the bank (such as the implementation of the ESCB-related tasks). The responsibility for the overall running of the Austrian NCB is entrusted to the Governing Board, which consists of the Governor, the Vice Governor and two other members.

Belgium - The organs of the Belgian NCB are the Governor, the Board of Directors, the Council of Regency, the Board of Censors and the General Meeting. The Governor of the Belgian NCB presides over the Board of Directors and the Council of Regency.

The General Meeting is subject to reporting by the Council of Regency on at least an annual basis.

⁷⁹ The General Council has adopted formal ECB decisions, such as (1) Decision ECB/2009/17 of 19 June 2009 amending Decision ECB/2003/14 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility, OJ L 190, 22.7.2009, p. 11. (2) Decision ECB/2008/28 of 15 December 2008 laying down the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks, OJ L 21, 24.1.2009, p. 81. (3) Decision ECB/2006/26 of 18 December 2006 laying down the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks, OJ L 24, 31.1.2007, p. 15. (4) Decision ECB/2004/12 of 17 June 2004 adopting the Rules of Procedure of the General Council of the European Central Bank, OJ L 230, 30.6.2004, p. 61; (5) Decision ECB/2004/10 of 23 April 2004 laying down the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks, OJ L 205, 9.6.2004, p. 19; (6) Decision ECB/2003/19 of 18 December 2003 laying down the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks, OJ L 9, 15.1.2004, p. 31. (7) Decision ECB/2003/14 of 7 November 2003 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility, OJ L 297, 15.11.2003, p. 35. (8) Decision ECB/1998/NP15 of 1 December 1998 concerning the performance by the European Central Bank of certain functions relating to medium-term financial assistance for Member States' balances of payments, OJ L 55, 24.2.2001, p. 76; (9) Decision ECB/1998/14 of 1 December 1998 laying down the measures necessary for the paying-up of the capital of the European Central Bank by the non-participating national central banks, OJ L 110, 28.4.1999, p. 33.

The Board of Directors is responsible for the administration and the management of the Belgian NCB. The Council of Regency is in charge of general issues concerning the NCB; however, it cannot be regarded as supervisory organ. Given that if the Governor is present in the Board as well as the Council, the fact that under Article 30 of the Belgian NCB Statute the Council can delegate some of its functions to the Board would lead to the conclusion that the Belgian NCB has two decision-making organs. However, it is arguable to what extent the Council of Regency participates in ESCB-related tasks; it is likely that the Council exercises its influence over the Board's activities.

The task of the Board of Censors is to supervise the preparation and implementation of the budget.

Bulgaria - The Bulgarian NCB Statute lists the Governing Council, the Governor and three Deputy Governors as the management bodies of the NCB. The Governor and three Deputy Governors along with three other members constitute the Governing Council, which is entitled to adopt decisions listed in Article 16 of the Bulgarian NCB Statute.

The Governor is entrusted with the task of organising, directing and supervising the activities of the Bulgarian NCB.

Cyprus - The organs of the Cypriot NCB are the Board of Directors, the Governor and the Deputy Governor. The Governor's role as a member of the ECB Governing Council and the General Council is noted in Articles 17(4) and 20(3) of the Cypriot NCB Statute.

Under the articles of the Cypriot NCB Statute, the Board shall supervise the administration of the bank and define and implement the policy of the Cypriot NCB as far as non-ESCB-related issues are concerned. ESCB-related tasks are exclusively entrusted to the Governor of the Cypriot NCB. However, the Board of Directors cannot be regarded as a supervisory body since the Governor and Deputy Governors are ex officio members of the Board and would therefore be supervising their own activities. Rather, the Board of Directors can be defined as 'another' decision-making organ that addresses issues outside the scope of ESCB-related tasks.

The Czech Republic - Under Article 5(1) of the Czech NCB Statute, the supreme governing body of the Czech National Bank is the Bank Board. The Bank Board is in charge of monetary policy and other basic central banking tasks. The Bank Board consists of seven members, including the Governor and two Deputy Governors.

Denmark - Under the Danish NCB Statute, the management of the NCB is carried out by a Board of Directors, a Committee of Directors and a Board of Governors.

The Board of Directors addresses, as a rule, issues that are outside the management of daily affairs; it supervises the NCB's activities. Its relationship and hierarchical position with regard to the Committee of Governors is not clear, it seems to be a body between the Board of Directors and the Board of Governors charged with a duty to review matters before the Board of Directors makes a decision.

The daily management of the NCB is vested in the Board of Governors.

Estonia - The Supervisory Board of the Estonian NCB is entitled to supervise all activities of the NCB. The Supervisory Board consists of a Chairman and seven members who are appointed by the Estonian Parliament.

The daily management of the NCB is vested in the Governor and the Executive Board. The Executive Board is composed of the Governor and the Deputy Governors; none of them may be a member of the Supervisory Board. The Executive Board is in charge of planning and organising the Estonian NCB's activities. However, certain competences, such as ESCB-related tasks, are allocated to the Governor exclusively.

Finland - The Finnish NCB's governing bodies are the Parliamentary Supervisory Council and the Board.

The Parliamentary Supervisory Council is appointed by the Finnish Parliament from among its members.

The Board, which includes the Governor, is responsible for the administration of the NCB and for ensuring that all tasks assigned to the NCB are duly executed, except for the tasks of the Parliamentary Supervisory Council.

France - The French NCB is managed by the Governor, who presides over the Monetary Policy Council and the General Council.

The Monetary Policy Council advises the Governor on issues related to the monetary policy of the Eurosystem. The General Council manages the NCB and decides on matters other than ESCB-related issues.

Germany - The governing body of the German NCB is the Executive Board, which consists of the Governor, Deputy Governor and six other members. The Executive Board is a collegiate body, but it may allocate responsibility for dealing with specific matters to one of its members.

Greece - The supreme organ of the Greek NCB is the General Meeting of Shareholders. The general management of affairs is entrusted with the General Council, which consists of the

Governor, the two Deputy Governors and the other members of the Monetary Policy Council as well as six Councillors. The General Council decides on matters outside the scope of ESCB-related tasks.

The Monetary Policy Council advises the Governor on economic and monetary developments. The Governor and Deputy Governors are members of the Monetary Policy Council by virtue of their office. The Governor's status as a member of the ECB Governing Council and General Council is noted in Article 22(2) of the Greek NCB Statute.

Hungary - The organs of the Hungarian NCB are the General Meeting, the Monetary Council, the Board of Directors and the Supervisory Board.

The General Meeting is the addressee of annual reports of the Hungarian NCB. The highest decision-making organ is the Monetary Council, which consists of the Governor, one Deputy Governor and other members. The Governor and Deputy Governors constitute the Board of Directors, which shall be responsible for the implementation of the decisions of the Monetary Council and the operations of the Hungarian NCB.

The NCB's activities are supervised by the Supervisory Board, whose members are appointed by the Hungarian Parliament and the Ministry of Finance.

Ireland - The Irish NCB is governed by the Board of Directors, which consists of the Governor and up to 11 Directors. The Governor shall be appointed by the President on the advice of the Government.

Italy - The organs of the Italian NCB are the Shareholders' Meeting, the Board of Directors, the Board of Auditors, the Directorate, the Governor, the Director General and the Deputy Directors General.

The Board of Auditors, which consists of five auditors, is responsible for monitoring the management of the NCB with regard to observance of the law and it carries out accounting checks in addition to the task carried out by the Italian NCB's statutory auditors.

The Board of Directors, which consists of the Governor and thirteen directors, is responsible for general management, supervision and internal control of the Italian NCB. The Directorate, which consists of the Governor, the Director General and three Deputy Directors General, has the authority to manage the NCB's daily affairs. The matters that are not expressly mentioned as a duty of the Board of Directors or the Directorate are entrusted to the Governor. The

Governor's status as a member of the ECB Governing Council and General Council is noted in Article 24(2) of the Italian NCB Statute.

Latvia - The Latvian NCB is managed by the Council and the Board.

The Council consists of eight persons, including the Governor and the Deputy Governor. The Council decides on basic central banking issues. The Council's decisions are carried out by the Board. The Board is chaired by a person appointed by the Governor.

Lithuania - The Lithuanian NCB is governed by the Board. The Board consists of the Governor, the two Deputy Governors and two other members. The Board is entitled to decide on basic central banking issues until the introduction of the euro in Lithuania, after which the Board shall address matters that are outside the competence of the ESCB

The Governor is responsible for the daily management of the Lithuanian NCB and he can delegate some of his duties to the Deputy Governors.

Luxembourg - The organs of the Luxembourg NCB are the Council and the Board of Directors. The latter is the executive authority of the NCB charged with the implementation of ESCB-related tasks, while the Council addresses more general issues.

The Board of Directors comprises the Governor and two Directors; the Council consists of the members of the Board of Directors and six other members. Both organs are headed by the Governor. The Governor's status as a member of the ECB Governing Council⁸⁰ is explicitly noted in the Luxembourg NCB Statute.

Malta - The organs of the Maltese NCB are the Board of Directors, the Governor and the Deputy Governor. Under the provisions of the Maltese NCB Statute, the Board of Directors is responsible for the policy and general management of the NCB, with the exception of ESCB-related tasks, which are in the remit of the Governor.

The Netherlands - The Netherlands NCB has the following organs: the Governing Board, the Supervisory Board, the Council and the Shareholders' Meeting.

The Governing Board, which consists of the Governor and up to five Executive Directors, is responsible for the daily management of the NCB. The Governor's role as a member of the ECB Governing Council⁸¹ is explicitly mentioned not in the Netherlands NCB Statute but in the

⁸⁰ Surprisingly, the Governor's status as a member of the ECB General Council is not mentioned in the Luxembourg NCB Statute.

⁸¹ The Governor's status as a member of the ECB General Council is mentioned neither in the Netherlands NCB Statute nor in its Articles of Association.

Netherlands NCB Articles of Association. The Governor may not be a member of the Supervisory Board and the Council.

The Supervisory Board supervises the management of the NCB's affairs. In addition to reporting to the Supervisory Board, the Governor is also accountable to the Council with regard to information on the general economic and financial situation and the NCB's policy.

Poland - The Polish NCB has the following organs: the Governor, the Monetary Policy Council and the Management Board.

The Governor chairs the Monetary Policy Council as well as the Management Board.

The nine members of the Monetary Policy Council other than the Governor are appointed in equal numbers by the President of the Republic of Poland, the Sejm and the Senate from among the persons of recognised standing in [the world of] finance.

The Monetary Policy Council is responsible for defining monetary policy and the Management Board is responsible for the daily management of the NCB.

The Management Board has, in addition to the Governor, up to eight members, including two Deputy Governors.

Portugal - The organs of the Portuguese NCB are the Governor, the Board of Directors, the Board of Auditors and the Advisory Board.

The Governor is accountable for the overall management of the NCB. The Governor's status as a member of the ECB Governing Council and the General Council is explicitly mentioned in the Portuguese NCB Statute.

The Governor chairs the Board of Directors, which is responsible for all activities of the NCB not assigned to any other body. In addition to the Governor, the Board of Directors may consist of one or two Deputy Governors and of three to five Directors.

The Governor also chairs the Advisory Board, which includes the Deputy Governors, former Governors, the Chairman of the Portuguese Association of Banks, the Chairman of the Public Credit Management Institute, a representative of each of the Autonomous Regions of the Azores and Madeira and four other members. The Advisory Board provides its opinions on the draft Annual Report, the NCB's activities and other matters addressed either by the Governor or the Board of Directors.

The Board of Auditors is liable for monitoring and assessing the NCB's activities. Most of the members of the Board of Auditors are appointed by the Portuguese Finance Minister.

Romania - The Romanian NCB is managed by the Board. The Board consists of nine members, including the Governor, the Senior Deputy Governor and seven other members, of whom two are Deputy Governors. The latter may not be employees of the Romanian NCB.

The daily affairs of the NCB are managed by the Governor, the Senior Deputy Governor and two Deputy Governors.

Slovakia - The Slovak NCB is governed by the Board, which consists of 11 members. The Governor, two Deputy Governors and at least five employees of the Slovak NCB constitute the Board.

Slovenia - The decision-making bodies of the Slovenian NCB are the Governor and the Governing Board.

The Governor is responsible for the daily management of the NCB and for implementing decisions adopted by the Governing Board, which he presides.

The Governing Board is composed of the Governor, four Deputy Governors and four other members. Under the Slovenian NCB Statute, the Governing Board shall decide on all issues that, on the basis of the Slovenian NCB Statute, fall within the responsibility of the Slovenian NCB.

Spain - The governing bodies of the Spanish NCB are the Governor, the Deputy Governor, the Governing Council and the Executive Commission.

The Governor is responsible for the daily management of the NCB and presides over the Governing Council and the Executive Commission. The Governor's role as a member of the ECB Governing Council and the General Council is explicitly mentioned in the Spanish NCB Statute.

The Governing Council is composed of the Governor, the Deputy Governor, six elected Council members, the Director-General of the Treasury and Financial Policy and the Vice-President of the National Securities Market Commission. The Governing Council is the highest decision-making body of the NCB, which has an advisory role with regard to ESCB-related tasks.

The Executive Commission, which consists of the Governor, the Deputy Governor and two elected Council Members, is responsible for the daily management of the NCB, including ESCB-related tasks.

Sweden - The decision-making bodies of the Swedish NCB are the General Council and the Executive Board.

The 11 members of the General Council are appointed by the Swedish Parliament from among its members. The General Council appoints the Executive Board, which consists of six members and is responsible for the daily business of the NCB. The General Council also appoints the Governor and at least one Deputy Governor from among the members of the Executive Board.

The Executive Board is competent to adopt any decision at the NCB, except in the areas that fall within the competence of the General Council.

The United Kingdom - The United Kingdom NCB Statute provides for a Court of Directors, a Committee of Non-executive Directors within the Court, and a Monetary Policy Committee. The Court of Directors is responsible for managing the affairs of the Bank other than the formulation of monetary policy. The Court of Directors consists of the Governor, the two Deputy Governors and nine Directors. The Monetary Policy Committee consists of the Governor and Deputy Governors, two of the Bank's Executive Directors and four members appointed by the Chancellor.

2.3.2 ESCB Committees

The system of committees dates back to the establishment of the Committee of Governors in 1964. In a way, the General Council, the Governing Council and the Executive Board can also be regarded as committees.

Moutot, Jung and Mongelli explain that the widespread use of committees in so many areas within the ESCBEurosystem reflects the need to share information and coordinate the work of the ECB and of the NCBs mostly for three reasons: (i) the ECB constitutes only a relatively small share of the Eurosystem's total staff, and considerable expertise is available at the national level in all areas related to the ECB's monetary policy; (ii) most NCBs have been in existence for much longer than the ECB and a committee structure ensures consistency with past policies and across countries, thereby securing a harmonious level playing-field; (iii)

committees provide the framework in which best practices and technical expertise can be shared, and they foster cooperation within the Eurosystem at the staff and management level.⁸²

Committees shall be established and dissolved by the Governing Council pursuant to Article 9.1 of the ECB Rules of Procedure; the committees shall assist in the work of the decision-making bodies of the ECB and shall report to the Governing Council via the Executive Board.

Article 9.2 of the ECB Rules of Procedure stipulates that committees shall be composed of up to two members from each of the Eurosystem NCBs and the ECB, appointed by each Governor and the Executive Board respectively [standard composition]; the Governing Council shall lay down the mandates⁸³ of the committees and appoint their chairpersons. As a rule, the chairperson shall be an ECB staff member; the ECB shall also provide secretarial assistance for the committees. Under Article 9.3 of the ECB Rules of Procedure, the non-Eurosystem NCBs may also appoint up to two staff members to take part in the meetings of a committee whenever it deals with matters falling within the field of competence of the General Council and whenever the chairperson of a committee and the Executive Board deems this appropriate [extended composition]. With regard to the other participants of the committees, Article 9.4 of the ECB Rules of Procedure establishes that representatives of other Community institutions and bodies and any other third party may also be invited to take part in the meetings of a committee whenever the chairperson of a committee and the Executive Board deems this appropriate.

The list of ESCB committees and their mandates is published on the ECB's website.⁸⁴

1. The Accounting and Monetary Income Committee (AMICO) advises on all intra-Eurosystem issues relating to accounting, financial reporting and the allocation of monetary income;
2. The Banking Supervision Committee (BSC) assists regarding the contribution to prudential supervision of credit institutions and the stability of the financial system (see also the discussion in Section 4.2.1.3);
3. The Banknote Committee (BANCO) advises on all banknotes policy-related matters and assists in the strategic planning of banknote production and issuance;

⁸² See Moutot, Jung, & Mongelli, 2008, p. 38.

⁸³ Further to this, under Article 9.2 of the ECB Rules of Procedure, both the Governing Council and the Executive Board shall have the right to request studies of specific topics by committees.

⁸⁴ Available at http://www.ecb.eu/ecb/educational/facts/orga/html/or_019.en.html (visited on 6 September 2010).

4. The Budget Committee (BUCOM), which assists and reports directly to the Governing Council in matters related to the ECB's budget. BUCOM is composed of representatives of the ECB and the Eurosystem NCBs;
5. The Communications Committee (ECCO) assists in external and intra-system communication policy;
6. The Human Resources Conference (HRC) includes the heads of personnel of all EU central banks;
7. The Information Technology Committee (ITC) assists in the development, implementation and maintenance of IT networks and communications infrastructures which support the joint operational systems;
8. The Internal Auditors Committee (IAC) develops common standards for auditing Eurosystem operations and audits joint projects and joint operational systems at the Eurosystem/ESCB level;
9. The International Relations Committee (IRC) assists in the performance of the ECB's statutory tasks with regard to international cooperation and acts as a forum for exchanging views on matters of common interest in the field of international relations;
10. The Legal Committee (LEGCO) provides legal advice for the fulfilment of the ECB's statutory task and prepares the legal acts for the operation of the Eurosystem;
11. The Market Operations Committee (MOC) assists in the execution of monetary policy operations and foreign exchange transactions, including those related to the operation of ERM II, and to the management of the ECB's foreign reserves;
12. The Monetary Policy Committee (MPC) does not make monetary policy decisions as its name suggests⁸⁵; it mainly advises on strategic and longer-term issues relating to the formulation of the monetary and exchange rate policy and is responsible for the Eurosystem staff projections;
13. The Payment and Settlement Systems Committee (PSSC) advises on the operation and maintenance of TARGET, general payment systems policy and oversight issues and issues of interest for central banks in the field of securities clearing and settlement;
14. The Statistics Committee (STC) mainly advises on the design and compilation of statistical information collected by the ECB with the assistance of the NCBs.

⁸⁵ The real monetary policy committee is the Governing Council. See also the explanation provided by Moutot, Jung, & Mongelli, 2008, pp. 22-23.

The creation of a Procurement Committee is further envisaged in Guideline ECB/2004/18 on the procurement of euro banknotes.⁸⁶

All ESCB committees operate in a similar way; they have a well-defined mandate which clarifies the range of contributions that they have to prepare as input in the policy process; the working language is English; and there are regular meetings (typically once a month).⁸⁷ Documentation and technical background information are subject to Article 23.1 of the ECB Rules of Procedure,⁸⁸ the documents are made available to all committee members, their deliberations are confidential, and reports are published on issues of more general interest, subject to the approval of the Governing Council.

However, while Moutot, Jung and Mongelli claim that all ESCB committees have clear mandates, very little is known about them since they are not publicly available. In various legal instruments some references have been made: AMICO, for instance, reports to the Governing Council, via the Executive Board, on the development, application and implementation of the ESCB accounting and financial reporting rules.⁸⁹ With regard to BSC, information is not so

⁸⁶ Guideline ECB/2004/18 of 16 September 2004 on the procurement of euro banknotes, OJ L 320, 21.10.2004, p. 21.

⁸⁷ See Moutot, Jung, & Mongelli, 2008, p. 39.

⁸⁸ Article 23.1 reads as follows: The proceedings of the decision-making bodies of the ECB and of any committee or group established by them shall be confidential unless the Governing Council authorises the President to make the outcome of their deliberations public.

⁸⁹ Decision ECB/2006/17 of 10 November 2006 on the annual accounts of the European Central Bank OJ L 348, 11.12.2006, p. 38; Guideline ECB/2006/16 of 10 November 2006 on the legal framework for accounting and financial reporting in the European System of Central Banks, OJ L 348, 11.12.2006, p. 1.

clear.⁹⁰ BANCO assists the Executive Board,⁹¹ as does the ITC⁹² and the STC.⁹³ The PSSC appears to have the broadest powers, as it can also adopt binding rules.⁹⁴

Committees can delegate work of a more technical nature to working groups with a specific mandate or to task forces that meet until the task at hand is accomplished.⁹⁵ For example, the MPC is supported by the Working Group on Forecasting (WGF), the Working Group on Econometric Modelling (WGEM) and the Working Group on Public Finance (WGPF).⁹⁶

2.4 Conclusions of Chapter 2

The ECB, together with NCBs, is usually referred to as the ESCB, that being the institutional set-up covering all central banks in the Union. The ECB and the national central banks of the Member States whose currency is the euro constitute the Eurosystem, which conducts the monetary policy of the Union.

In practice, this means a separation between the Eurosystem NCBs and the non-Eurosystem NCBs, as their tasks and obligations are different under the Treaties and the Statute.

Neither the ESCB nor the Eurosystem is a legal person. They function through the decision-making bodies of the ECB, which are the Executive Board, the Governing Council and the General Council. The Executive Board and the Governing Council can also be regarded as the main decision-making organs, while a third decision-making body, the General Council, will exist as long as there are Member States that have not adopted the euro.

⁹⁰ ECB Opinion CON/2008/63 of 7 November 2008 on a draft Commission decision establishing the Committee of European Banking Supervisors, OJ C 45, 24.2.2009, p. 1; ECB Opinion CON/2004/7 of 20 February 2004 at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council, in order to establish a new financial services committee organisational structure (COM(2003) 659 final), OJ C 58, 6.3.2004, p. 23.

⁹¹ Guideline ECB/2008/8 of 11 September 2008 on data collection regarding the euro and the operation of the Currency Information System 2, OJ L 346, 23.12.2008, p. 89. Decision ECB/2008/3 of 15 May 2008 on security accreditation procedures for manufacturers of euro secure items for euro banknotes, OJ L 140, 30.5.2008, p. 26. Guideline ECB/2004/18 of 16 September 2004 on the procurement of euro banknotes, OJ L 320, 21.10.2004, p. 21. Decision ECB/2001/11 of 8 November 2001 on certain conditions regarding access to the Counterfeit Monitoring System (CMS), OJ L 337, 20.12.2001, p. 49.

⁹² Guideline ECB/2008/8 of 11 September 2008 on data collection regarding the euro and the operation of the Currency Information System 2, OJ L 346, 23.12.2008, p. 89.

⁹³ Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template, OJ L 354, 30.11.2004, p. 34.

⁹⁴ However, it is arguable whether these kinds of powers comply with the Treaties, the Statute and the ECB Rules of Procedure. See Decision ECB/2010/9 of 29 July 2010 on access to and use of certain TARGET2 data, OJ L 211, 12.8.2010, p. 45. In other legal instruments, it is referred to as an advisory body only; see Decision ECB/2009/6 of 19 March 2009 on the establishment of the TARGET2-Securities Programme Board, OJ L 102, 22.4.2009, p. 12. Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2), OJ L 237, 8.9.2007, p. 1.

⁹⁵ See Moutot, Jung, & Mongelli, 2008, p. 39.

⁹⁶ See Moutot, Jung, & Mongelli, 2008, p. 38.

The NCB Statutes, while describing their decision-making bodies, refer to the status of the Governor as a member of the Governing and/or General Council as evidenced in Table 2-1. This reference is important for the discussion in Chapter 3, where many of the issues are related to the notion of ‘Governor’.

The ESCB and the Eurosystem both operate through various committees, which assist in the work of the decision-making bodies of the ECB and report to the Governing Council via the Executive Board.

3 A national central bank in the European Union

3.1 Interaction between central bank independence and accountability

Due to the institutional set-up of the Eurosystem and the ESCB as explained in Chapter 2, an NCB is granted independence under the Treaties and the Statute while maintaining, to a large extent, the accountability regime established under the national legal system.

This Chapter is divided into two parts: the first will assess central bank independence; the second part will address central bank accountability transparency and its confidentiality regime.

The assessment has been broken down into functional (Section 3.2.1), institutional (Section 3.2.2), personal (Section 3.2.3) and financial (Section 3.2.4) independence and each discussion point will be supported by a separate comparative table. I will also explain the link between central bank independence and accountability, by analysing the duty of loyalty (Section 3.2.3.4) and the duty of non-competition (Section 3.2.3.5) that apply to the Governors and make them accountable to the institutions that have either appointed them or participated in the process of appointment (Section 3.3.1).

Second, I will discuss the notion of accountability and the assessment that I provide will also be supported by tables comparing the relevant national provisions. Those provisions will be analysed, placing the NCB within the existing system of checks and balances. Central bank transparency (Section 3.3.2) will be discussed in a broader context, referring to the activities which the central banks have to carry out pursuant to their respective Statutes but which are different from the formal aspect of accountability. Finally, I will explain the limits set for accountability and transparency by Article 37.1 of the Statute [former Article 38 of the Statute], namely confidentiality and professional secrecy (Section 3.3.3).

3.2 Central bank independence

The Committee of Governors of the Central Banks of the Member States of the European Economic Community noted in 1990 that *'in order to enable the System to*

*attain the primary objective of price stability it is important that the decision-making bodies should not be influenced by considerations which would be in conflict with the pursuit of price stability. [...] 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 longer term’.*⁹⁷ Almost immediately, legal scholars started paying attention to the issues concerning the extent to which the central banks can be independent from political influence while being accountable for their actions.⁹⁸

The move towards central bank independence is not something that can be attributed to the ESCB or the Eurosystem; even without EMU the separate European countries can, and indeed are, moving in the direction of more independent national central banks.⁹⁹ The phenomenon of independence is not unique to central banking – it is a feature inherent in an administrative law tradition in which certain powers are delegated to certain agencies with regulatory powers.¹⁰⁰ Central bank independence reflects the division of powers between the central bank and the government – the central bank sets goals and controls monetary policy while the government controls fiscal policy. In the framework of the Treaties and the Statute, Advocate General Jacobs has noted that central bank independence shall not imply that there should be total isolation from, or a complete absence of, cooperation with the institutions and bodies of the Union – the only prohibition is of bringing influence to bear that is liable to undermine the ability of the ECB to carry out its tasks effectively with a view to price stability.¹⁰¹

The original set of features of the principle of central bank independence, distinguishing between functional, institutional, personal and financial independence, were established in the “Introductory Report on the Draft Statute of the European System of Central Banks and of the European Central Bank”¹⁰² and repeated, together

⁹⁷ See Committee of Governors of the Central Banks of the Member States of the European Economic Community, 1990, p. 5.

⁹⁸ Lastra R. M., *The Independence of the European System of Central Banks*, 1992.

⁹⁹ See Goodhart C. A., *European Monetary Union: A Progress Report*, 1994, p. 10.

¹⁰⁰ Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 45.

¹⁰¹ See Opinion of Advocate General Jacobs, delivered on 3 October 2002, paragraph 155, in Case C-11/00.

¹⁰² See footnote 97.

with the description of legal integration into the Eurosystem in the European Monetary Institute's "Progress towards convergence", which was published in November 1995.¹⁰³ Over the years, the concept of central bank independence has been developed in Convergence Reports as well as in ECB Opinions on draft national legal instruments.

3.2.1 Functional independence

The ECB supports the view according to which functional independence requires each NCB's primary objective to be stated in a clear and legally certain manner and to be fully in line with the primary objective of price stability established by the Treaties.¹⁰⁴ Furthermore, functional independence is served by providing the NCBs with the necessary means and instruments to achieve this objective independently of any other authority.¹⁰⁵ Berger and de Haan have said that by specifying the objectives of the central bank and by giving it certain powers, politicians determine the extent of their commitment to a policy rule.¹⁰⁶ In a way, functional independence summarises what core purpose of institutional, personal and financial independence are all about¹⁰⁷ and explains in a simple manner why central bank independence is necessary as well as its limitations.

The requirement of central bank independence reflects the generally held view that the primary objective of price stability is best served by a fully independent institution with a precisely defined mandate.¹⁰⁸ Therefore provisions of national law stating, for example, that the main objective of an NCB is implementing monetary policy by controlling the amount of money in circulation with the aim of maintaining price

¹⁰³ See European Monetary Institute, 1995, pp. 91-93.

¹⁰⁴ See, for example, the ECB Convergence Report 2010 (p. 18). The ECB also used the same text in the earlier ECB Convergence Reports (European Central Bank, 2008, p. 17), (European Central Bank, 2007, p. 16), (European Central Bank, 2006, p. 62), (European Central Bank, 2006, p. 24), (European Central Bank, 2005, p. 25). A more detailed review has been provided by Niall Lenihan (Lenihan, 2006).

¹⁰⁵ See footnote 104.

¹⁰⁶ See Berger & de Haan, 1999, p. 20.

¹⁰⁷ The Court of Justice of the European Union has outlined the following aspects with regard to the independence of the ECB: (1) legal personality; (2) its own resources and budget; (3) its own decision-making bodies; (4) existence of such privileges and immunities as are necessary for the performance of its tasks; (5) that only the Court may retire a member of the Executive Board. See paragraph 132 of Case C-11/00 Commission v ECB [2003] ECR I-7147.

¹⁰⁸ See footnote 97.

stability in the State cannot be deemed compliant with the Treaties and the Statute.¹⁰⁹ This requirement is supported by the monetary financing prohibition, which is discussed in Section 4.3.2.¹¹⁰

However, the objectives and tasks of the ESCB as set forth in Article 127(1) to (3) and (5) TFEU [former Article 105(1) to (3) and (5) TEC],¹¹¹ do not apply to the Member States with a derogation under Article 139(2)(c) TFEU. The interpretation previously taken by the ECB that the non-Eurosystem NCBs are also subject to the primary objective of price stability even though for some reason Article 127(1) TFEU does not apply to them¹¹² was therefore misleading.¹¹³ However, Article 282(2) TFEU and Article 2 of the Statute, which also refer to the primary objective, do not enjoy a similar derogation, which would therefore mean that the Member States with a derogation are bound by this duty.¹¹⁴ The above provisions, with the exception of Article 2 of the Statute, do not apply to the United Kingdom under Article 4 of Protocol No 15.¹¹⁵ It should be noted that price stability as an objective is mentioned in the United Kingdom NCB Statutes.¹¹⁶

Table 3-1 reveals that the NCB Statutes of Austria,¹¹⁷ Belgium,¹¹⁸ Cyprus,¹¹⁹ Finland¹²⁰ France,¹²¹ Greece,¹²² Italy,¹²³ Malta,¹²⁴ the Netherlands,¹²⁵ Portugal,¹²⁶

¹⁰⁹ Such provision was previously set forth in Article 3 of the Latvian NCB Statute and subsequently criticised by the ECB in the Convergence Report of December 2004 (European Central Bank, 2004, p. 223). The provision was modified on 1 December 2005 but the new version was still found unsatisfactory in the ECB Convergence Reports (2006, p. 219); (2008, p. 236); (2010, p. 243).

¹¹⁰ Further studies were conducted by several scholars already in 1998 (Hahn, 1998; Herdegen, 1998).

¹¹¹ Also repeated in Article 282(2) TFEU and Article 2 of the Statute.

¹¹² The position was first taken in the ECB Convergence Report of 2004 (2004, p. 25). With some variations in presentational style, the same statements were repeated in the ECB Convergence Reports of May 2006 (2006, p. 62) and December 2006 (2006, p. 24), as well as in the report of May 2007 (2007, p. 16) and May 2008 (European Central Bank, 2008, p. 17).

¹¹³ However, the ECB continues to maintain its position; see the ECB Convergence Report of May 2010 (European Central Bank, 2010, p. 18).

¹¹⁴ Article 42.1 of the Statute, which provides that a derogation referred to in Article 139 TFEU (and that this shall entail that certain provisions do not confer any rights or impose any obligations on the Member State concerned), does not list Article 2 of the Statute; similarly there is no exemption regarding Article 282(2) TFEU.

¹¹⁵ It is noteworthy that while Article 4 of Protocol No 15 provides that, among other, Articles 127(1) to (5) TFEU and Article 282(2) TFEU, with the exception of the first and last sentences thereof, shall not apply to the United Kingdom, there is no such corresponding duty in Article 7 of Protocol No 15.

¹¹⁶ Article 11 of the United Kingdom NCB Statute. Notably, the Bank of England's objectives are not determined by the Bank itself but the Treasury under Article 12 of the United Kingdom NCB Statute.

¹¹⁷ Article 2(2) of the Austrian NCB Statute.

¹¹⁸ Article 12 of the Belgian NCB Articles of Association.

¹¹⁹ Article 5(2) of the Cypriot NCB Statute.

¹²⁰ Article 2(1) of the Finnish NCB Statute.

¹²¹ Article L 141-1 of the French NCB Statute.

¹²² Article 4(3) of the Greek NCB Statute.

Slovenia,¹²⁷ and Spain,¹²⁸ as well as conditionally Estonia,¹²⁹ and Lithuania,¹³⁰ refer to the Treaties and the Statute while addressing the functional independence. Against this background, it should be noted that such references were included in response to the advice of the ECB in its Convergence Reports.¹³¹ A simple reference to the maintenance of price stability, sometimes with a link to membership of the ESCB is made in the NCB Statutes of the Czech Republic,¹³² Germany,¹³³ Lithuania,¹³⁴ Slovakia,¹³⁵ and Sweden.¹³⁶

Some deviations with regard to the ESCB statutory objectives are currently present in the NCB Statutes of Bulgaria,¹³⁷ Estonia¹³⁸, Hungary,¹³⁹ Latvia,¹⁴⁰ Poland,¹⁴¹ and

¹²³ Article 1(3) of the Italian NCB Statute.

¹²⁴ Article 4 of the Maltese NCB Statute.

¹²⁵ Article 2 of the Dutch NCB Statute.

¹²⁶ Article 3(2) of the Portuguese NCB Statute.

¹²⁷ Article 4(2) of the Slovenian NCB Statute.

¹²⁸ Article 7(2) of the Spanish NCB Statute.

¹²⁹ See the new Article 2(1) of the Estonian NCB Statute, entering into force on a day provided by a Council decision on abrogation of the derogation.

¹³⁰ See the new Article 7(1) of the Lithuanian NCB Statute, entering into force on a day provided by a Council decision on abrogation of the derogation.

¹³¹ For Lithuania and Slovenia, see the ECB Convergence Report of May 2006 (European Central Bank, 2006, pp. 73, 76) respectively; for Cyprus and Malta, see the ECB Convergence Report of May 2007 (European Central Bank, 2007, pp. 74, 78) respectively.

¹³² Article 2(1) of the Czech Statute as amended by Section II of Act No 442/2000 Coll. However, it appears that Section II of the Act No 442/2000 actually did not repeal Article 2(1), which makes it difficult to understand which provisions remain valid.

¹³³ Article 3 read in conjunction with Article 12 of the German NCB Statute.

¹³⁴ Article 7 of the Lithuanian NCB Statute.

¹³⁵ Article 2 of the Slovak NCB.

¹³⁶ Article 2(2) of Chapter 1 of the Swedish NCB Statute.

¹³⁷ Article 2(1) of the Law on the Bulgarian National Bank stipulates that ‘the primary objective of the Bulgarian National Bank shall be to maintain price stability through ensuring the stability of national currency and implementing monetary policy as provided by this law’. [My emphasis – AT.] Under Article 2(2), the Bulgarian National Bank shall support the general economic policies in the Community.

¹³⁸ Until the date provided by a Council Decision on abrogation of the derogation, Article 2(1) of the Estonian NCB Statute stipulates that the primary objective of Eesti Pank is to ensure price stability; Eesti Pank shall regulate currency circulation both in Estonia and with other countries and seek to uphold the stability of national currency. However, the new Article 2(1) of the Estonian NCB Statute sets forth that the primary objective of Eesti Pank is to maintain price stability; Eesti Pank also supports the achievement of other economic policy objectives in accordance with the Treaty. [My emphasis – AT.] Article 4(4) of the Estonian NCB Statute provides that Eesti Pank shall, within the limits of its authority, support the economic policy of the Government provided that this policy is not in conflict with the objectives and functions of Eesti Pank provided by Article 2 and does not prevent Eesti Pank from performing them.

¹³⁹ Article 3(1) of the Hungarian NCB Statute sets forth that the primary objective of Magyar Nemzeti Bank shall be to achieve and maintain price stability; without prejudice to its primary objective, Magyar Nemzeti Bank shall support the economic policy of the Government. [My emphasis – AT.]

¹⁴⁰ Article 3 of the Latvian NCB Statute sets forth that the main objective of Latvijas Banka shall be to maintain price stability in the country.

¹⁴¹ Article 3(1) of the Polish NCB Statute sets forth that the primary objective of Narodowy Bank Polski shall be to maintain price stability and it shall at the same time act in support of the Government’s economic policies, insofar as this does not constrain pursuit of the main objective of Narodowy Bank Polski.

Romania,¹⁴² and it is arguable whether these provisions comply with the Treaties and the Statute.

Some of these examples require closer attention. The legal framework for a currency board arrangement focuses on the external stability of a currency, which differs from price stability under Article 127(1) TFEU and Article 2 of the Statute, and it is arguable whether the two can be linked together since the operational framework would be entirely different. A currency board is a special type of fixed exchange rate arrangement, which is based on strong explicit legislative commitment to a fixed exchange rate and the requirement that the domestic currency be issued only against foreign exchange [reserves].¹⁴³ The issuance of domestic currency is tied to the growth of foreign reserves in the currency board arrangement, and money supply becomes endogenous, resulting in automatic changes to central bank foreign reserves. A currency board arrangement is thus an extreme form of fixed exchange rate systems whereby irreversibility of commitment is secured by a legally fixed parity between the national currency and the reserve currency. As a currency board arrangement is rule-based, it is not affected by political pressures. The government cannot print money or borrow from the central bank to fund its budget deficit; thus, inflationary financing of government activities cannot take place.¹⁴⁴ A currency board arrangement does not enable any active measures for maintaining price stability. At the same time, the Eurosystem has made it clear that under no circumstances could a currency board substitute for the required ERM II membership¹⁴⁵ as an ‘antechamber’ to the euro;

¹⁴² Article 2(1) of the Romanian NCB Statute provides that the primary objective of the Banca Nationala a Romanei shall be to ensure and maintain price stability. Subsection (3) further stipulates that the Bank shall support the general economic policy of the State. [My emphasis – AT.]

¹⁴³ See Sepp, Lättemäe, & Randveer, 2002, p. 238.

¹⁴⁴ See Sepp, Lättemäe, & Randveer, 2002, p. 330. The downside, of course, is that inflation can be accelerated by private borrowing and that the central bank cannot really control it.

¹⁴⁵ Participation in the exchange rate mechanism (ERM) is voluntary for non-euro area Member States. However, as membership of ERM II is one of the convergence criteria for the eventual adoption of the euro, non-euro area Member States are expected to join the mechanism at some stage. For the currency of each Member State participating in the mechanism, a central rate against the euro and a standard fluctuation band of $\pm 15\%$ will be defined. Decisions on central rates and standard fluctuation bands must be taken by mutual agreement of the ministers of the euro area Member States, the ECB and the ministers and central bank governors of the non-euro area Member States participating in ERM II. In this regard, see the Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union, OJ C 73, 25.3.2006, p. 21, as last amended on 14 December 2007, OJ C 319, 29.12.2007, p. 7.

however, it could constitute an additional and unilateral commitment within ERM II.¹⁴⁶

The Bulgarian and Estonian legislators have, however, been confident that a currency board arrangement could be linked to the objective of price stability – it therefore comes as no surprise that the National Bank of Bulgaria intends to ‘maintain price stability through ensuring the stability of national currency’¹⁴⁷ or that until the adoption of the euro Eesti Pank’s duty to ‘ensure price stability’ and ‘uphold the stability of national currency’ are both referred to in the Estonian NCB Statute.¹⁴⁸ However, the Lithuanian legislation does not follow the above examples. What is surprising is that the Lithuanian NCB Statute does not contain any reference to a currency board arrangement and that the references to the obligation to ensure the stability of national currency were repealed upon the accession to the EU, while the currency board arrangement itself was kept.¹⁴⁹

In contrast, no reference to the maintenance of price stability or to the provisions of EU law is made in the Danish NCB Statute,¹⁵⁰ although Protocol No 16 on certain provisions relating to Denmark refers to Denmark as a Member State with a derogation and does not exempt Denmark from either Article 127 TFEU (or Article 282(2) TFEU) or Article 2 of the Statute.¹⁵¹

Under Article 127(1) TFEU, Article 282(2) TFEU and Article 2 of the Statute, the ESCB shall, without prejudice to the objective of price stability, 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 TEU – also often referred to as the secondary objectives. The Member States do not have a common implementing

¹⁴⁶ See Padoa-Schioppa, High-level seminar with the EU-candidate countries, 2000. Estonia and Lithuania kept their currency boards as a unilateral commitment in ERM II from 28 June 2004 and Latvia as of 29 April 2005. Bulgaria has not yet joined ERM II. See also “Policy position of the Governing Council of the ECB on exchange rate issues relating to the acceding countries” published on 18 December 2003, available at <https://www.ecb.int/pub/pdf/other/policyaccechangerateen.pdf> as well as point 4 in Frequently Asked Questions: EU enlargement and Economic and Monetary Union (EMU), available at <http://www.ecb.int/ecb/enlargement/html/faqenlarge.en.html> (visited on 6 September 2010).

¹⁴⁷ Article 2(1) of the Bulgarian NCB Statute.

¹⁴⁸ Article 2(1) of the Estonian NCB Statute.

¹⁴⁹ Article 7 of the Lithuanian NCB Statute was amended on 15 April 2004 in order to repeal the reference to the duty to achieve stability of the currency of the Republic of Lithuania and establish price stability as the bank’s primary objective. The earlier versions of the Lithuanian NCB Statute in English can be found at http://www3.lrs.lt/pls/inter2/dokpaieska.rezult_e?p_nr=I-678&p_kalb_id=2 (visited on 20 February 2010).

¹⁵⁰ Article 1 of the Danish NCB Statute.

¹⁵¹ The ECB is of the opinion that as long as Denmark does not notify the EU Council that it intends to adopt the euro, no Danish legislation needs to be adapted. For the latest statement, see the ECB Convergence Report of May 2010 (p. 16).

practice in this regard. While support for the general economic policies in the Union (formerly in the Community)¹⁵² [my emphasis – AT] is present in the current NCB Statutes of Austria,¹⁵³ Belgium,¹⁵⁴ Bulgaria,¹⁵⁵ the Czech Republic,¹⁵⁶ Finland,¹⁵⁷ Italy,¹⁵⁸ Luxembourg,¹⁵⁹ Malta,¹⁶⁰ the Netherlands,¹⁶¹ Slovenia,¹⁶² and the new NCB Statutes of Estonia¹⁶³ and Lithuania;¹⁶⁴ several NCB Statutes still provide for the support of national government: Cyprus,¹⁶⁵ France,¹⁶⁶ Germany,¹⁶⁷ Greece,¹⁶⁸ Hungary,¹⁶⁹ Lithuania,¹⁷⁰ Poland,¹⁷¹ Romania,¹⁷² and Spain.^{173, 174} No such provision can be found in the NCB Statutes of Denmark, Latvia and Sweden.

3.2.2 Institutional independence

3.2.2.1 *Background to institutional independence*

Institutional independence aims at institutionally separating the monetary policy decision making from the other executive branches of the State. For this reason, the ECB has been granted legal personality under Article 282(3) TFEU and independence in the exercise of its powers and the management of its finances. The principle of institutional independence for the NCBs is derived from Article 130 TFEU and Article 7 of the Statute. These two articles prohibit the NCBs and members of their

¹⁵² See also comments by Lenihan, specifying that, first, the ESCB has only one overriding objective, that, second, the secondary objective of the ESCB is to support the general economic policies (plural) in (rather than of) the Community and that, third, this support is general and not specific (Lenihan, 2006).

¹⁵³ Article 2(2) of the Austrian NCB Statute.

¹⁵⁴ Article 12 of the Belgian NCB Articles of Association.

¹⁵⁵ Article 2(2) of the Bulgarian NCB Statute.

¹⁵⁶ Article 1 of Section II of Act No. 442/2000 Coll.

¹⁵⁷ Article 2(2) of the Finnish NCB Statute.

¹⁵⁸ Article 1(3) of the Italian NCB Statute.

¹⁵⁹ Article 2(2) of the Luxembourg NCB Statute.

¹⁶⁰ Article 4 of the Maltese NCB Statute.

¹⁶¹ Article 2(2) of the Dutch NCB Statute.

¹⁶² Article 4(2) of the Slovenian NCB Statute.

¹⁶³ Article 2(1) of the new Estonian NCB Statute.

¹⁶⁴ Article 7(2) of the new Lithuanian NCB Statute.

¹⁶⁵ Article 5(2) of the Cypriot NCB Statute.

¹⁶⁶ Article L 141-1 of the French NCB Statute.

¹⁶⁷ Article 12 of the German NCB Statute.

¹⁶⁸ Article 4(2) of the Greek NCB Statute.

¹⁶⁹ Article 3(2) of the Hungarian NCB Statute.

¹⁷⁰ Article 7(2) of the Lithuanian NCB Statute.

¹⁷¹ Article 3(1) of the Polish NCB Statute.

¹⁷² Article 2(3) of the Romanian NCB Statute.

¹⁷³ Article 7(2) of the Spanish NCB Statute.

¹⁷⁴ The United Kingdom also belongs to the latter group but does not have to comply with Article 127 TFEU.

decision-making bodies from seeking or taking instructions from Union institutions and bodies, offices or agencies, from any government of a Member State or from any other body; in addition, they prohibit Union institutions and bodies, offices or agencies and the governments of the Member States from seeking to influence those members of the NCBs' decision-making bodies whose decisions may affect the fulfilment of the NCBs' ESCB-related tasks.¹⁷⁵ These two articles apply to the Member States with a derogation but not to the United Kingdom.¹⁷⁶ As a result, the United Kingdom NCB is the only member of the ESCB that is not subject to the central bank independence requirement.

Nowhere in the Treaties or the Statute has it been explicitly established that the NCBs shall be legal persons, although all members of the ESCB in fact have legal personality.¹⁷⁷ Each NCB of the Eurosystem has legal personality pursuant to the national law of its respective Member State.¹⁷⁸ The non-Eurosystem NCBs also have legal personality.¹⁷⁹ Separate legal personality is different from independence granted in the exercise of some delegated government functions.¹⁸⁰ Article 35.6 of the Statute, which places the NCBs under the jurisdiction of the Court of Justice of the European Union, clearly assumes that both the ECB and the other members of the ESCB (note that Article 35.6 of the Statute also applies to the Member States with a derogation as well as to the United Kingdom) are legal persons.

However, irrespective of whether an NCB is organised as a state-owned body, a special public law body or simply a public limited company, there is a risk that influence may be exercised by the owner, which is why the ECB has elaborated the following prohibitions to limit such influence:¹⁸¹

¹⁷⁵ Other authors have referred to this prohibition as “‘No’ to instructions and ‘Yes’ to dialogue” (Arda, 2006).

¹⁷⁶ See Articles 4 and 7 of Protocol No 15.

¹⁷⁷ Under Article 282(3) TFEU, the ECB shall have legal personality.

¹⁷⁸ Of all Eurosystem NCBs, the Banque Nationale de Belgique, the Banca d'Italia, the Bank of Greece and De Nederlandsche Bank NV are public limited companies, in which the State's share does not usually exceed 50%, except with regard to De Nederlandsche Bank NV, where it is 100% and the Banca d'Italia, which is currently in the process of raising the State's ownership to 100%. The other Eurosystem NCBs are regarded as public legal persons and are fully owned by the State.

¹⁷⁹ Most of them are regarded as public legal persons, except Magyar Nemzeti Bank, which is a public limited company.

¹⁸⁰ See Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 41.

¹⁸¹ See the ECB Convergence Report of May 2010 (pp. 19-20).

- 1) Rights of third parties to give instructions to NCBs, their decision-making bodies or their members are incompatible with the Treaties and the Statute as far as ESCB-related tasks are concerned;
- 2) Rights of third parties to approve, suspend, annul or defer NCBs' decisions are incompatible with the Treaties and the Statute as far as ESCB-related tasks are concerned;
- 3) A right for bodies other than independent courts to censor, on legal grounds, decisions relating to the performance of the ESCB-related tasks is incompatible with the Treaties and the Statute since the performance of these tasks may not be reassessed at the political level;¹⁸²
- 4) Participation by representatives of third parties in an NCB's decision-making body with a right to vote concerning the exercise by the NCB of ESCB-related tasks is incompatible with the Treaties and the Statute even if this vote is not decisive;
- 5) An express statutory obligation for an NCB to consult third parties ex ante provides the latter with a formal mechanism with which to influence the final decision and is therefore incompatible with the Treaties and the Statute; however, a dialogue between NCBs and third parties can be deemed compatible with the Treaties and the Statute.¹⁸³

The sixth element, 'discharge provided for the duties of members of the NCB's decision-making bodies' has been omitted from my research since it does not contain any direct prohibitions.

Lorenzo Bini Smaghi notes that institutional independence has to be guaranteed at the time when each country joins the European Union, rather than at the time when it joins the euro area.¹⁸⁴ However, the ECB Convergence Report 2004 found that in the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Sweden, incompatibilities persisted to a lesser or greater degree between national legislation and the Treaties and the Statute in the key area of central bank

¹⁸² This also concerns the right of the Governor to suspend the implementation of ECB legal instruments; see the ECB Convergence Report of May 2010 (p. 19).

¹⁸³ The criteria for compatibility are: (i) the consultation does not result in interference with the independence of the members of the NCB's decision-making bodies; (ii) the special status of Governors in their capacity as members of the ECB's General Council is fully respected; and (iii) confidentiality requirements resulting from the Statute are observed. See ECB Convergence Report, May 2010 (p. 19).

¹⁸⁴ See Bini Smaghi, *Central Bank Independence in the EU: From Theory to Practice*, 2008, p. 449.

independence.¹⁸⁵ By May 2006, Lithuania and Slovenia had removed all these incompatibilities,¹⁸⁶ followed by Estonia in December 2006,¹⁸⁷ Cyprus and Malta in May 2007,¹⁸⁸ and Slovakia in May 2008.¹⁸⁹

However, there are also a few negative examples that can be mentioned (1) with regard to the requirement for Magyar Nemzeti Bank to obtain opinion of the Hungarian Ministry of Justice ex ante on the basic tasks of the Bank;¹⁹⁰ and (2) with regard to the duty of forwarding draft monetary policy guidelines to the Government.¹⁹¹ These NCB obligations clearly undermine their institutional independence, as explained below.

3.2.2.2 Prohibition on giving or taking of instructions

Table 3-2 shows that the prohibition on giving or taking of instructions is present in almost all the NCB Statutes. The Danish, the Irish and the Polish NCB Statutes do not contain express prohibition, which would mean that in these cases Article 130 TFEU and Article 7 of the Statute and the subsequent interpretation of these articles would apply directly. Contrary to the spirit of the Treaties and the Statute, but in compliance with the United Kingdom's opt-out position, Article 19(1) of the United Kingdom NCB Statute authorises the Treasury to give instructions to the NCB.

The prohibition is mostly addressed to the NCBs and their decision-making bodies; only on rare occasions is the addressee just an NCB.¹⁹² Alternatively, an NCB decision-making body can be subject to the prohibition.¹⁹³

¹⁸⁵ ECB Convergence Report 2004 (p. 32).

¹⁸⁶ ECB Convergence Report, May 2006 (pp. 75-77).

¹⁸⁷ ECB Convergence Report, December 2006 (p. 38). This does not take account of Estonia's legal integration into the Eurosystem.

¹⁸⁸ ECB Convergence Report, May 2007 (pp. 73-81).

¹⁸⁹ ECB Convergence Report, May 2008 (p. 52).

¹⁹⁰ Paragraph 3.1.1 of ECB Opinion CON/2006/55 of 6 December 2006 at the request of the Hungarian Ministry of Finance on a draft law amending the Law LVIII of 2001 on Magyar Nemzeti Bank and the Law XI of 1987, available at http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2006_55_f_sign.pdf. See also the ECB Convergence Reports of 2004 and 2006 (p. 227) and (p. 222). The incompatibility has been addressed in the new Article 60(2) of the Hungarian NCB Statute; see footnote 206.

¹⁹¹ See footnotes 465 and 466.

¹⁹² Articles 3(1) and 3(1¹) of the Estonian NCB Statute, Articles 13(1) and 13(2) of the Latvian NCB Statute. Article 10(3) of the Estonian NCB Statute, which establishes the independence of the Governor and Deputy Governors, falls within the conflict of interest provisions and is only remotely connected with Article 130 TFEU (former Article 108 TEC) and Article 7 of the Statute.

¹⁹³ Article 2 of Chapter 3 of the Swedish NCB Statute.

The prohibition on giving or taking instructions from third parties has been expressed in several ways. Based on the text of the prohibitions, three options have been used: (1) transformation of the negative prohibition into a positive duty by establishing that ‘in implementation of the Treaty the NCB may seek and take instructions exclusively from the ECB’;¹⁹⁴ (2) copying the text of Article 130 TFEU and Article 7 of the Statute or referring to these Articles;¹⁹⁵ (3) establishing the prohibition in a primarily national context.¹⁹⁶

However, making such a distinction may be somewhat artificial – for example, Article 9(1) of the Czech NCB Statute as amended by Section II (c) of Act No 442/2000 Coll. provides that when exercising the powers and carrying out the tasks and duties conferred upon them by this Act, the Treaties and the Statute, neither the Czech National Bank, nor any member of its Bank Board shall seek or take instructions from the Community institutions or bodies, from any government of a Member State of the European Union or from any other entity. Therefore, one could assume that the Czech NCB Statute should belong to the second category listed above. However, since the amendment act did not repeal the text of Article 9(1) of the Czech NCB Statute, it would be more appropriate to list it in the third category.

Moreover, as the NCB Statutes do not follow uniform drafting, same legal provision can fall into several categories – for example Article 2(5) of the Austrian NCB Statute and Article 4(1) of the Finnish NCB Statute could well fall into the first as well as the second category. In substance, all the NCB Statutes that fell into at least one category have the aim of protecting the NCB against any external influence on the NCB and its decision-making bodies.

An interesting aspect with regard to the Czech NCB Statutes is the power of the Czech Parliament to instruct the Czech NCB to provide reports to the former under Article 3 of the Czech NCB Statute. The ECB notes in its Convergence Report of

¹⁹⁴ Article 3(1¹) of the Estonian NCB Statute; Article 4(1) of the Finnish NCB Statute; Article 1(2) of the Hungarian NCB Statute; Article 3(3) of the Dutch NCB Statute.

¹⁹⁵ (1) Article 2(5) of the Austrian NCB Statute; (2) Article 15 of the Belgian NCB Articles of Association; (3) Article 7 of the Cypriot NCB Statute; (4) Article 1(2) of the Hungarian NCB Statute; (5) Article 3(2) of the Lithuanian NCB Statute; (6) Article 5(2) of the Luxembourg NCB Statute; (7) Article 27(2) of the Portuguese NCB Statute; (8) Article 7(4) of the Spanish NCB Statute.

¹⁹⁶ (1) Article 44 of the Bulgarian NCB Statute; (2) Article 9(1) of the Czech NCB Statute; (3) Article 3(1) of the Estonian NCB Statute; (4) Article L 141-1 of the French NCB Statute; (5) Article 12 of the German NCB Statute; (6) Article 5A of the Greek NCB Statute; (7) Article 1(2) of the Italian NCB Statute; (8) Article 13 of the Latvian NCB Statute; (9) Article 5(2) of the Maltese NCB Statute; (10) Article 3(1) of the Romanian NCB Statute; (11) Articles 7(7) and 12(1) of the Slovak NCB Statute; (12) Article 2 of the Slovenian NCB Statute; (13) Article 2 of Chapter 3 of the Swedish NCB Statute.

May 2008 that these parliamentary powers could potentially breach the prohibition on giving instructions and that such a provision should be adapted.¹⁹⁷

Similarly, Article 11(3) of the Polish NCB Statute sets forth that the Governor of the Polish NCB shall represent the interests of the Republic of Poland within international banking institutions and, unless the Council of Ministers decides otherwise, within international financial institutions – this provision may be seen as a legal ground for the Government to instruct the Governor also in the ESCB decision-making bodies, which is why the ECB has suggested that the Polish law be adapted.¹⁹⁸

3.2.2.3 Prohibition on approving, suspending, annulling or deferring decisions

As shown in Table 3-3, there are three Member States that have maintained the right of a third party to approve, suspend, annul or defer NCBs' decisions. However, the Belgian NCB Statute exempts tasks and transactions within the domain of the ESCB¹⁹⁹ while Article 47(2) of the Greek NCB Statute does not.²⁰⁰ However, under Greek law, the State's commissioner's salary will be paid by the State,²⁰¹ while in Belgium it is paid by the NCB.²⁰² The situation is unclear with regard to France, where an observer appointed by the Government seems to have the power to veto the decisions adopted by the NCB's decision-making body.²⁰³

Furthermore, Article 47(5) of the Czech NCB Statute sets forth that if the Czech Parliament rejects the financial report of the Czech National Bank, the Czech National Bank shall within six weeks submit a revised report that complies with the requirements of Parliament. The ECB has noted that such parliamentary powers

¹⁹⁷ ECB Convergence Report, May 2010 (p. 239).

¹⁹⁸ ECB Convergence Report, May 2010 (p. 253).

¹⁹⁹ Article 22(1) of the Belgian NCB Statute (Article 41 of the Belgian NCB Articles of Association) provides that, except as regards the tasks and transactions within the domain of the ESCB, the representative of the Minister of Finance shall supervise the Bank's transactions and shall suspend and bring to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State.

²⁰⁰ Article 47(2) of the Greek NCB Statute stipulates that 'The Commissioner shall have the right to protest against any decision of either the General Meeting of Shareholders or the General Council, which he considers in conflict to this Statute or other laws of the State. Any such protest, if adopted by the Minister of Finance within two days, shall have the force of a suspensive veto until the question in dispute has been resolved by a Committee consisting of three persons, to be named within seven days on a request to that effect being made either by the Bank or the Government Commissioner; the Committee should report within seven days from nomination. The Committee shall consist of one representative of the Government, one representative of the General Council, and a Chairman, to be elected upon a mutual agreement of the Government and the Bank. Failing an agreement, Chairman shall be the President of the Supreme Court'.

²⁰¹ Article 47(1) of the Greek NCB Statute.

²⁰² Article 22(3) of the Belgian NCB Statute (Article 41 of the Belgian NCB Articles of Association).

²⁰³ Article L.142-3, II (4-5) of the French NCB Statute.

breach the prohibition on approving, annulling or deferring decisions, and recommended that the provision be adapted.²⁰⁴

Although also doubtful at first sight, the system under Article 11(3) of the Estonian NCB Statute, whereby if a Governor does not agree with a decision of the Supervisory Board of Eesti Pank, he shall report to the President of the Estonian Parliament within three working days and make a proposal to submit an interpellation in the matter to the Chairman of the Supervisory Board, does not violate the prohibition on approving, suspending, annulling or deferring decisions. The Estonian Parliament has only the power to ask the Chairman of the Supervisory Board to explain in public the nature of the supervisory decisions and this does not concern any of the Estonian NCB's daily activities.

3.2.2.4 Prohibition on censoring draft decisions on legal grounds

Legal provisions addressing the prohibition on censoring decisions on legal grounds have been introduced, to a varying degree, in the NCB Statutes of Belgium²⁰⁵ and Hungary.²⁰⁶ As is shown in Table 3-4, the other NCB Statutes remain silent on this issue.

3.2.2.5 Prohibition on participation in decision-making bodies of an NCB with a right to vote

The underlying principle for this prohibition is that participation by representatives of third parties in an NCB's decision-making body with a right to vote concerning the exercise by the NCB of ESCB-related tasks is incompatible with the Treaties and the Statute. At the moment, only the Danish NCB Statute contains provisions contrary to this principle.²⁰⁷

The participation by representatives of third parties in an NCB's decision-making body has been regulated in most of the NCB Statutes, as is apparent from Table 3-5, with the exception of Bulgaria, Cyprus, Finland, Germany, Ireland, Italy, Latvia,

²⁰⁴ ECB Convergence Report, May 2010 (p. 239).

²⁰⁵ See Article 22(1) of the Belgian NCB Statute and Article 41(1) of the Belgian NCB Articles of Association, where the exception only refers to ESCB-related activities. In this respect, certain provisions discussed in Section 3.2.2.3 with regard to Greece may be compared. However, there is no such limitation in the Greek law.

²⁰⁶ Article 60(2) of the Hungarian NCB Statute sets forth that the Minister responsible for justice affairs need not be consulted in the case of a decree of the Governor of the Bank.

²⁰⁷ Article 7 of the Danish NCB Statute; Articles 6 and 25 of the Danish NCB By-laws.

Lithuania, Malta, Portugal and the United Kingdom. The prohibition in a classical sense, i.e. the prohibition of a Minister or his representative from participating in a meeting with a right to vote, has been introduced into the NCB Statutes of the Czech Republic,²⁰⁸ Hungary,²⁰⁹ Luxembourg,²¹⁰ the Netherlands,²¹¹ Romania,²¹² Slovakia,²¹³ Slovenia²¹⁴ and Spain.²¹⁵

Third party representatives sometimes attend meetings of an NCB organ that is not responsible for monetary policy decisions. Such situations are regulated in the NCB Statutes of Austria,²¹⁶ Belgium,²¹⁷ Greece²¹⁸ and the Netherlands.²¹⁹ Of all these provisions, attention should be drawn to the NCB Statutes of Belgium, Greece and the Netherlands.

The NCB Statutes of Belgium, Greece and the Netherlands nonetheless require further analysis. The Belgian and Greek legal provisions and the potential veto powers of the Minister were addressed earlier under Section 3.2.2.3 and the arguments will therefore not be repeated here. However, a review of the Dutch NCB Statute²²⁰ raises different concerns. Under Article 14 of the Dutch NCB Statute the Minister does not participate directly in the meetings of the Dutch NCB decision-making bodies but has a representative whose authority to inform the Minister appears rather limited. In effect, a Supervisory Board member appointed by the Government has the right to collect information from the NCB and pass it on to the Minister. At the same time he has the conflicting duty under Article 14 of the Dutch NCB Statute to observe Article 130

²⁰⁸ Article 11(1) of the Czech NCB Statute.

²⁰⁹ Article 39(2) of the Hungarian NCB Statute.

²¹⁰ Article 9(5) of the Luxembourg NCB Statute.

²¹¹ Article 15(4) of the Dutch NCB Statute.

²¹² Article 33(10) of the Romanian NCB Statute.

²¹³ Article 8(4) of the Slovak NCB Statute.

²¹⁴ Article 33(1) of the Slovenian NCB Statute.

²¹⁵ Articles 20(3) and 20(4) of the Spanish NCB Statute.

²¹⁶ Article 40 of the Austrian NCB Statute.

²¹⁷ Articles 22(2) and 22(3) of the Belgian NCB Statute and Articles 41(2) of the Belgian NCB Articles of Association.

²¹⁸ Articles 47(1) and 47(2) of the Greek NCB Statute.

²¹⁹ Article 14(1) and 14(2) of the Dutch NCB Statute.

²²⁰ Under Article 13(2) of the Dutch NCB Statute, one member of the Supervisory Board shall be appointed by the Government. Under Article 14(1), this person acts on behalf of the Minister and may, either at the request of the Minister or at its own initiative, without prejudice to Article 108 of the Treaty, obtain from the Governing Board of the Bank data and information about the manner in which the Bank performs its tasks and to communicate his findings to the Minister. Article 14(2) further stipulates that the Governing Board and the Bank are under an obligation to provide the requested information, the exceptions being the date and information which is secret pursuant to the Treaty or the statutory regulations.

TFEU [former Article 108 TEC] and not to pass on confidential data under the Treaties and the Statute. The information that can be revealed in that manner could not possibly relate to ESCB-related tasks, which in turn makes it questionable whether there should be such an information duty at the Supervisory Board level at all. If, however, the Supervisory Board member has to act at Supervisory Board meetings as a representative of the Government and the Minister of Finance, it would be difficult for him to comply with Article 130 TFEU [former Article 108 TEC] and Article 7 of the Statute while at the same time exercising his voting rights at the Supervisory Board meetings. Similarly, there are provisions under the French law, which would enable an observer appointed by the Government to submit draft resolutions to an NCB's decision-making body.²²¹

Finally, there are provisions aimed at regulating the internal order of an NCB, enabling, for example, members of an executive organ to take part in a meeting of a supervisory organ or the other way around. Such provisions can be found in the NCB Statutes of Estonia,²²² Finland,²²³ Poland²²⁴ and Sweden.²²⁵

Under the Finnish NCB Statute the members of the Board shall have the right to be present and to be heard at meetings of the Parliamentary Supervisory Council; under the Swedish NCB Statute the Chairman and Vice-Chairman of the General Council have the right to be present at the Executive Board's meetings with the right to speak but without the right to make proposals or vote.

3.2.2.6 Prohibition on ex ante consultations of an NCB decision

The prohibition of an ex ante consultation of an NCB decision assumes that an express statutory obligation for an NCB to consult third parties ex ante provides the latter with formal mechanism to influence the final decision and is therefore incompatible with the Treaties and the Statute; however, a dialogue between NCBs and third parties can be deemed compatible with the Treaties and the Statute.²²⁶

²²¹ Article L.142-3, II (4-5) of the French NCB Statute.

²²² Article 9(5) of the Estonian NCB Statute.

²²³ Article 12(2) of the Finnish NCB Statute.

²²⁴ Article 15 of the Polish NCB Statute.

²²⁵ Article 3(3) of Chapter 3 of the Swedish NCB Statute.

²²⁶ See the ECB Convergence Reports of May 2010 (p. 19), May 2008 (p. 18), May 2007 (pp. 17-18), December 2006 (p. 25), May 2006 (p. 63), December 2004 (pp. 26-27). See also footnotes 183 and 458.

As is apparent from Table 3-6, the only Member State that has introduced an express statutory prohibition is Hungary.²²⁷ There are also four NCB Statutes that enable ex ante consultation by third parties, usually by the Minister of Finance.²²⁸ Article 3 of the Bulgarian NCB Statute needs to be especially outlined since it assumes that the Council of Ministers also has a role in formulating monetary policy, which in turn implies that the central bank is not independent. The problem could have been avoided by rephrasing the provision in a manner similar to Article 13(1) of the German NCB Statute, which provides that the Deutsche Bundesbank shall advise the Federal Government on monetary policy issues of major importance and shall furnish it with information on request.

Instead of a prohibition on ex ante consultation on an NCB decision, some NCB Statutes provide a cooperation mechanism between the NCB and the national government. This will be discussed in Section 3.3.1.2.

3.2.3 Personal independence

3.2.3.1 The concept of personal independence

The concept of personal independence is derived from the principle of central bank independence. It relates to the personal composition of the decision-making bodies of a central bank and the legal arrangements concerning the appointment, the duration of office, the duties of loyalty and non-competition, the possibility of reappointment, and dismissal of central bank officials.²²⁹

Article 283(2) TFEU [former Article 112(2)(b) TEC] and Article 11.2 of the Statute establish that 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 recognised standing and professional experience in monetary or banking matters on a recommendation from the Council²³⁰ after it has

²²⁷ Article 38 of the Hungarian NCB Statute.

²²⁸ (1) Article 3 of the Bulgarian NCB Statute; (2) Article 7 of the Danish NCB Statute; (3) Article 23(1) of the Polish NCB Statute; (4) Article 3 of Chapter 6 of the Swedish NCB Statute.

²²⁹ Some authors refer to 'personal independence' as 'organisational independence' (Kapteyn & VerLoren van Themaat, 2008, p. 954).

²³⁰ For example, Council Recommendation of 16 February 2010 on the appointment of the Vice-President of the European Central Bank, OJ C 52, 2.3.2010, p. 1.

consulted the European Parliament²³¹ and the Governing Council.²³² Carel C. A. van den Berg outlines three safeguards against the appointment of political ‘cronies’:

1. the appointment decision requires a qualified majority among the governments of the participating Member States;
2. the nominees have to be of a good professional reputation;
3. the ECB Governing Council has to be consulted.²³³

Article 283(2) TFEU [former Article 112(2)(b) TEC] and Article 11.2 of the Statute further stipulate that their term of office shall be eight years and shall not be renewable and only nationals of Member States may be members of the Executive Board. Non-renewability is one of the safeguards of personal independence, a unique figure in the constitutional structure of the EU as both the Commissioners, Judges of the Court of Justice as well as the members of the Court of Auditors can be reappointed.²³⁴ The length of the term of office for the Executive Board members has been explained as contributing to a so-called ‘Becket-effect’,²³⁵ which is indicative of the phenomenon that people tend to fairly quickly start defending the interests of the organisation that they have joined, especially when that organisation is independent.²³⁶ There is no upper age limit for the members of the Executive Board.

Pursuant to the second sentence of Article 11.1 of the Statute, the 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.

²³¹ The European Parliament has no power to enforce its decision or legally to prevent a nomination. However, it has been claimed that a candidate who fails to convince the European Parliament should not be acceptable, see Randzio-Plath, 2000, p. 13.

²³² For one of the recent consultations, see ECB Opinion CON/2010/19 of 4 March 2010 on a Council recommendation on the appointment of the Vice-President of the European Central Bank, OJ C 58, 10.3.2010, p. 3, also available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:058:0003:0003:EN:PDF>. Usually the ECB Governing Council states, after making reference to the eligibility criteria under Article 283(2) TFEU, that it ‘has no objections’ to the Council’s recommendation.

²³³ However, van den Berg seemed to assume that ‘common accord’ equals ‘unanimity’ (van den Berg, 2005, p. 122).

²³⁴ See Article 17(3) TEU, Article 17(7) TEU, Article 253 TFEU and Article 286(2) TFEU respectively.

²³⁵ The phrase refers to Thomas Becket who became Archbishop of Canterbury after having served as the King’s Chancellor of the Exchequer and his adviser. Once he had obtained the bishop’s position he became a relentless critic of the king’s usurpation of power (van den Berg, 2005, p. 122).

²³⁶ Van den Berg concludes that, in other words, they very quickly lose their loyalty to their former employer (van den Berg, 2005, p. 121).

Article 11.4 of the Statute sets forth that if a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice of the European Union (Court of Justice) may, on application by the Governing Council or the Executive Board, compulsorily retire him. Furthermore, Article 11.7 of the Statute provides that any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with Article 11.2 of the Statute.

3.2.3.2 *Notion of Governor*

Article 14.2 of the Statute provides that the NCB statutes must, in particular, provide for a minimum term of office of five years for the Governor; Governors may only be relieved from office if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct, with the possibility of recourse to the Court of Justice.

Article 130 TFEU [former Article 108 TEC] and Article 7 of the Statute which establish the basic principle of ESCB independence refer to ‘any members of decision-making bodies of national central banks’ and not to ‘Governors’.

Neither the notion of ‘Governor’, nor the conditions required for his performance are defined in EU law.²³⁷ The only criteria under Union law concerning a Governor could be determined by analogy with Article 283(2) TFEU [former Article 112(2)(b) TEC] and Article 11.2 of the Statute, which refer to a rather wide ‘recognised standing and professional experience in monetary or banking matters’; it is arguable whether this phrase indeed constitutes the ‘conditions required for the performance of his duties’ noted in Article 14.2 of the Statute. Therefore, Table 3-7 analyses the ways in which the Member States have responded to the text of Article 14.2 of the Statute.

It has been said that central bankers should have professional skills that correspond to their functions as well as ‘professional independence’ – the suitability of candidates would be enhanced by adequate tests of their experience, knowledge and ability to

²³⁷ The ECB acknowledges that Member States are free to set the conditions required for the appointment of the NCB Governing Council members; see paragraph 3.4 of ECB Opinion CON/2009/13 of 16 February 2009 at the request of the Bulgarian Ministry of Justice on a draft law supplementing the Law on Administration, available at http://www.ecb.int/ecb/legal/pdf/en_opinion_con_2009_13_bg_amending_law_on_administration.pdf.

implement central bank policies.²³⁸ The most common conditions required of a Governor as described in the NCB Statutes are:

1. Citizenship of a particular Member State;²³⁹
2. Full legal capacity;²⁴⁰ and
3. Either proof of higher (university) education²⁴¹ or high integrity and prominent qualifications in economics, finance or banking.²⁴²

Some NCB Statutes²⁴³ simply establish that the Governor shall meet the ‘expertise and qualifications required’ without providing any further specification. The Governor’s age-limits are regulated in five NCB Statutes,²⁴⁴ ranging from sixty-five

²³⁸ See Lastra R. M., *The Independence of the European System of Central Banks*, 1992, p. 482. Bini Smaghi notes that it is not sufficient for the person to have the necessary professional qualifications; he or she must also be perceived to have them by the public (Bini Smaghi, *Central Bank Independence in the EU: From Theory to Practice*, 2008, p. 451).

²³⁹ (1) Article 33(3) of the Austrian NCB Statute; (2) Article 29(1) of the Belgian NCB Articles of Association; (3) Article 11(2) of the Bulgarian NCB Statute; (4) Article 18(1) of the Cypriot NCB Statute; (5) Articles 6(7) and 6(8) of the Czech NCB Statute; (6) Article 3(2) of the Danish NCB Statute; (7) Article 10(2) of the Estonian NCB Statute; (8) Article 22(1) read in conjunction with Article 14 of the Greek NCB Statute; (9) Article 49(5) of the Hungarian NCB Statute; (10) Article 31 of the Latvian NCB Statute; (11) Article 10(2) of the Lithuanian NCB Statute; (12) Article 24(1) of the Spanish NCB Statute.

²⁴⁰ (1) Article 33(3) of the Austrian NCB Statute; (2) Article 14(f) of the Cypriot NCB Statute; (3) Articles 6(7) and 6(8) of the Czech NCB Statute; (4) Article 3(2) of the Danish NCB Statute; (5) Article 22(1) read in conjunction with Article 14 of the Greek NCB Statute; (6) Article 7(4) of the Slovak NCB Statute; (7) Chapter 3, Article 1(2) of the Swedish NCB Statute.

²⁴¹ (1) Articles 6(7) and 6(8) of the Czech NCB Statute; (2) Article 10(2) of the Estonian NCB Statute; (3) Article 7(4) of the Slovak NCB Statute. The Estonian NCB Statute was amended in the course of 2008 by removing the requirement of only a law or economics degree and establishing that any university degree would suffice. See ECB Opinion CON/2008/14 of 25 March 2008 at the request of Riigikogu on a draft law amending the Law on Eesti Pank. In addition, (1) Article 12(5) of the Bulgarian NCB Statute; (2) Article 14 of the Cypriot NCB Statute; (3) Articles L. 142-5(2) and L. 142-8(9),(10) of the French NCB Statute; (4) Articles 29(2) and 35A(4) of the Greek NCB Statute; (5) Article 58(5) of the Hungarian NCB Statute; (6) Article 14(1) of the Polish NCB Statute; (7) Article 61(2) of the Portuguese NCB Statute; and (8) Article 38(4) of the Slovenian NCB Statute can be interpreted as implicitly establishing the higher education requirement since holding a teaching post at a university or its equivalent usually implies that the holder has pursued a course of higher education.

²⁴² (1) Article 11(3) of the Bulgarian NCB Statute; (2) Article 18(1) of the Cypriot NCB Statute; (3) Articles 6(7) and 6(8) of the Czech NCB Statute; (4) Article 13(1) of the Finnish NCB Statute; (5) Article L. 142-3(3) of the French NCB Statute; (6) Article 7(2) of the German NCB Statute; (7) Article 35A(4) of the Greek NCB Statute; (8) Article 49(5) of the Hungarian NCB Statute; (9) Article 8(1) of the Maltese NCB Statute; (10) Article 7(4) of the Slovak NCB Statute; (11) Article 24(1) of the Spanish NCB Statute. An implicit requirement for the sound background can be drawn from Article 33(3) of the Austrian NCB Statute; Article 37 of the Belgian NCB Statute; the first part of Article 14 of the Cypriot NCB Statute; Article 58(1) of the Hungarian NCB Statute; Article 34(1) of the Romanian NCB Statute; and Article 7(6) of the Slovak NCB Statute, since these provisions describe offices indicating that the candidate could possibly be deemed suitable for the Governor’s position, such as positions in the civil service or judiciary authorities. This means that the criteria for these offices are considered to be equivalent to if not identical with those applying to the position of Governor.

²⁴³ See last sentence of Article 13(1) of the Finnish NCB Statute and the last sentence of Article 7(2) of the German NCB Statute. The lack of pre-determined criteria has raised concerns in Germany, especially after the appointment of Carl-Ludwig Thiele and Andreas Dombret, as reported by the *Frankfurter Allgemeine Zeitung* (Ruhkamp, 2010), referring to the paper of Emilie Yoo and Stefan Gerlach.

²⁴⁴ (1) Article 40 of the Belgian NCB Articles of Association and Article 27 of the Belgian NCB Statute; (2) Article 3(2) and 6(2) of the Danish NCB Statute; (3) Article L. 142-8 of the French NCB Statute; (4) Article 10(2) of the Lithuanian NCB Statute. Article 25(4)(c) of the Spanish NCB Statute establishes that reaching seventy years of age is the ground for leaving the office.

to seventy years. The range of issues subject to regulation by national law is broader than the provisions regulating the appointment of the Executive Board members, as discussed in Section 3.2.3.1 of this thesis.

Far more attention is paid to in the NCB Statutes factors that are incompatible with the Governor's working arrangements:

1. With the exception of research or pedagogical activities,²⁴⁵ having any position outside NCB as:
 - a. an elected politician, minister or civil servant in the public sector;²⁴⁶
 - b. a manager or employee in the private sector;²⁴⁷
2. Being sentenced to imprisonment;²⁴⁸
3. Being adjudicated on bankruptcy in the past;²⁴⁹ or
4. Having a conflict of interest in general.²⁵⁰

Sometimes, the NCB Statutes refer to Article 130 TFEU [former Article 108 TEC] and Article 7 of the Statute with regard to the Governor's personal independence.²⁵¹ It

²⁴⁵ (1) Article 12(5) of the Bulgarian NCB Statute; (2) the second part of Article 14 of the Cypriot NCB Statute; (3) Articles 29(2) and 35A(4) of the Greek NCB Statute; (4) Article 58(5) of the Hungarian NCB Statute; (5) Article 16(1) of the Lithuanian NCB Statute; (6) Article 34(4) of the Romanian NCB Statute; (7) Article 38(4) of the Slovenian NCB Statute. In addition to the exception for scientific and pedagogical activities, Article 6(6) of the Czech NCB Statute also exempts literary, journalistic and artistic activities as well as management of personal assets.

²⁴⁶ (1) Articles 33(3) of the Austrian NCB Statute; (2) Article 25 of the Belgian NCB Statute and Article 37 of the Belgian NCB Articles of Association; (3) the first part of Article 14 of the Cypriot NCB Statute; (4) Article 6(6) of the Czech NCB Statute; (5) Article L. 142-8 (9) (10) of the French NCB Statute; (6) Articles 22(1) and 35A(4) of the Greek NCB Statute; (7) Article 58(1) of the Hungarian NCB Statute; (8) Article 19(2) of the Irish NCB Statute; (9) Article 43(1) of the Italian NCB Statute; (10) Article 7(3) of the Luxembourg NCB Statute; (11) Article 14(1) of the Polish NCB Statute; (12) Article 34(1) of the Romanian NCB Statute; (13) Article 7(6) of the Slovak NCB Statute; (14) Article 38(4) of the Slovenian NCB Statute; (15) Chapter 3 Article 1(1) of the Swedish NCB Statute.

²⁴⁷ (1) Article 26(1) of the Belgian NCB Statute and Article 38(1) of the Belgian NCB Articles of Association; (2) the third part of Article 14 and Articles 19(1) and 19(2) of the Cypriot NCB Statute; (3) Article 6(6) of the Czech NCB Statute; (4) Article 6(2) of the Danish NCB Statute and Article 8(2) of the Danish NCB By-laws; (5) Articles 22(1) and 35A(4) of the Greek NCB Statute; (6) Article 17 of the Finnish NCB Statute; (7) Articles 58(2) and 58(3) of the Hungarian NCB Statute; (8) Articles 19(5), 19(6), 20(1), 20(2), 20(3), 20(4) and 20(4A) of the Irish NCB Statute; (9) Article 42(1) of the Italian NCB Statute; (10) Article 16(1) of the Lithuanian NCB Statute; (11) Article 8(4) of the Maltese NCB Statute; (12) Article 7(6) of the Slovak NCB Statute; (13) Article 38(4) of the Slovenian NCB Statute; (14) Article 26(1) of the Spanish NCB Statute; (15) Chapter 3 Article 1(1) of the Swedish NCB Statute.

²⁴⁸ (1) Article 11(4) of the Bulgarian NCB Statute; (2) Articles 6(7) and 6(8) of the Czech NCB Statute; (3) Article 22(1) read in conjunction with Article 14 of the Greek NCB Statute; (4) Article 7(4) of the Slovak NCB Statute; (5) Article 25(4) of the Spanish NCB Statute.

²⁴⁹ (1) Article 11(4) of the Bulgarian NCB Statute; (2) the third part of Article 14 of the Cypriot NCB Statute; (3) Article 22(1) read in conjunction with Article 14 of the Greek NCB Statute; (4) Chapter 3 Article 1(2) of the Swedish NCB Statute.

²⁵⁰ (1) Article 6(6) of the Czech NCB Statute; (2) Article 10(3) of the Estonian NCB Statute; (3) Article 17 of the Finnish NCB Statute; (4) Article 7(3) of the Luxembourg NCB Statute; (5) Article 34(2) of the Romanian NCB Statute; (6) Article 7(6) of the Slovak NCB Statute; (7) Article 38(4) of the Slovenian NCB Statute; (8) Articles 1(1) and 1(3) of Chapter 2 of the Swedish NCB Statute.

is questionable whether such a drafting technique aims at creating more legal certainty as it narrows the scope to the members of decision-making bodies, while EU law covers both the NCBs and their decision-making bodies.

Finally, Bini Smaghi has also raised the issue of whether political affiliations are of concern. He notes that problems may arise if the members of decision-making bodies have a political affiliation or have played an active political role prior to their appointment, or if they are expected to play such a role afterwards.²⁵² However, political affiliations, or absence of them, cannot be regulated by law and, as far as I am aware, none of the reviewed NCB Statutes contains such clauses. Rather, Bini Smaghi's point is addressing a political culture which should be observed by the members of the ESCB decision-making bodies and respected by third parties.

3.2.3.3 Appointment procedure and term of office

Table 3-8 illustrates the procedures conducted at the national level. The most extensive regulations regarding the Governor's appointment procedure are found in the Slovenian NCB Statute, where six paragraphs regulate the procedure of nomination. The same amount of legislative text is dedicated to the potential Governor's security vetting in the Estonian NCB Statute.

In principle, ethical considerations can be taken into account in the recruitment process, such as (i) investigating the background; (ii) issuing security clearance for positions representing a potential risk to national security; (iii) checking criminal records; (iv) evaluating candidate's ethical standards during the interviews.²⁵³

It may be mandatory in one Member State for a vacancy to be announced publicly,²⁵⁴ while in another Member State exactly the opposite is true.²⁵⁵ However, in general the NCB Statutes tend to be rather brief as far as the appointment procedure is concerned.

²⁵¹ Article 7(3) read in conjunction with Article 5(2) of the Luxembourg NCB Statute; Article 7(7) of the Slovak NCB Statute;

²⁵² Bini Smaghi refers to examples of political affiliation of central bank Governors or board members being used by other institutions or political parties as an excuse to put pressure on the central bank, especially after a change in government. He explains that the ability of the central bank to speak out, if necessary, in critical terms with respect to economic and budgetary policies might be impaired if the Governor, or other members of the board, are perceived to have a political affiliation, as this might be interpreted as political interference rather than fair judgement (Bini Smaghi, *Central Bank Independence in the EU: From Theory to Practice*, 2008, pp. 451-452).

²⁵³ OECD, 2000, p. 44.

²⁵⁴ Article 33(8) of the Romanian NCB Statute; Article 37(2) of the Slovenian NCB Statute.

²⁵⁵ See Article 13(1) of the Finnish NCB Statute.

The Governors are usually appointed by the Head of State²⁵⁶ (such as the King, Grand Duke or President) by virtue of a decree,²⁵⁷ and only on a few occasions is the Governor appointed by the Government.²⁵⁸ However, there are seven Member States in which the Governor is appointed by the national Parliament or its sub-committee.²⁵⁹ With the exception of Sweden, all those parliamentary appointment systems are represented by the new Member States. Lastra has raised some concerns over this trend; however, it is arguable whether appointment by an authority other than the Parliament would address the democratic deficit concern.²⁶⁰

As a rule, Governors should have a sufficiently long term of office to safeguard independence and to avoid political influence and short-term perspectives; tenure longer than that of legislators serves these ends.²⁶¹ In general, the term of office for the Governors complies with Article 14.2 of the Statute in all Member States. In Austria, Belgium, Cyprus, Lithuania, Malta, Portugal Romania and Slovakia the term of office is five years.²⁶² Article 14.2 of the Statute should not be interpreted as prohibiting longer terms of office or an indefinite period of office.²⁶³ However, legislative

²⁵⁶ (1) Article 33(2) of the Austrian NCB Statute; (2) Articles 34(1) of the Belgian NCB Articles of Association and Article 23(1) of the Belgian NCB Statute; (3) Article 18(1) of the Cypriot NCB Statute; (4) Article 6(2) of the Czech NCB Statute; (5) Article 6(1) of the Danish NCB Statute and Article 8(1) of the Danish NCB By-laws; (6) Article 10(1) of the Estonian NCB Statute; (7) Article 13(1) of the Finnish NCB Statute; (8) Article 7(3) of the German NCB Statute; (9) Article 29(1) of the Greek NCB Statute; (10) Article 50(3) of the Hungarian NCB Statute; (11) Article 19(1) of the Irish NCB Statute; (12) Article 17(1) of the Italian NCB Statute; (13) Article 12(2) of the Luxembourg NCB Statute; (14) Article 8(1) of the Maltese NCB Statute; (15) Article 12(2) of the Dutch NCB Statute and Article 6(6) of the Dutch NCB Articles of Association; (16) Article 7(2) of the Slovak NCB Statute; (17) Article 24(1) of the Spanish NCB Statute.

²⁵⁷ Only Article 33(8) of the Romanian NCB Statute provides that such documents are to be published in the *Monitorul Oficial al României*, Part One.

²⁵⁸ Article L. 142-8 of the French NCB Statute; Article 27 of the Portuguese NCB Statute.

²⁵⁹ (1) Article 12(1) of the Bulgarian NCB Statute; (2) Article 22(1) of the Latvian NCB Statute; (3) Article 10(4) of the Lithuanian NCB Statute; (4) Article 9(1) of the Polish NCB Statute; (5) Article 33(3) of the Romanian NCB Statute; (6) Article 35 of the Slovenian NCB Statute; (7) Chapter 1 Article 4(1) of the Swedish NCB Statute.

²⁶⁰ Lastra argues that there may nevertheless be undesirable results if parliament is dominated by the Executive – the political party in power – it might be tempted to make appointments purely on the basis of political patronage or by willingness to adhere to the government’s economic policy, thereby undermining the purpose of independence (Lastra R. M., *The Independence of the European System of Central Banks*, 1992, p. 483).

²⁶¹ See Lastra R. M., *The Independence of the European System of Central Banks*, 1992, p. 484.

²⁶² (1) Article 33 of the Austrian NCB Statute; (2) Article 23(1) of the Belgian NCB Statute and Article 34(1) of the Belgian NCB Articles of Association; (3) Article 18(3) of the Cypriot NCB Statute; (4) Article 10(4) of the Lithuanian NCB Statute; (5) Article 8(1) of the Maltese NCB Statute; (6) Article 33(2) of the Portuguese NCB Statute; (7) Article 33(4) of the Romanian NCB Statute; (8) Article 7(4) of the Slovak NCB Statute; (9) Article 1(1) of Schedule 1 of the United Kingdom NCB Statute.

²⁶³ See paragraph 8 of ECB Opinion CON/2004/16 of 11 May 2004 at the request of the Italian Ministry of Economic Affairs and finance on a draft law on the protection of savings, available at http://www.ecb.eu/ecb/legal/pdf/en_con_2004_16_f_sign.pdf.

provisions providing for terms shorter than five years need to be amended.²⁶⁴ A term of six years is provided for in the NCB Statutes of Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Latvia, Poland, Slovenia, Spain and Sweden.²⁶⁵ Seven years of office is provided for the NCB Governors of Estonia, Finland and the Netherlands.²⁶⁶ The German NCB Statute foresees a term of office of eight years or, in exceptional circumstances, a term of office of five years.²⁶⁷ The Danish NCB Statute sets forth that the Governor's term is unlimited.²⁶⁸

Upon entering into office, some NCB Statutes make provision for the Governor to take an oath.²⁶⁹ As a rule, an oath concerns the duty of loyalty and secrecy and, as such, is referred to in the NCB Statutes in a rather general manner. However, the Luxembourg and the Polish NCB Statutes stipulate the exact text of the oath, which in the latter case was also criticised by the ECB for its concentration on national issues.²⁷⁰ While the ECB's criticism of the Polish NCB Statute is well founded, it is true that none of the assessed NCB Statutes focuses particularly on ESCB-related issues.²⁷¹ One could therefore argue that Article 14.3 of the Statute and, in a more general context, Article 130 TFEU [former Article 108 TEC] and Article 7 of the Statute, will be better enforced if the national authorities taking the oath also

²⁶⁴ See Paragraph 7 of EMI Opinion CON/97/10 of 30 May 1997 at the request of the German Minister of Finance on the Draft 6th Act amending the Bundesbank Act, available at http://www.ecb.europa.eu/ecb/legal/pdf/en_con_97_10.pdf. In cases in which a person is appointed for the outstanding period of the term of office of a Governing Council member whose duties have ceased, in which case the term of office can also be less than five years, the ECB has recommended aligning the wording of the law with Article 14.2 of the Statute. See the ECB Convergence Report of May 2010 (p. 254).

²⁶⁵ (1) Article 12(4) of the Bulgarian NCB Statute; (2) Article 6(5) of the Czech NCB Statute; (3) Article L. 142-8 of the French NCB Statute; (4) Article 29(1) of the Greek NCB Statute; (5) Article 50(3) of the Hungarian NCB Statute; (6) Article 24(6) of the Italian NCB Statute; (7) Article 22(3) of the Latvian NCB Statute; (8) Article 12(2) of the Luxembourg NCB Statute; (9) Article 9(2) of the Polish NCB Statute; (10) Article 35 of the Slovenian NCB Statute; (11) Article 25(1) of the Spanish NCB Statute; (12) Chapter 1, Article 4(1) of the Swedish NCB Statute.

²⁶⁶ (1) Article 10(1) of the Estonian NCB Statute; (2) Article 13(1) of the Finnish NCB Statute; (3) Article 12(2) of the Dutch NCB Statute and Article 6(6) of the Dutch NCB Articles of Association.

²⁶⁷ Article 7(3) of the German NCB Statute.

²⁶⁸ Article 9(1) of the Danish NCB By-laws.

²⁶⁹ (1) Articles 13(1) and 13(2) of the Bulgarian NCB Statute; (2) Article 26 of the Cypriot NCB Statute; (3) Article 22(5) of the Greek NCB Statute; (4) Article 49(7) of the Hungarian NCB Statute; (5) Article 12(5) of the Luxembourg NCB Statute; (6) Article 9(3) of the Polish NCB Statute.

²⁷⁰ The ECB has noted that Article 9(3) of the Polish NCB Statute does not take the Polish NCB's participation in the ESCB into account since the text of the oath refers to 'the economic development of our nation and the well-being of its citizens' (European Central Bank, 2004, p. 230).

²⁷¹ Against this background it should be noted that both Greece and Luxembourg are 'old' Member States and their legislation had to be compatible by the date of establishment of the ESCB.

recognise the Governor's duties as a member of the Governing Council and the General Council.²⁷²

Reappointment of the Governor is possible in 15 Member States,²⁷³ while it is prohibited in two.²⁷⁴ There appears to be no correlation between the length of the period in office and the possibility for the Governor to be reappointed. The Governor's terms of office in Estonia and Spain are seven and six years respectively. However, there are eight Member States that allow Governors to be reappointed after six or more years in office.²⁷⁵ Five-year terms can be renewed under the NCB Statutes of eight Member States.²⁷⁶ The legislation is unclear with regard to reappointment in the remaining Member States.

3.2.3.4 *Duty of loyalty*

A Governor is expected to comply with the duty of loyalty during his term of office. The duty of loyalty could be described as a sum of several types of loyal conduct, such as proper case, due diligence, duty to act *bona fide*, etc.²⁷⁷ Pursuant to Article 2 of the Code of Conduct,²⁷⁸ the Members of the Governing Council are expected to observe the highest standard of ethical conduct, to act honestly, independently and

²⁷² This double reference may be necessary as Article 14.3 of the Statute applies only to the Eurosystem NCBs. For the Governors of non-Eurosystem NCBs a possible solution would be to refer to their status as a member of a ESCB decision-making body, such as the General Council.

²⁷³ (1) Article 33(2) of the Austrian NCB Statute; (2) Article 34(1) of the Belgian NCB Articles of Association and Article 23(1) of the Belgian NCB Statute; (3) Article 6(4) of the Czech NCB Statute; (4) Article 13(3) of the Finnish NCB Statute; (5) Article L. 142-8 of the French NCB Statute; (6) Article 19(4) of the Irish NCB Statute; (7) Article 24(6) of the Italian NCB Statute; (8) Article 10(6) of the Lithuanian NCB Statute; (9) Article 12(2) of the Luxembourg NCB Statute; (10) Article 8(1) of the Maltese NCB Statute; (11) Article 9(2) of the Polish NCB Statute; (12) Article 33(2) of the Portuguese NCB Statute; (13) Article 33(4) of the Romanian NCB Statute; (14) Article 7(4) of the Slovak NCB Statute; (15) Article 35 of the Slovenian NCB Statute.

²⁷⁴ Article 10(1) of the Estonian NCB Statute; Article 25(1) of the Spanish NCB Statute.

²⁷⁵ (1) Articles 6(4) and 6(5) of the Czech NCB Statute; (2) Articles 13(1) and 13(3) of the Finnish NCB Statute; (3) Article L. 142-8 of the French NCB Statute; (4) Article 19(4) of the Irish NCB Statute; (5) Article 24(6) of the Italian NCB Statute; (6) Article 12(2) of the Luxembourg NCB Statute; (7) Article 9(2) of the Polish NCB Statute; (8) Article 35 of the Slovenian NCB Statute.

²⁷⁶ (1) Article 33(2) of the Austrian NCB Statute; (2) Article 34(1) of the Belgian NCB Articles of Association and Article 23(1) of the Belgian NCB Statute; (3) Article 18(3) of the Cypriot NCB Statute; (4) Articles 10(4) and 10(6) of the Lithuanian NCB Statute; (5) Article 8(1) of the Maltese NCB Statute; (6) Article 33(2) of the Portuguese NCB Statute; (7) Article 33(4) of the Romanian NCB Statute; (8) Article 7(4) of the Slovak NCB Statute.

²⁷⁷ The duties of Governors are in essence very similar to those of company directors, and in fact some of the NCBs are established as companies under national law. An extensive survey with regard to EU company law has been carried out by Eric Werlauff (Werlauff, 2003).

²⁷⁸ Code of Conduct for the Members of the Governing Council, OJ C 123, 24.5.2002, p. 9. The Code was amended by another Memorandum of Understanding of 21 December 2006. The Code is without prejudice to other rules of conduct addressed to NCB Governors and the Code of Conduct of the European Central Bank that gives guidance to the members of the Executive Board of the ECB.

impartially, and to avoid any situation that might give rise to a personal conflict of interest.

The duty of loyalty can be divided into a positive and a negative aspects; these aspects can be further divided into material and formal criteria.

The positive aspect is that the person is to promote the ESCB/NCB and must act in diligent and prudent manner. The positive aspect means that Governor must act to promote the interests of the ESCB and the NCB.²⁷⁹ Under Article 2 of the Code of Conduct, the Governors are expected to be mindful of the importance of their duties and responsibilities, to take into account the public character of their function and to conduct themselves in a way that maintains and promotes the public's trust in the ECB. This would imply that the Governor is under an obligation to be active and participate at the Governing and General Council meetings; if he cannot attend personally, he must appoint an alternate. Pursuant to Article 10.2 of the Statute, the NCB Governors participate *ad personam* at the Governing Council meetings and vote in their personal capacity, except in cases referred to in Article 10.3 of the Statute, where the Governors as representatives of their respective NCBs decide upon the issues related to the shareholdings.²⁸⁰

There is another positive duty concerning professional secrecy. Under Article 5 of the Code of Conduct, the members of the Governing Council shall take all necessary measures to ensure that the persons having access to their information also respect the professional secrecy obligations imposed by Article 37 of the Statute [former Article 38 of the Statute]. Pursuant to Article 37 of the Statute, the obligation of professional secrecy for ECB and NCB staff also applies to the Governors. Article 5 of the Code of Conduct stipulates that professional secrecy requires the non-divulgence of confidential information; this shall be taken into account in particular in public speeches or statements and in relations with media with regard to monetary policy decisions that have not yet been officially disclosed to the public.

The negative aspect of the duty of loyalty is that the person shall refrain from damaging the ESCB/NCB and has to keep secret all confidential information. It also means that Governors must refrain from any action that is incompatible with their

²⁷⁹ Under Article 14.3 of the Statute, the NCBs are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB.

²⁸⁰ This has also been described as a "one person-one vote rule" (Servais, 2006, p. 251).

duties and that may have a damaging effect on the ESCB and their respective NCBs.²⁸¹ Several NCB Statutes have either listed sanctions or references to the sanctions for the breach of the duty of confidentiality.²⁸²

Under Article 3.3 of the Code of Conduct, respect for the principle of independence is incompatible with applying for, receiving or accepting from any source except from within the ESCB any benefits, rewards, remuneration or gifts in excess of EUR 200, whether financial or non-financial, which are connected in any way whatsoever with the function as a member of the Governing Council. However, under Article 3.4 of the Code of Conduct, they may accept invitations to conferences,²⁸³ receptions or cultural events and connected entertainment, including appropriate hospitality, if their participation in the event is compatible with the fulfilment of their duties as members of the Governing Council. In this respect, they may accept refunding by the organisers of travel and accommodation expenses commensurate with the duration of their commitment except when the organisers are institutions under their supervision. In particular, members of the Governing Council should observe special prudence with regard to individual invitations. Article 3.4 further states that the above rules should apply equally to their spouses or partners if the invitations are also extended to them and if their participation is consistent with internationally accepted custom. One would therefore argue that willingness to use the office to confer benefits on personal

²⁸¹ By comparison, the individual Commissioners must perform their duties in complete independence and in the general interest of the Union. They must refrain from any action incompatible with their duties. When taking up office, Members of the Commission are required to give the solemn undertaking that both during and after their term of office, 'they will respect the obligations arising there from and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits'. Any failure to meet these standards can potentially lead to significant damage to the public image of the institution and undermine confidence in it, which in turn will diminish its efficacy. This was demonstrated by the effects of the events leading up to the collective resignation of the Santer Commission in 1999. See Case C-432/04, opinion of Mr Advocate General Geelhoed, paragraphs 74 and 74. However, Mastroianni and Arena point out that this procedure is not subject to the same rules as *disciplinary proceedings*, involving an official or servant of the Union and that, accordingly, solutions applied in the latter cannot be applied to this case, thereby forming a *sui generis* type of personal legal responsibility (Mastroianni & Arena, 2008, p. 1222).

²⁸² (1) Article 35 of the Belgian NCB Statute and Article 56 of the Belgian NCB Articles of Association; (2) Article 35(3) of the Estonian NCB Statute, (3) Articles 55C(5), 55C(6) and 55(7) of the Greek NCB Statute; (4) Article 33(1) of the Luxembourg NCB Statute, (5) Article 52 of the Romanian NCB Statute, (6) Article 6 of the Spanish NCB Statute, and (7) Schedule 7 of the UK NCB Statute.

²⁸³ However, under Article 3.5 of the Code of Conduct, members of the Governing Council shall not accept for themselves fees for lectures and speeches undertaken in their official capacity as members of the Governing Council.

acquaintances would also clearly constitute breach of the obligations arising from the office.²⁸⁴

These negative and positive aspects form a material criterion; the formal criterion in turn requires disclosure of transactions that might constitute a conflict of interest, and the person involved must abstain from the decision-making process.²⁸⁵

Making the Governors subject to a requirement to submit a wealth declaration is in principle acceptable.²⁸⁶ A study carried out for the European Commission Bureau of European Policy Advisers reveals that with regard to the registers and financial disclosure policies of NCBs and the ECB, only 10 of them have a register for declarations (Bulgaria, France, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Romania, Spain) while the others do not, including the ECB; the duty to declare the financial interests nonetheless seems to exist.²⁸⁷

The NCB Statutes of Hungary and Spain provide for the Governor's duty to provide a wealth declaration.²⁸⁸ However, in cases where Governors fail to provide or update their declaration of wealth, the issue is whether the Governor can be dismissed as a result.²⁸⁹

The Code of Conduct aims at the same objectives as any national anti-corruption mechanism. Articles 2, 3.3, 3.4, 3.5 and 3.6 stipulate that the members of the Governing Council shall observe the highest standard of ethical conduct and shall not

²⁸⁴ See Case C-432/04 Commission of the European Communities v Édith Cresson [2006] ECR I-6387, opinion of Mr Advocate General Geelhoed delivered on 23 February 2006, paragraph 120. Article 4.1 of the Code of Conduct provides that the members of the Governing Council shall avoid any situation liable to give rise to a conflict of interests; a conflict of interest arises where the members of the Governing Council have private or personal interests which may influence or appear to influence the impartial and objective performance of their duties; private or personal interests of the members of the Governing Council mean any potential advantage for themselves, their families, their other relatives or their circle of friends and acquaintances.

²⁸⁵ Criminal legislation constitutes the 'teeth' of the overall ethics infrastructure; penal codes determine the baseline by defining the types of misconduct that are not acceptable in the public service. It is noted that all OECD countries impose sanctions on corrupt behaviour by public officials. See OECD, 2000, p. 61.

²⁸⁶ See Paragraph 3.1.2 of ECB Opinion CON/2006/55.

²⁸⁷ See Demmke, et al., 2007, pp. 78, 83-84.

²⁸⁸ Article 58A(1) of the Hungarian NCB Statute, Article 28(2) of the Spanish NCB Statute. Other NCB Statutes either refer to other laws governing prevention of corruption or are silent on the matter.

²⁸⁹ For example, Article 39a of the Slovenian NCB Statute provides that sanctions of early termination of office shall not apply to the Governing Board of Banka Slovenije. The ECB Convergence Report of May 2006 noted that the Slovenian law on prevention of corruption no longer applies to members of the Governing Board of Banka Slovenije (European Central Bank, 2006, p. 76). On a similar occasion, the ECB invited the national legislator to take full account of Article 108 of the Treaty and Article 14.2 of the Statute. See Paragraph 3.1.2 of ECB Opinion CON/2006/55. See also paragraphs 3.2 and 3.3 of ECB Opinion CON/2010/27 of 29 March 2010 on a new legal framework concerning integrity and prevention of corruption as regards its application to Banka Slovenije and its decision-making bodies, available at http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2010_27_f_sign.pdf.

accept any payments, benefits, rewards or excessive gifts, and that each Governor is obliged to provide the President of the ECB with the list of his/her external mandates.

Considering the above, one may wonder whether the addressees of the duty of loyalty would be the ESCB the ECB or the respective national authorities. It may well be that the beneficiaries of the duty of loyalty would be the ESCB and the NCB. The issue is whether the Governors are required to exercise their functions bona fide in the interest of the NCB or some other organ or authority. Article 3.2 of the Code of Conduct sets forth that the members of the Governing Council shall act in the general interest of the euro area; for decisions to be taken in accordance with Article 10.3 of the Statute, the Governors may also take into account the interest of their respective NCB as shareholder.

If the Governors owe their duties to the ESCB that would safeguard the well-being of their respective NCB as a member of the ESCB and follow the principle that monetary policy should be decided at the supranational level. However, it is arguable whether there is an accountability mechanism at the ESCB-level for the duty of loyalty. On the other hand, the Governors would continue to owe their duties to Member States that have appointed them as Governors. It is arguable whether this would imply that the national interest, and not those of the Eurosystem or ESCB prevail. After all, the Member States have decided to form a monetary union and the officials appointed to govern the institutions of the monetary union should not operate in isolation, without any accountability to the Member States. I would therefore support the idea that although the Governors have to act in the best interests of the ESCB, they still remain accountable to the national institutions, as discussed in Section 3.3.1.

It is arguable whether the Governors owe a duty of loyalty towards the general public because the general public has no direct connection to or interest in an NCB.²⁹⁰ The general public is an abstract notion that cannot be determined individually as, for example, Member States which have representative organs; it is therefore difficult to argue that there is a duty of loyalty towards the general public. It can be assumed that

²⁹⁰ At the same time, the general public is entitled to access ECB documents under Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents, OJ L 80, 18.3.2004, p. 42 (the ECB Public Access Decision). Article 2(1) of the ECB Public Access Decision provides that 'any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State has a right of access to ECB documents, subject to the conditions and limits defined in this Decision'. Article 2(2) of the ECB Public Access Decision extends the scope of beneficiaries outside the European Union.

in the long run the general public benefits from the Governors' duty of loyalty to the ESCB as the maintenance of price stability is clearly in their interests. There remains, however, the obligation to be transparent, which is discussed in Section 3.3.2.

There is no expressed time limit for the duty of loyalty;²⁹¹ the duty to keep confidential certain information therefore basically applies without a time limit. Article 37.1 of the Statute sets forth that members of the governing bodies and the staff of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy. The indefinite duration of the duty of confidentiality is expressly mentioned in several NCB Statutes.²⁹² However, as the information that was originally confidential tends to lose its value over time, one could assume that at some point in time this duty loses its meaning, although formally continuing to apply.

3.2.3.5 Duty of non-competition

As noted earlier, it is incompatible with the Governor's position for him/her to hold any position outside NCB,²⁹³ with the exception of research or pedagogical activities.²⁹⁴ The duty of non-competition is an obligation that is derived from the duty of loyalty and has no express legal basis in the Treaties or Statute. The timing aspect of the duty of non-competition, which has a pre-defined term, differentiates it from the duty of loyalty, which is in principle indefinite.²⁹⁵ The material criterion of the duty of non-competition consists of a negative aspect and a positive aspect.

²⁹¹ Werlauff has noted that the duty of secrecy will survive the termination of the office of the member in question and since there is no time limit under Union company law, the duty is in principle applicable indefinitely, although the period of time which has passed may, of course, indicate that the information is no longer confidential (Werlauff, 2003, p. 405).

²⁹² (1) Article 45 of the Austrian NCB Statute; (2) Article 23 of the Bulgarian NCB Statute; (3) Article 25(1) of the Cypriot NCB Statute; (4) Article 50(1) of the Czech NCB Statute; (5) Article 35(2) of the Estonian NCB Statute; (6) Articles 35A(5) and 55C(4) of the Greek NCB Statute; (7) Article 54(1) of the Hungarian NCB Statute; (8) Article 33AK(1) of the Irish NCB Statute; (9) Article 33 of the Latvian NCB Statute; (10) Article 19(1) of the Lithuanian NCB Statute; (11) Article 33(1) of the Luxembourg NCB Statute; (12) Article 55 of the Polish NCB Statute; (13) Article 52(1) of the Romanian NCB Statute; (14) Article 41 of the Slovak NCB Statute; (15) Article 47(1) of the Slovenian NCB Statute; and (16) Article 6(1) of the Spanish NCB Statute.

²⁹³ See footnotes 246 and 247.

²⁹⁴ See Articles 3.1 and 3.4 of the Code of Conduct. Article 3.5 of the Code of Conduct sets forth that members of the Governing Council shall not accept fees for lectures and speeches undertaken in their official capacity as members of the Governing Council. For the respective national legislation, see footnote 245.

²⁹⁵ See Tupits, *The Duties and Liabilities of Directors under EU Company Law*, 2000, p. 404. One could argue that it is not proper to refer to the duty of non-competition where it is unlikely that a Governor would take a position in another central bank (even for the ECB, a Governor has to resign from his position first in order to take up an appointment as a member of the Executive Board). However, there is no better definition currently available.

The positive aspect means that a Governor may be involved outside the NCB in research or pedagogical activities. The negative aspect provides that a Governor may not exercise his/her activities outside the NCB as a Governor of the NCB. Under Article 3.4 of the Code of Conduct, members of the Governing Council may accept invitations to conferences, receptions or cultural events and connected entertainment, including appropriate hospitality, if their participation in the event is compatible with the fulfilment of their duties as members of the Governing Council; they may accept refunding by the organisers of travel and accommodation expenses commensurate with the duration of their commitment except when the organisers are institutions under their supervision and they should observe special prudence with regard to individual invitations. Pursuant to Article 3.5 of the Code of Conduct, members of the Governing Council shall not accept for themselves fees for lectures and speeches undertaken in their official capacity as members of the Governing Council.

Under the formal criterion, the Governor shall disclose his external activities. Under Article 3.6 of the Code of Conduct, the members of the Governing Council shall once a year send to the President of the ECB a list of their external mandates, either public or private, which are to be exercised during their term of office.²⁹⁶

As far as the beneficiaries of the duty of non-competition are concerned, it appears that the duty of non-competition is mainly owed to the NCB at which a person has his/her position as a Governor; however, it is apparent from the wording of the Code of Conduct that it may also be owed to the ESCB in general.²⁹⁷ It is also clear from Article 6 of the Code of Conduct that this provision is unlikely to apply in situations where the Governor becomes a member of the ECB Executive Board. However, the accountability mechanism in the Code of Conduct does not appear as firm as under national provisions. In this respect, the assumption in Section 3.3.1 that the Governors should be accountable to the national authorities is firmly grounded. However, this does not preclude the Governors' accountability towards their colleagues under the Code of Conduct.

²⁹⁶ Almost all the OECD countries require disclosure of personal financial interest in the public service; the majority of OECD countries requires information on current financial interests and positions, such as assets, liabilities, including loans, sources and level of incomes, etc. (OECD, 2000, pp. 49-50).

²⁹⁷ Under Article 6 of the Code of Conduct, during the first year after their duties have ceased, the members of the Governing Council shall continue to avoid any conflict of interests that could arise from any new private or professional activities. They shall, in particular, inform the members of the Governing Council in writing whenever they intend to engage in such activities and shall seek their advice before committing themselves.

With regard to the duration of the duty of non-competition, the duty will exist until the Governor has retired from office and for one more year thereafter.²⁹⁸ This limit of duration distinguishes the duty of non-competition from the duty of loyalty. Article 6 of the Code of Conduct sets forth that during the first year after their duties have ceased, the members of the Governing Council shall continue to avoid any conflict of interest that could arise from any new private or professional activities. However, this does not mean that the former Governor will no longer be bound to the duty of loyalty. It should be noted that the termination of the duty of non-competition does not terminate the general duty of loyalty, especially the obligation to keep information confidential, which is not subject to any time limit.

3.2.3.6 Appointment of alternates

Pursuant to Article 10.2 of the Statute, as members of the Governing Council, the NCB Governors participate *ad personam* and vote in their personal capacity, except in cases referred to in Article 10.3 of the Statute where, as representatives of their respective NCBs, the Governors decide on the issues related to the shareholdings. Article 3.1 of the Rules of Procedure confirms this principle and in the case of absences, Article 3.3 in conjunction with Article 4.4 of the Rules of Procedure provides that if Governors are unable to attend, they may appoint, in writing, an alternate; if Governors are prevented from voting for a prolonged period (more than one month) they may appoint a member of the Governing Council as an alternate. Provisions of national law that are corresponding to Article 10.2 of the Statute and Article 3.3 of the Rules of Procedure can only be found in two NCB Statutes.²⁹⁹

It is clear from the above provisions that the status of an alternate is in both cases closely linked to the membership of the Governor. One would assume that the alternate has to have the same level of personal independence as a Governor but at the same time remain at the disposal of the Governor if the latter decides to resume his/her seat in the Governing Council. The ECB has said that any person who takes over the duties of the Governor or President on an interim basis until a newly appointed Governor or President takes up his duties benefits from the same rules on

²⁹⁸ The BIS has observed that the vast majority of central banks have policies limiting the activity of the Governor and other senior officials during a period that extends from some point before to some point after their departures from the institution (Bank for International Settlements, 2009, p. 180).

²⁹⁹ (1) Article 18 of the Belgian NCB Statute and Article 28 of the Belgian NCB Articles of Association; (2) Article 6(4) of the Dutch NCB Articles of Association.

security of tenure of office and grounds for dismissal as any member of the decision-making bodies of national central banks involved in the performance of ESCB-related tasks.³⁰⁰ The relevant provisions of national law have been explored in Table 3-9.

Normally, the Governor's substitution is either automatic or he himself decides on his substitution;³⁰¹ however, his substitution can also be decided by a supervisory [decision-making] organ of the NCB, especially when the Governor has failed to decide.³⁰² Alternatively, the right to appoint an alternate may also be an exclusive privilege of a supervisory organ at the NCB.³⁰³

Some NCB Statutes specify that the Governor can be substituted by a member of the same decision-making body,³⁰⁴ ranked on the basis of either seniority in office³⁰⁵ or seniority of age.³⁰⁶ Alternatively, a member of the same decision-making body can replace the Governor without any specific ranking stipulated in the NCB Statute.³⁰⁷ In these cases, the official title (for example 'Deputy Governor') of a member of the

³⁰⁰ See paragraph 2.1 of ECB Opinion CON/2010/37 of 7 May 2010 on an amendment to the rules securing the continuation of office of the President of Narodowy Bank Polski, available at http://www.ecb.int/ecb/legal/pdf/en_con_ecb_2010_37_f_sign.pdf.

³⁰¹ For the Eurosystem, see (1) Article 34(4) of the Austrian NCB Statute; (2) Article 18 of the Belgian NCB Statute and Articles 28 and 71(1) of the Belgian NCB Articles of Association; (3) Articles 9(6), 17(2) and 21 of the Cypriot NCB Statute; (4) Article L. 142-8(5) of the French NCB Statute; (5) Article 1(5) of the German NCB Organisational Statute; (6) Articles 32(2), 32(3) and 32(4) of the Greek NCB Statute; (7) Article 22A of the Irish NCB Statute; (8) Articles 22(1) and 25(4) of the Italian NCB Statute; (9) Article 8(1) of the Luxembourg NCB Statute; (10) Article 8(3) of the Maltese NCB Statute; (11) Article 6(4) of the Dutch NCB Articles of Association; (12) Article 31 of the Portuguese NCB Statute; (13) Article 9(1) of the Slovak NCB Statute; (14) Article 30(3) of the Slovenian NCB Statute; (15) Article 19 of the Spanish NCB Statute. For the non-Eurosystem, see (1) Articles 15(2) and 18(1) of the Bulgarian NCB Statute; (2) Articles 7(1) and 8 of the Czech NCB Statute; (3) Article 3 of the Danish NCB By-laws; (4) Article 10(4) of the Estonian NCB Statute; (5) Article 50(6) of the Hungarian NCB Statute; (6) Article 28(5) and 29 of the Latvian NCB Statute; (7) Article 17(2) of the Lithuanian NCB Statute; (8) Articles 10(1), 16(1a) and 16(2) of the Polish NCB Statute; (9) Articles 35(1) and 35(5) of the Romanian NCB Statute; (10) Article 4(2) of Chapter 1 of the Swedish NCB Statute.

³⁰² (1) Article 10(4) of the Estonian NCB Statute; (2) Article 8 of the Dutch NCB Articles of Association; (3) Article 9(1) of the Slovak NCB Statute.

³⁰³ (1) Article 11 of the Finnish NCB Statute; (2) Article 4(2) of Chapter 1 of the Swedish NCB Statute.

³⁰⁴ As a rule, in all NCB Statutes the Governor can be substituted by a member of the same decision-making body; it is, however, also possible for the Governor to be substituted exceptionally by a member of the higher organisational body (Articles 8(2) and 8(3) of the Dutch NCB Statute) in the NCB or by a member of the lower organisational body (Article 29 of the Latvian NCB Statute). Theoretically, the wording of Article 28(5) of the Latvian NCB Statute also be interpreted as also allowing the rights and obligations of the Governor to be delegated to a third person, but there is no such case known to the author.

³⁰⁵ (1) Article 34(4) of the Austrian NCB Statute; (2) Article 10(4) of the Estonian NCB Statute; (3) Article 32 of the Greek NCB Statute.

³⁰⁶ (1) Article 34(4) of the Austrian NCB Statute; (2) Article 10(4) of the Estonian NCB Statute; (3) Article 32 of the Greek NCB Statute; (4) Article 8 of the Articles of Association of de Nederlandsche Bank; (5) Article 31(1) of the Portuguese NCB Statute.

³⁰⁷ (1) Article 21 of the Cypriot NCB Statute; (2) Article 25(4) of the Italian NCB Statute; (3) Article 8(3) of the Maltese NCB Statute; (4) Article 10(1) of the Polish NCB Statute; (5) Article 35(5) of the Romanian NCB Statute; (6) Article 30(3) of the Slovenian NCB Statute.

same decision-making body is provided for in the NCB Statute.³⁰⁸ Sometimes the alternate's powers are restricted with regard to policy decisions and organisational changes.³⁰⁹

As a result, it can be concluded that for the majority of Member States, the authority to appoint an alternate is based on the existence of a Governor in office, physically prevented from acting, whereby the alternate is his/her agent or representative and the Governor remains ultimately responsible.³¹⁰

Quite often the NCB Statutes regulate the Governor being 'absent'.³¹¹ In addition, phrases such as 'unable to perform his duties',³¹² 'temporary incapacity',³¹³ 'prevented from attending a meeting',³¹⁴ 'unable to be present',³¹⁵ 'unable to vote',³¹⁶ 'obstructed',³¹⁷ 'inability to act',³¹⁸ 'unavailable to act/unable to act',³¹⁹ 'incapacitated to act',³²⁰ or 'illness'³²¹ are also used, which would lead to the conclusion that there appears to be a distinction in some Member States between short and long absences by a Governor.

³⁰⁸ See footnote 307.

³⁰⁹ Article 1(5) of the German NCB Organisational Statute.

³¹⁰ See footnote 301.

³¹¹ (1) Article 34(4) of the Austrian NCB Statute; (2) Article 15(2) of the Bulgarian NCB Statute; (3) Articles 9(6), 17(2) and 21 of the Cypriot NCB Statute; (4) Articles 7(1) and 8 of the Czech NCB Statute; (5) Article 3 of the Danish NCB By-laws; (6) Article 10(4) of the Estonian NCB Statute; (7) Article 11 of the Finnish NCB Statute; (8) Article L. 142-8(5) of the French NCB Statute; (9) Article 1(5) of the German NCB Organisational Statute; (10) Articles 32(2), 32(3) and 32(4) of the Greek NCB Statute; (11) Article 22A of the Irish NCB Statute; (12) Articles 22(1), 22(2), 25(1), and 26(1) of the Italian NCB Statute; (13) Articles 28(5) and 29 of the Latvian NCB Statute; (14) Article 8(1) of the Luxembourg NCB Statute; (15) Article 8(3) of the Maltese NCB Statute; (16) Article 8 of the Dutch NCB Articles of Association; (17) Articles 10(1) and 16(1a) of the Polish NCB Statute; (18) Article 31(1) of the Portuguese NCB Statute; (19) Article 35(5) of the Romanian NCB Statute; (20) Article 9(1) of the Slovak NCB Statute; (21) Article 19 of the Spanish NCB Statute; (22) Article 4(2) of Chapter 1 of the Swedish NCB Statute. All refer to 'absence' of a Governor in the English language versions of the NCB Statutes. The same is true for Article 18 of the Belgian NCB Statute and Article 28 of the Belgian NCB Articles of Association and Article 52(6) of the Hungarian NCB Statute which refer to the 'being unable to attend/vote' instead of 'absence'. Surprisingly, the Slovenian NCB Statute does not refer to any of the reasons for absence discussed above, as it simply states that one of the Deputy Governors shall be empowered to 'act in the capacity of a deputy' by the Governor; see Article 30(3) of the Slovenian NCB Statute.

³¹² Article 34(4) of the Austrian NCB Statute.

³¹³ Articles 9(6), 17(2) and 21 of the Cypriot NCB Statute.

³¹⁴ (1) Article L. 142-8(5) of the French NCB Statute; (2) Article 31(1) of the Portuguese NCB Statute.

³¹⁵ (1) Article 28 of the Belgian NCB Statute and Article 18 of the Belgian NCB Organic Act; (2) Article 32 of the Greek NCB Statute.

³¹⁶ Article 52(6) of the Hungarian NCB Statute.

³¹⁷ Article 50(6) of the Hungarian NCB Statute.

³¹⁸ Articles 22(1), 22(2), 25(1), and 26(1) of the Italian NCB Statute.

³¹⁹ Article 8 of the Dutch NCB Articles of Association.

³²⁰ (1) Article 35(5) of the Romanian NCB Statute; (2) Chapter 1 Article 4(2) of the Swedish NCB Statute.

³²¹ Article 19 of the Spanish NCB Statute.

That would leave several Member States, such as Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Luxembourg, Poland and Slovakia, where the Governor's 'absence'³²² can be interpreted differently than, for example, in Austria, Cyprus, France, Greece, Italy, the Netherlands, Portugal, Romania, Spain and Sweden, where the Governor can be 'absent' or have an alternative reason for taking leave.³²³ In both of these occasions, the Governor is apparently assumed to be able to delegate his functions during the period of his business trips, illness or other similar causes of absence.

Articles 3.3 and 4.4 of the Rules of Procedure do not address cases in which the Governor's term of office has expired and his/her successor has still to be appointed. However, in some Member States it is also possible for the alternate to act when no Governor has been appointed.³²⁴ Throughout the history of ECB, this situation has occurred several times³²⁵ and the solution adopted can be legally arguable as it deviates from the principle that the Governors participate and vote in their personal capacity. When the Governor's term of office has expired, he has no authority to appoint an alternate under Article 10.2 of the Statute and Articles 3.3 and 4.4 of the Rules of Procedure. A general principle of the law of agency is that the representative capacity of the agent ceases when the principal wanes. However, the situation could be different if a national law contains specific provisions concerning situations in which a Governor's term of office has expired before the new Governor is appointed.

³²² For Belgian and Hungarian NCB Statutes the phrase would be 'being unable to attend/vote' instead of 'absence'.

³²³ The Irish and Maltese NCB Statutes would be in a different category since they regulate 'absence' as well as 'vacancy'.

³²⁴ (1) Article 32(2) of the Greek NCB Statute; (2) Article 22A of the Irish NCB Statute; (3) Article 8(3) of the Maltese NCB Statute; (4) Article 31(2) of the Portuguese NCB Statute; (5) Article 9(1) of the Slovak NCB Statute.

³²⁵ Governor Ernst Welteke of the Bundesbank retired from office and consequently from the Governing Council on 16 April 2004, while Governor Axel Weber of the Bundesbank took office as late as 30 April 2004. The interim period was covered by Mr Jürgen Stark, who was deemed to be the Acting President of the Bundesbank. Mr Matti Vanhala, the Governor of Suomen Pankki, stepped down from office on 31 March 2004 and Mr Erkki Liikanen was appointed as the new Governor on 12 July 2004. The interim period was covered by Mr Matti Louekoski, who was referred to as the Acting Governor of Suomen Pankki (see the ECB Annual Report 2004 (2005, p. 165)). Governor Antonio Fazio of the Banca d'Italia left the office on 19 December 2005 and was replaced by Governor Mario Draghi as of 16 January 2006. The interim period was covered by Mr Vincenzo Desario, who was officially noted as the Acting Governor of the Governor of the Banca d'Italia (see the ECB Annual Report 2005 (2006, p. 167)). The term of Governor Mitja Gaspari of Banka Slovenije expired on 31 March 2007 and a new Governor had not been appointed by that date. Governor Marko Kranjec assumed office as from 16 July 2007, with Mr Andrej Rant assuming the position of Acting Governor from 1 April until 15 July 2007 (see the ECB Annual Report 2007 (p. 193)). Similarly, there was a gap between Governor Hurley's terms of office and Mr Tony Grimes was the Acting Governor of the Central Bank and Financial Services Authority of Ireland from 19 July until 19 September 2008 (see the ECB Annual Report 2008 (p. 199)).

For example, the NCB Statutes of Estonia,³²⁶ Greece,³²⁷ Malta³²⁸ the Netherlands,³²⁹ Portugal³³⁰ and Slovakia³³¹ contain such clear provisions. The situation is less clear, still leaving scope for interpretation, in those Member States where the NCB Statutes foresee automatic substitution for the Governor.³³² The situation is more problematic with regard to the provisions in those NCB Statutes, by which the scope of regulation is limited to temporary absences; that could nevertheless be applied in cases where the Governor's position is vacant.³³³

3.2.3.7 *Grounds for dismissal*

Under Article 14.2 of the Statute, a Governor may be removed from office 'only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct'. René Smits assumes that this phrase is a reference to 'reasons of health or misconduct',³³⁴ which appears to be too restrictive. Advocate General Geelhoed has said that the Community institutions and bodies, with the exception of the European Ombudsman, act as collegiate bodies and that the individual members cannot be removed for reasons relating to the exercise of the functions of these bodies; as the members of these institutions hold the highest office in their respective fields and are not subject to any kind of hierarchical scrutiny, special arrangements must be provided for in order to ensure that any misuse of powers is sanctioned in an appropriate manner.³³⁵ By ensuring that holders of public offices are not, by reason of the office they hold, immune from any corrective response where they fail to comply with the requisite standards of personal conduct, procedures such as Article 14.2 of the Statute provide basic guarantees that the institutions concerned operate in accordance with their constitutional task. The ECB

³²⁶ Article 10(4) of the Estonian NCB Statute. Article 10(4) read in conjunction with Article 11³ of the Estonian NCB Statute would lead to a conclusion that the substitution rules described in Article 10(4) would apply in the case of death of the Governor, rather than in situations in which no Governor has been appointed.

³²⁷ Articles 32(2) and 32(3) of the Greek NCB Statute.

³²⁸ Article 8(3) of the Maltese NCB Statute.

³²⁹ Article 8 of the Dutch NCB Articles of Association.

³³⁰ Article 31(2) of the Portuguese NCB Statute.

³³¹ Article 9(1) of the Slovak NCB Statute.

³³² See footnote 301.

³³³ Note that the Bulgarian and Estonian NCB Statutes contain a safeguard clause, in Articles 12(7) and 11³ respectively, which would extend the incumbent Governor's mandate until the vacancy is officially filled.

³³⁴ See Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, p. 165.

³³⁵ It is inherent in this function that the sanctioning power is vested either in the institution of which the individual concerned is a member or in another institution with equivalent status in the constitutional framework. Case C-432/04 *Commission of the European Communities v Édith Cresson* [2006] ECR I-06387, opinion of Mr Advocate General Geelhoed delivered on 23 February 2006, paragraph 69.

Convergence Reports have advised that the NCB Statutes should either contain grounds for dismissal that are compatible with those laid down in Article 14.2 of the Statute or omit any mention of grounds for dismissal since Article 14.2 is directly applicable.³³⁶

Article 14.2 of the Statute consists of two parts that should be analysed separately. The first part consists of the non-fulfilment of the ‘conditions required for the performance of his duties’ and the second part refers to being ‘guilty of serious misconduct’.

The NCB Statutes list several criteria, such as citizenship, higher education or full legal capacity, which can be deemed to be the ‘conditions required for the performance of his duties’.³³⁷ As the conditions required for the performance of the Governors’ duties are not defined in EU law but in national law, the ECB’s argumentation raises some concerns. If, for example, an NCB Statute prescribes the requirement of sound health,³³⁸ then it would be legitimate to remove the Governor if he is in ill health for more than certain period of time. The problem is that in several NCB Statutes, the ‘sound health requirements’ are drafted not as preconditions for office but as grounds for removal, which technically justifies the ECB’s point of view. For example, these NCB Statutes interpret the non-fulfilment of the conditions for holding office as including the failure of the Governor to perform his duties for a certain period of time. The ECB is, however, unwilling to accept this interpretation.³³⁹

There are legal risks, however, with regard to those NCB Statutes that do not have any conditions for the Governor’s performance, where the grounds for his/her removal from office are compatible with Article 14.2 of the Statute; in those instances

³³⁶ See the ECB Convergence Report 2010 (p. 20), 2008 (p. 19), 2007 (p. 18), December 2006 (p. 26); May 2006 (p. 64), and 2004 (p. 27). No reference to the grounds of dismissal is mentioned in the ECB Convergence Report 2002. The EMI mentioned this in its Convergence Reports of 1998 (p. 294), 1996 (p. 102). A rather general reference was made in 1995 (European Monetary Institute, 1995, p. 93).

³³⁷ See footnotes 239, 240, 241 and 242.

³³⁸ Article 14 of the Cypriot NCB Statute.

³³⁹ The ECB is of the opinion that this is in addition to the two grounds for dismissal provided for in Article 14.2 of the Statute, with regard to Article 6(13) of the Czech NCB Statute, see the ECB Convergence Report of December 2006 (p. 210). Article 22(4) of the Latvian NCB Statute receives similar criticism; see the ECB Convergence Report 2006 (pp. 219-220). Article 14(1) of the Bulgarian NCB Statute, Article 9(5) of the Polish NCB Statute. Article 33(4) the Austrian NCB Statute contains the same interpretation. Note Article 19(7) of the Irish NCB Statute, which contains rather extensive list of reasons terminating the Governor’s right to hold office, or Article 25(4) of the Spanish NCB Statute with similar content.

the phrase ‘no longer fulfils the conditions’ would be meaningless since there are no preconditions in the first place.³⁴⁰

To explain the meaning of ‘guilty of serious misconduct’ is far more problematic as ‘serious misconduct’ is defined neither in the Treaties nor the Statute. Under EU Law, the ECB Executive Board members and the NCB Governors are not the only persons that can be removed from office on the grounds of ‘serious misconduct’. Article 247 TFEU [former Article 216 TEC] provides that if any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, compulsorily retire him.³⁴¹ The second sentence of Article 228(2) TFEU [former Article 195(2) TEC] sets forth that the Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct. Similarly, Article 286(6) TFEU [former Article 247(7) TEC] stipulates that a Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office. These procedures coexist with two other corrective mechanisms, namely political accountability and criminal liability.³⁴²

The Court of Justice has held that the Members of European Commission must respect the obligations arising from their office; they have to ensure that the general interest of the Community takes precedence at all times, not only over national interests, but also over personal interests; the penalty of compulsory retirement will apply [only] where a breach has arisen and continues, during the term of office of the

³⁴⁰ The problem would arise for example with regard to the German NCB Statute and the Finnish NCB Statute.

³⁴¹ Article 245(2) TFEU provides that the Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not; [...] In the event of any breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 TFEU or deprived of his right to a pension or other benefits in its stead. Mastroianni and Arena also note that according to the Court, the procedure under Article 245(2) TFEU is not subject to the same rules as disciplinary proceedings involving an official or servant of the Union and that, accordingly, solutions applied in the latter “cannot necessarily be transposed” to the former, which Mastroianni and Arena interpret as that arguably sometimes the principles of disciplinary proceedings do apply, see Mastroianni & Arena, 2008, p. 1222.

³⁴² See Mastroianni & Arena, 2008, p. 1220.

Member of the Commission in question.³⁴³ It therefore follows that ‘serious misconduct’ can also be explained as ‘breach of obligations’ that the person was obliged to honour;³⁴⁴ It can also be said that where the person has correctly performed the mission entrusted to him, the concept of ‘serious misconduct’ cannot be used on the grounds that the outcome of the person’s activities was unsatisfactory.³⁴⁵

So far, only the German NCB Statute has remained silent with regard to the grounds for dismissal. Sixteen NCB Statutes copy the language of Article 14.2 of the Statute.³⁴⁶ However, several other Statutes provide for an interpretation of Article 14.2.³⁴⁷ In this regard, the ECB has stated on numerous occasions that the wording chosen in respect of the grounds for dismissal of the Governor can copy the text of Article 14.2 of the Statute,³⁴⁸ but cannot create new grounds for dismissal.³⁴⁹ Some of the NCB Statutes provide grounds for dismissal that do not copy Article 14.2 of the

³⁴³ Case C-432/04 *Commission v. Cresson* [2006] ECR I 6387, paragraphs 69, 71 and 73.

³⁴⁴ Case C-432/04 *Commission v. Cresson* [2006] ECR I 6387, paragraphs 147 and 150.

³⁴⁵ Case C-234/02 *P Ombudsman v. Lamberts* [2004] ECR I 2803, paragraph 82. The case was analysed in great detail by Suksi (2005). In the ESCB context this would mean that the Governor cannot be relieved from office by national authorities when the latter believe that the Governing Council’s decisions do not serve the national interest. This argumentation is further supported by the language of Article 130 TFEU and the requirement of price stability.

³⁴⁶ (1) Article 33(4) of the Austrian NCB Statute; (2) Articles 34(1) of the Belgian NCB Articles of Association and Article 23(1) of the Belgian NCB Statute; (3) Article 18(4) of the Cypriot NCB Statute; (4) Article 12(2) of the Estonian NCB Statute; (5) Article 16(1) of the Finnish NCB Statute; (6) Article L. 142-5(1) of the French NCB Statute; (7) Article 24 of the Greek NCB Statute; (8) Article 17(1) of the Italian NCB Statute; (9) Article 12(1) of the Lithuanian NCB Statute; (10) Article 12(3) of the Luxembourg NCB Statute; (11) Article 8(5) of the Maltese NCB Statute; (12) Article 12(3) of the Dutch NCB Statute and Article 6(7) of the Dutch NCB Articles of Association; (13) Article 33(4) of the Portuguese NCB Statute; (14) Article 33(6) of the Romanian NCB Statute, (15) Article 7(9) of the Slovak NCB Statute, (16) Article 39(1) of the Slovenian NCB Statute.

³⁴⁷ (1) Article 33(4) of the Austrian NCB Statute; (2) Article 14(1) of the Bulgarian NCB Statute; (3) Article 6(13) of the Czech NCB Statute; (4) Article 24 of the Greek NCB Statute; (5) Article 49(10) of the Hungarian NCB Statute.

³⁴⁸ See paragraph 7(g) of EMI Opinion CON/98/06 of 12 February 1998 at the request of the Finnish Ministry of Finance for an opinion on draft legislative proposals concerning the Act on the Bank of Finland, available at http://www.ecb.eu/ecb/legal/pdf/en_con_98_06.pdf.

³⁴⁹ See paragraph 3.3 of ECB Opinion CON/2006/19 of 3 April 2006 at the request of Latvijas Banka on a draft law amending the Law on Latvijas Banka, available at http://www.ecb.int/ecb/legal/pdf/en_con_2006_19_f_sign.pdf; paragraph 8 of the ECB Opinion CON/2005/26 of 4 August 2005 at the request of Národná banka Slovenska on a draft law amending the Act No 566/1992 Coll. on Národná banka Slovenska, as amended, available at http://www.ecb.eu/ecb/legal/pdf/en_con_2005_26_f_sign.pdf.

Statute but are still deemed compatible with Article 14.2.³⁵⁰ Grounds for dismissal that differ from those established under Article 14.2 of the Statute have been established in eight NCB Statutes.³⁵¹

Article 14.2 of the Statute provides that ‘a Governor may be relieved from office only if [...] he has been guilty of serious misconduct’ [My emphasis – AT.]. This wording suggests that (a) ‘serious misconduct’ has to have actually occurred; (b) there has to be an authority to decide that the Governor is guilty of breaching his duties; and (c) once preconditions (a) and (b) have been fulfilled, a Governor can be removed from office.³⁵²

In the case of dispute, proceedings before the Court of Justice shall be instituted by the Governor concerned or the Governing Council within two months of the

³⁵⁰ Article 39(1) of the Slovenian NCB Statute; Article 25(4) of the Spanish NCB Statute; Chapter 2 Article 2(1) of the Swedish NCB Statute. The EMI Convergence Report 1998 noted that the Spanish NCB Statute is compatible with Treaty and Statute requirements for Stage Three, (1998, p. 17). The ECB Convergence Report of May 2006 concluded that the Slovenian NCB Statute is compatible with Treaty and Statute requirements for Stage Three of Economic and Monetary Union (2006, p. 77). However, the wording did receive some criticism in the ECB Opinion CON/2006/17 of 13 March 2006 on a draft law amending the Law on Banka Slovenije, available at http://www.ecb.eu/ecb/legal/pdf/en_con_2006_17_f_sign.pdf. In paragraph 2.6 the ECB noted that it would ‘welcome further amendments to this Article to bring the grounds for dismissal of the Governor of Banka Slovenije fully into line with the wording of Article 14.2 of the Statute. In particular, the Law should specify, without supplementary conditions, that a Governor may be relieved from office if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct’. The EMI Opinion CON/1998/25 of 10 June 1998 on a draft law amending the Statute of Sveriges Riksbank, http://www.ecb.int/ecb/legal/pdf/EN_CON_98_25.pdf, does not address the grounds for removal as an issue and neither do the EMI/ECB Convergence Reports.

³⁵¹ (1) Article 9(1) of the Danish NCB By-laws; (2) Article 19(7) of the Irish NCB Statute; (3) Article 22(4) of the Latvian NCB Statute; (4) Article 9(5) of the Polish NCB Statute; (5) Article 25(4) of the Spanish NCB Statute; (6) Chapter 9, Article 13, of the Swedish Instrument of Government; (7) Articles 5(1), 7(1), 7(2) and 8 of Schedule 1 of the UK NCB Statute. To a certain extent, Article 14(1) of the Bulgarian NCB Statute could also belong to this group.

³⁵² For the example of (a) and (b), the Executive Board of the Deutsche Bundesbank distanced itself categorically from discriminatory remarks made by its member, Dr Thilo Sarrazin in the press release issued on 30 August 2010 (Deutsche Bundesbank, 2010). Dr Sarrazin, a former member of the Berlin Senate, had repeatedly and persistently made provocative statements, especially on issues relating to immigration. It noted that owing to their special position, the members of the Executive Board of the Deutsche Bundesbank are obliged, in any political activity, to exercise the moderation and restraint commensurate with their position with regard to society at large and with due regard to the duties of their office. Under the code of conduct for members of the German NCB’s Executive Board, members of the Executive Board are to conduct themselves at all times in a manner ‘that upholds and promotes the Bundesbank’s reputation and the public’s trust in the Bundesbank’. The Executive Board of the Bundesbank found that Dr Sarrazin’s remarks were damaging to the reputation of the Deutsche Bundesbank. The Executive Board of the Deutsche Bundesbank announced that it would immediately conduct a discussion with Dr Sarrazin, give him a hearing and take prompt further action. On 2 September 2010, the Executive Board of the Deutsche Bundesbank took a unanimous decision to submit to the Federal President an application for the dismissal of Dr Thilo Sarrazin from the Executive Board. The Deutsche Bundesbank’s corporate governance officer, Professor Uwe Schneider, fully supported this application (Deutsche Bundesbank, 2010).

publication of the decision or of its notification to the plaintiff or of the day on which it came to the knowledge of the latter.³⁵³

However, from Table 3-10, it is apparent that there is confusion as to what extent Article 14.2 of the Statute applies. Some NCB Statutes refer to conviction by a criminal court as a ground for removal and it is not clear whether this should be interpreted as non-compliance with conditions required for the performance of the Governor's duties or as he/she being found guilty of serious misconduct.

From the substantial point of view, the notion 'serious misconduct' is part of Union law and is not defined in national law.³⁵⁴ Therefore, an additional ground for removal, according to which only conviction for criminal offences justify dismissal, would consequently lead to a Governor remaining in office until the end of the judicial procedure, is debatable.³⁵⁵ It is true that not every judicial procedure ends with the removal of the Governor from office³⁵⁶ and one could therefore argue that it is better for the Governor's independence to be protected by such a safeguard. It would therefore be misleading to argue whether 'serious misconduct' should be treated as 'serious crime' or an 'administrative offence' in order to fit it into the national

³⁵³ Article 14.2 of the Statute thus complies with Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms which provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Zilioli and Selmayr note that Article 14.2 of the Statute is the first time that Union law allows a "national" official to challenge a national decision directly in the European Court of Justice, see Zilioli & Selmayr, *The Law of the European Central Bank*, 2001, p. 78.

³⁵⁴ In an analogous case involving a former member of the European Commission, Advocate General Geelhoed said that 'there is no objection to a national procedure and an Article 213(2) EC procedure being applied concurrently; both types of procedure serve different purposes in the national and Community legal orders respectively. Whereas the former is aimed at enforcing standards which are deemed to be essential to the fabric of society at the national level, the latter is designed to ensure the proper functioning of the Community institutions with a view to realising the objectives of the Treaties. Even if the national criminal procedure had continued and had resulted in the imposition of a penalty, there still would be scope for imposing the sanctions provided for in Article 213(2) EC'. See Case C-432/04 *Commission of the European Communities v Édith Cresson* [2006] ECR I-06387, opinion of Mr Advocate General Geelhoed delivered on 23 February 2006, paragraph 97.

³⁵⁵ If this argument were true, there would be three grounds for removal of the Governor: (1) the non-fulfilment of conditions required for the performance of his duties; (2) being guilty of breaching his duties; and (3) being convicted by the court for a deliberate crime. The grounds (2) and (3) do not necessarily overlap, as there may be several duties that can be breached but not all such breaches can be regarded as crime. For example, it can be perfectly legal for a Governor to accept benefits from third parties, but in so doing he is breaching the duty of loyalty and there is a conflict of interest which would justify his removal from office. It may also occur that the Governor is brought before the court for acts or omissions that have nothing to do with his duties as a Governor. According to Mastroianni and Arena, the dismissal procedure coexists with political accountability and criminal liability (Mastroianni & Arena, 2008, p. 1220) as evidenced by Case C-432/04 *Commission v. Cresson* [2006] ECR I 6387.

³⁵⁶ For example, Jean-Claude Trichet's path to the presidency of the ECB was cleared on 18 June 2003 when the Governor of the French NCB was acquitted of all responsibility in the collapse of *Crédit Lyonnais*. The charges against Mr Trichet were related to the financial accounts of *Crédit Lyonnais* between 1991 and 1993, when he was director of the French Finance Ministry, see Marsh, 2009, p. 190; Webster, 2003; or some of the newspaper articles from the period (*Top Euro banker cleared of scandal cover-up*, 2003).

framework. Since the concept has its origins in Union law, a national court hearing the case would have to request a preliminary ruling of the Court of Justice under Article 267 TFEU [former Article 234 TEC] in order to ensure uniform interpretation. From the procedural point of view, a court decision dismissing the Governor is subject to Article 14.2. However this would be tantamount to making the Court of Justice the highest national criminal court, which obviously was not the intention of the drafters of the Treaties.³⁵⁷

It should be noted that in the dismissal of a Governor is different from the dismissal of a member of the ECB Executive Board under Article 11.4 of the Statute, where the Governing Council (or the Executive Board) has a specific role and it is the Court of Justice that dismisses the Executive Board Member. This is because the appointment of Governors is a national competence, which implies that dismissal also belongs to the sphere of national competence. The Governing Council may initiate proceedings under Article 14.2 of the Statute if the Governor concerned has not initiated the proceedings.³⁵⁸ A dismissal procedure is prescribed to a greater or lesser extent in eighteen NCB Statutes,³⁵⁹ while the other NCB Statutes are silent on the issue.

The competence of the Court of Justice to hear cases regarding the dismissal of the Governor is noted in eight NCB Statutes.³⁶⁰ Article 14.2 of the Statute uses the expression ‘may be referred to the Court of Justice of the European Union’; this

³⁵⁷ This however should not invite national legislators to amend the NCB Statutes so that a Governor is to be relieved from office when criminal investigations against him are initiated, as is currently the case in Spain. Such an approach would have clearly stopped Mr Trichet’s career as the Governor of the French NCB and possibly prevented his appointment as President of the ECB. Against this background, the wording of Article 25(4)(d) of the Spanish NCB Statute raises concern as to whether such an automatism would be compliant with Article 14.2 of the Statute. In addition, Article 6(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

³⁵⁸ For example, the ECB Governing Council may decide that a national decision to dismiss a governor is ill-founded even when the Governor agrees to step down.

³⁵⁹ (1) Articles 34(1) of the Belgian NCB Articles of Association and Article 23(1) of the Belgian NCB Statute; (2) Article 14(1) of the Bulgarian NCB Statute; (3) Article 153(8) of the Cypriot Constitution and Article 18(4) of the Cypriot NCB Statute; (4) Article 6(13) of the Czech NCB Statute; (5) Article 9(1) of the Danish NCB Statute; (6) Article 28(7) of the Estonian NCB Articles of Association; (7) Article 16(1) of the Finnish NCB Statute; (8) Article 24 of the Greek NCB Statute; (9) Articles 50(3) and 50(4) of the Hungarian NCB Statute; (10) Article 21 of the Irish NCB Statute; (11) Article 17(1) of the Italian NCB Statute; (12) Article 22(4) of the Latvian NCB Statute; (13) Articles 12(2), 12(3) and 12(4) of the Lithuanian NCB Statute; (14) Article 12(3) of the Luxembourg NCB Statute; (15) Articles 33(6), 33(7), 33(8) and 33(9) of the Romanian NCB Statute; (16) Article 7(2) of the Slovak NCB Statute; (17) Articles 39(2), 39(3), 57(1) and 57(2) of the Slovenian NCB Statute; (18) Chapter 2 Article 2 of the Swedish NCB Statute.

³⁶⁰ (1) Articles 34(1) of the Belgian NCB Articles of Association and Article 23(1) of the Belgian NCB Statute; (2) Article 6(13) of the Czech NCB Statute; (3) Article 21(4) of the Irish NCB Statute; (4) Article 12(4) of the Lithuanian NCB Statute; (5) Article 33(5) of the Portuguese NCB Statute; (6) Article 7(10) of the Slovak NCB Statute; (7) Article 57(1) of the Slovenian NCB Statute; (8) Chapter 2 Article 2(2) of the Swedish NCB Statute. Conditionally also Article 16(2) of the Finnish NCB Statute belongs to this group.

cannot be interpreted as allowing litigants to choose a national court instead. Rather, the wording of Article 14.2 is to be understood as providing the opportunity to refer the matter to the Court of Justice. As noted above, there are substantial as well as procedural arguments to support the exclusive jurisdiction of the Court of Justice.³⁶¹

However, there may also be cases in which the Governor is not formally removed from office, as the fact of being subject to public scrutiny would force him to resign voluntarily. In the personal statement of Governor Welteke,³⁶² he noted that his integrity was ‘assailed by distorted and false statements’,³⁶³ that he was no longer in a position to ‘actively participate in shaping European stability policy within the Governing Council of the European Central Bank free of outside influence’ and that the Bundesbank needed a president ‘who can implement the necessary reforms without constraints and above all, one who is free to advise the Federal Government and represent Germany in international organisations in close agreement with the Federal Ministry of Finance’. Mr Welteke stepped down as Governor on 16 April 2004.³⁶⁴

The other, less successful, possible means of avoiding the procedures stipulated in Article 14.2 of the Statute is to amend the NCB Statutes so that the incumbent Governor would be dismissed by the legislature. Such an attempt was made in order to remove Governor Fazio from office by means of a draft law on the protection of savings. The ECB noted that any reorganisation measure affecting the term of office of its governor should foresee that the existing Governor can continue to perform his duties until the end of the term of office for which he has been appointed; since Governor Fazio was appointed for life, there should be a transitional regime which is compatible with Article 14.2 of the ESCB Statute.³⁶⁵ Governor Fazio ultimately

³⁶¹ However, the position is not entirely clear as the Court of Justice has been referred to as the ‘final’ arbiter; see the ECB Monthly Bulletin, November 2002 (p. 56).

³⁶² Personal statement by Bundesbank President Ernst Welteke (Deutsche Bundesbank, 2004).

³⁶³ Governor Welteke was referring to an article by the German magazine *Der Spiegel* published earlier in 2004, which revealed that Dresdner Bank AG paid EUR 7,661 for Governor Welteke’s stay at Berlin’s Adlon hotel and that of several other people close to him. This allegation forced the Executive Board of the German NCB to adopt, on 8 April 2004, the same Code of Conduct as that of the ECB’s Governing Council as there was no specific legal instrument for the members of the Executive Board (see Statement from the Executive Board of the Deutsche Bundesbank (Deutsche Bundesbank, 2004)). At the time when the facts of which Mr Welteke was accused occurred, no code of conduct existed for the members of the ECB Governing Council specifying the standards to be complied with.

³⁶⁴ Governor Welteke’s resignation created some legal concerns since under the German NCB Statute, the substitution of the Governor while there is none in office is not regulated. However, this has not prevented the Governing Council from allowing interim governors to participate as Governors. See footnotes 67 and 325.

³⁶⁵ See Paragraph 8 of the ECB Opinion CON/2004/16.

resigned on 19 December 2005 after a scandal over his involvement in a foreign takeover bid for two Italian credit institutions.³⁶⁶

3.2.4 Financial independence

Financial independence refers to the legal and practical arrangements relating to the finances of a central bank and the extent to which the bank is subject to outside influence in this regard.³⁶⁷ The principle of financial independence implies that an NCB must have sufficient means not only to perform ESCB-related tasks but also its own national tasks, such as financing its administration and own operations.³⁶⁸ The ECB usually³⁶⁹ assesses the following six aspects of financial independence:

- 1) Budget determination
- 2) Accounting rules;
- 3) Auditing;
- 4) Distribution of profits, NCB's capital and financial provisions;
- 5) Autonomy in staff matters; and
- 6) Financial liability for supervisory authorities.

3.2.4.1 Budget determination

The ECB is of the opinion that it is incompatible with financial independence if a third party has the power to determine or influence an NCB's budget, unless the law provides a safeguard clause so that such a power is without prejudice to the financial means necessary for carrying out the NCB's ESCB-related tasks.³⁷⁰ In 2008, the power of some NCBs to determine their budgets was undermined with regard to the

³⁶⁶ The allegations were that Governor Fazio had a conflict of interest as the head of the supervisory authority and at the same time protecting the domestic banking system from foreign competition. None of this was however addressed in the Italian NCB public statement (Banca d'Italia, 2005).

³⁶⁷ See Kapteyn & VerLoren van Themaat, 2008, p. 956.

³⁶⁸ This would also entail the separation of budgets; for example, the ECB's budget is not part of the Union's annual budget under Article 314 TFEU. See also Case C-11/00, paragraph 132.

³⁶⁹ From time to time, other issues may also be added. For example, in 2008 'Autonomy in staff matters' was included in the ECB Convergence Report (2008, p. 22) and in 2010 NCB's ownership rights were introduced (2010, p. 23).

³⁷⁰ ECB Convergence Report, May 2010 (2010, p. 22). The same position has also been stated earlier (2008, p. 21), (2007, p. 20), December (2006, p. 27) and May (2006, p. 66), (2004, p. 29).

third party determining the governance of their staff members.³⁷¹ In 2010, the situation in which the Lithuanian NCB's immovable property was legally owned by the Lithuanian State triggered the creation of another element of financial independence.³⁷²

According to most of the NCB Statutes, the budget is determined internally, as is revealed by Table 3-11.³⁷³ Contrary to this general rule, Articles 52(1) and 52(2) of the Portuguese NCB Statute stipulate that an operating budget shall be drawn up for each year and forwarded to the Minister of Finance. The Portuguese NCB Statute is silent with regard to the powers of the Minister of Finance, so it is unclear whether the purpose of this provision is just to keep the Minister informed or whether the Minister actually have the power to adopt the NCB budget.³⁷⁴ In fact, there are also examples of a third party having the official authority to approving the NCB annual budget.³⁷⁵ Notably, in this situation neither the Spanish NCB Statute nor the Swedish NCB Statute contain any safeguards, while the Luxembourg NCB Statute states that granting discharge for the NCB bodies is taken without prejudice to ESCB-related

³⁷¹ For example, in paragraph 2.4 of the ECB Opinion CON/2008/9 of 21 February 2008 at the request of the German Ministry of Finance on a draft law amending the Law on the Deutsche Bundesbank, available at http://www.ecb.int/ecb/legal/pdf/en_con_2008_9_f_sign.pdf. The ECB expressed its concerns about the German Government's discretionary powers to grant and withdraw the delegation and to regulate directly the legal relationships of the Deutsche Bundesbank with all categories of staff as well as the careers of such staff; the threat of withdrawing such delegated powers was considered a potential tool to influence an NCB unduly in fulfilling its tasks and thus limit that NCB's independence. A similar position was taken in ECB Opinion CON/2008/10 of 21 February 2008 at the request of the Italian Ministry of Economic Affairs and Finance on the Law on the State annual and pluriannual budget, available at http://www.ecb.int/ecb/legal/pdf/en_con_2008_10_f_sign.pdf.

³⁷² In its Convergence Report of May 2010, the ECB considered that due to this legal situation, there was a risk of the Lithuanian NCB being able to dispose of its property only with the approval of governmental authorities. This legal situation was deemed to undermine both institutional and financial independence. From an institutional perspective, state authorities could instruct the NCB on the assets that it holds. The NCB's financial independence would be undermined since it would no longer be entirely free to decide on the allocation of its resources and could be unable to secure sufficient means for the performance of its tasks. See (pp. 23, 248). For the background of the legal issue, see the discussion in Section 5.3.4.2 with regard to the Estonian NCB assets.

³⁷³ For the Eurosystem: (1) Article 20(4) of the Belgian NCB Statute and Article 30(8) of the Belgian NCB Articles of Association; (2) Articles 61(1) and 61(2) of the Cypriot NCB Statute; (3) Article 14(1) of the Finnish NCB Statute; (4) Article L.142-2(4) of the French NCB Statute; (5) Article 26(4) of the German NCB Statute; (6) Article 31(1) of the Greek NCB Statute; (7) Article 6G of the Irish NCB Statute; (8) Article 18(2)(2) of the Italian NCB Statute; (9) Articles 6(c) and 29(2) of the Luxembourg NCB Statute; (10) Article 19(2) of the Dutch NCB Articles of Association; (11) Article 6(2)(b) of the Slovak NCB Statute; (12) Articles 49(3) and 49(4) of the Slovenian NCB Statute; for the non-Eurosystem: (1) Article 48 of the Bulgarian NCB Statute; (2) Article 47(1) of the Czech NCB Statute; (3) Article 9(2)(6) of the Estonian NCB Statute; (4) Article 26(2) of the Latvian NCB Statute; (5) Article 11(1) (15) of the Lithuanian NCB Statute; (6) Articles 12(2), 17(4) and 64 of the Polish NCB Statute; (7) Article 41 of the Romanian NCB Statute;

³⁷⁴ However, in Ireland, where the Minister of Finance also has extensive powers, Article 6G(7) of the Irish NCB Statute could be interpreted as having such a safeguard clause in compliance with the principle of financial independence.

³⁷⁵ (1) Article 4(2) and 21(1)(g) of the Spanish NCB Statute; (2) Article 30 of the Luxembourg NCB Statute; (3) Chapter 10 Article 2 of the Swedish NCB Statute. In the case of Spain and Sweden, the national Parliament has the authority to approve the annual budget

tasks and without calling into question the obligations of the NCB within the framework of the ESCB.³⁷⁶

Under Article 3(3) of the Romanian NCB Statute the NCB shall cooperate with the Ministry of Finance in setting the macroeconomic indicators based on which the annual draft budget shall be drawn up. Although the Romanian NCB adopts its budget independently, it is strange that there is a cooperation requirement at the beginning of the process. Another example, from the other end of the process concerns an NCB whose annual budget is subject to the jurisdiction of a National Audit Office.³⁷⁷ The reports on the budgeted expenditure of the Bulgarian NCB shall be examined by the National Audit Office, which shall prepare a special report on its examination. Then the report on the budgeted expenditure of the Bulgarian NCB is sent to the Bulgarian Parliament together with the annual report of the Bulgarian NCB. So far, the ECB Convergence Reports have not registered any cases in which the application of this provision could have violated the principle of financial independence.

3.2.4.2 Accounting rules

Pursuant to Article 26.1 of the Statute, the financial year of the ECB and NCBs shall begin on the first day of January and end on the last day of December.

Table 3-12 shows that most of the 20 NCB Statutes that refer to the ‘financial year’ also stipulate that the financial year shall be equal to the calendar year.³⁷⁸

Article 26.2 of the Statute further stipulates that the annual accounts of the ECB shall be drawn up by the Executive Board in accordance with the principles established by the Governing Council; the accounts shall be approved by the Governing Council and shall thereafter be published. Under Article 26.3 of the Statute, the Executive Board shall draw up a consolidated balance sheet of the ESCB for analytical and operational purposes, comprising those assets and liabilities of the NCBs that are part of the

³⁷⁶ From the Table 3-11 it is not entirely clear to what extent the third parties could also influence the annual budget.

³⁷⁷ Article 48(3) of the Bulgarian NCB Statute.

³⁷⁸ See (1) Article 67(1) of the Austrian NCB Statute; (2) Article 17 of the Danish NCB Statute and Article 35 of the Danish NCB By-laws; (3) Article 28 of the Estonian NCB Statute; (4) Article 19(1) of the Finnish NCB Statute; (5) Article 26(1) of the German NCB Statute; (6) Article 51 of the Greek NCB Statute; (7) Article 16 of the Latvian NCB Statute; (8) Article 48 of the Lithuanian NCB Statute; (9) Article 28 of the Luxembourg NCB Statute; (10) Article 21(1) of the Maltese NCB Statute; (11) Article 19(1) of the Dutch NCB Articles of Association; (12) Article 68(2) of the Polish NCB Statute; (13) Article 49(1) of the Slovenian NCB Statute; (14) Chapter 10 Article 2 of the Swedish NCB Statute. The NCB Statutes of Belgium, Cyprus, France, Ireland, Italy and the United Kingdom make reference to the financial year but do not determine its length.

ESCB.³⁷⁹ Under Article 15.2 of the Statute, a consolidated financial statement of the ESCB shall be published each week.

Article 26.4 of the Statute stipulates that the Governing Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the NCBs. The European Central Bank adopted on its Guideline on the legal framework for accounting and financial reporting in the European System of Central Banks on 10 November 2006 and subsequently adopted its update on 14 December 2009,³⁸⁰ which applies to the Eurosystem. Several NCB Statutes make reference to the Statute or Guideline and adapt their internal rules accordingly even if the NCB does not belong to the Eurosystem and is therefore not subject to ECB Guidelines.³⁸¹ The majority of NCB Statutes refer, in various forms, to the accounting legal instruments adopted by the ECB.³⁸²

In its Convergence Reports, the ECB has stated that (1) the accounts should be drawn up either in accordance with general accounting rules or in accordance with rules specified by an NCB's decision-making bodies; and (2) if, instead, such rules are specified by third parties, the rules must at least take into account what has been proposed by the NCB's decision-making bodies.³⁸³ It has also been suggested that taking into account the restrictions set by the Eurosystem as a whole, it is the NCB itself that determines the structure and composition of its balance sheet.³⁸⁴

The International Financial Reporting Standards (previously known as the International Accounting Standards) are general accepted accounting rules and have

³⁷⁹ It should be noted that while Article 26.2 of the Statute only applies to the Eurosystem, all other paragraphs apply to all members of the ESCB under Article 42.1 of the Statute.

³⁸⁰ Guideline of the European Central Bank of 14 December 2009 amending Guideline ECB/2006/16 on the legal framework for accounting and financial reporting in the European System of Central Banks (ECB/2009/28), OJ L 348, 29.12.2009, p. 75.

³⁸¹ See Table 3-12 referring to (1) Article 31(2) of the Estonian NCB Statute; (2) Article 49(1) of the Lithuanian NCB Statute; (3) Article 67 of the Polish NCB Statute; (4) Article 37(1) of the Romanian NCB Statute; (5) Article 3(2) of Chapter 10 of the Swedish NCB Statute.

³⁸² See (1) Article 67(2) of the Austrian NCB Statute; (2) Article 33 of the Belgian NCB Statute and Article 52 of the Belgian NCB Articles of Association; (3) Article R.144-6 of the French NCB Statute; (4) Article 54A of the Greek NCB Statute; (5) Article 49(1) of the Lithuanian NCB Statute; (6) Article 67 of the Polish NCB Statute; (7) Article 37(1) of the Romanian NCB Statute; (8) Article 49(2) of the Slovenian NCB Statute; (9) Chapter 10 Article 3 of the Swedish NCB Statute.

³⁸³ ECB Convergence Report, May 2010 (p. 22); May 2008 (p. 21); May 2007 (p. 20); December 2006 (p. 27); May 2006 (p. 66) and 2004 (p. 29).

³⁸⁴ See Paragraph 9 of ECB Opinion CON/2003/22 of 15 October 2003 at the request of the Finnish Ministry of Finance on a draft government proposal to amend the Suomen Pankki Act and other related acts.

been adopted by the European Union for large companies listed on stock exchanges since 2002³⁸⁵ and some of the NCB Statutes refer to them in general.³⁸⁶

3.2.4.3 *Auditing*

Pursuant to Article 27.1 of the Statute, the accounts of the ECB and NCBs shall be audited by independent external auditors recommended by the Governing Council and approved by the ECOFIN Council; the auditors shall have full power to examine all books and accounts of the ECB and NCBs and obtain full information about their transactions. The external auditors of the ECB and of the NCBs need not be identical, although this does not prevent the ECB's external auditor from carrying out some audit work directly at the NCB.³⁸⁷ Unlike Article 26 of the Statute which, with Article 26.2, applies to all members of the ESCB, Article 27.1 does not apply outside the Eurosystem.

On 23 October 2008 the Governing Council approved a non-binding set of principles known as "Good Practices for the selection and mandate of External Auditors according to Article 27.1 of the ESCB/ECB Statute" (Good Practices).³⁸⁸ This establishes four Good Practices:

- 1) Selection and evaluation conditions;³⁸⁹
- 2) Procurement procedure;³⁹⁰
- 3) Mandate: duration, rotation and dismissal;³⁹¹

³⁸⁵ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OJ L 243, 11.9.2002, p. 1. For further information and related legal instruments see http://europa.eu/legislation_summaries/internal_market/single_market_services/financial_services_general_framework/126040_en.htm (visited on 6 September 2010).

³⁸⁶ See (1) Article 67(2) of the Austrian NCB Statute; (2) Article 46 of the Bulgarian NCB Statute; (3) Article 20(1) of the Finnish NCB Statute; and (4) Article 3(1) of Chapter 10 of the Swedish NCB Statute refer only to international accounting standards in Table 3-12.

³⁸⁷ See van den Berg, 2005, pp. 158, 162. The reason is that the management of the reserves of the ECB is at present outsourced to the NCBs, which is why the ECB external auditor either has to rely on the external auditors of the NCBs or carry out the audit itself.

³⁸⁸ Available electronically at http://www.ecb.int/ecb/pdf/orga/practices_selection_external_auditorsen.pdf?146316f913110fbc378893769367f06c (visited on 29 August 2010).

³⁸⁹ Good Practice No 1: External audits pursuant to Article 27.1 of the Statute shall be carried out only by auditors or audit firms which are independent and approved under the applicable professional regulations of an EU Member State. The approved auditors or audit firms are registered in a public register. All auditors and audit firms are subject to a system of quality assurance.

³⁹⁰ Good Practice No 2: Each Eurosystem central bank is responsible for carrying out a procurement procedure for the selection of its auditors or audit firms which ensures that auditors are treated equally, non-discriminatorily and in a transparent way. A procurement procedure for the selection of auditors or audit firms should be carried out at least once every seven years. Their appointment should take place after their approval by the Ecofin Council, following the ECB Governing Council recommendation. So far, only the Slovenian NCB Statute foresees a public procurement procedure.

4) External auditor's independence.³⁹²

However, as is apparent from Table 3-13, the Statutes of non-Eurosystem NCBs have similar provisions on auditing,³⁹³ except for the Swedish NCB, which is audited by the National Audit Office.³⁹⁴

The Good Practices are not necessarily reflected in the NCB Statutes, which usually address the procedural rules regarding the appointment process and the task of the independent external auditors rather than issues arising from other parts of the legislation.

The establishment of a multi-year mandate for independent external auditors appears to be a common practice (the Good Practices foresee up to seven years),³⁹⁵ although

³⁹¹ Good Practice No 3: The Eurosystem central banks should establish a defined multi-year mandate for the appointment of the external auditor or the audit firm. This will help to enhance overall effectiveness, efficiency and independence. The auditor or the key audit partner or alternatively the audit firm should be rotated from the external audit engagement at least every seven years. Any divergence of opinions on accounting treatments or audit procedures between the Eurosystem central bank and the external auditor should not be a ground for dismissal. The Governing Council shall be informed of any case of dismissal and of any case where a renewable mandate is not renewed, as well as of the reasons thereof.

³⁹² Good Practice No 4: The Eurosystem central banks should verify on an annual basis that the auditor or the audit firm carrying out an external audit is independent from the audited Eurosystem central bank, in particular that it is: not providing any non-audit services (all services that go beyond the following services: statutory audits, financial statement audits or interim reviews, attestation of management reports on internal controls, and work that is reasonably related to the performance of an audit or review and is a logical extension of the audit scope, is of an assurance or compliance nature and is work that the auditors must or are best placed to undertake. Assurance engagements performed by the Eurosystem central banks' external auditors at the request of the external auditors of the ECB are not defined as non-audit services) to the audited Eurosystem central bank; and not in any way involved in management decisions of the audited Eurosystem central bank. The auditor or the key audit partner should not be allowed to take up a key management position in the audited Eurosystem central bank until a period of at least two years has elapsed since she/he resigned as an auditor or key audit partner of the external audit team.

³⁹³ (1) Articles 49(3) and 49(4) of the Bulgarian NCB Statute; (2) Article 48(2) of the Czech NCB Statute; (3) Articles 45(3) and 59 of the Hungarian NCB Statute; (4) Article 43(2) of the Latvian NCB Statute; (5) Article 50 of the Lithuanian NCB Statute; (6) Article 69(1) of the Polish NCB Statute; (7) Article 36(1) of the Romanian NCB Statute. Article 31(1) of the Estonian NCB Statute follows the text of Article 27.1 of the Statute, which is rather unusual for a non-Eurosystem NCB. The auditing regime of the UK NCB is not apparent from the UK NCB Statute.

³⁹⁴ The annual reports of the Swedish NCB are examined by the Swedish National Audit Office (Riksrevisionen) in accordance with generally accepted auditing standards. The auditors' report by the Swedish National Audit Office is very similar to the audit reports prepared by independent external auditors of the other ESCB members. The annual reports of the Swedish NCB are available at <http://www.riksbank.se>. Under Chapter 10, Article 5 of the Swedish NCB Statute, the NCB shall annually report to the Swedish Parliament about the measures that the NCB has taken in view of the Swedish National Audit Office's observations.

³⁹⁵ See Paragraph 2.4 of the ECB Opinion CON/2008/14 of 25 March 2008 at the request of Riigikogu on a draft law amending the Law on Eesti Pank. For the Eurosystem, see Article 52(1) of the Slovenian NCB Statute. For the non-Eurosystem, see (1) Article 49(4) of the Bulgarian NCB Statute; (2) Article 59 of the Hungarian NCB Statute;

there are several NCB Statutes requiring the appointment of independent auditors each year.³⁹⁶

The ECB has stated in its Convergence Reports that if the NCB's operations are subject to the control of a state audit office or similar body charged with controlling the use of public finances, the scope of the control should be clearly defined by the legal framework and should be without prejudice to the activities of the NCB's independent external auditors.³⁹⁷ The State Audit Office (or a similar body) performs the functions of a financial audit in Latvia and Sweden, where it functions in parallel with the independent external auditors in Finland and Ireland.³⁹⁸ The powers of the State Audit office are limited in one NCB Statute,³⁹⁹ while in other Member States it can also audit the NCBs, as is shown in Table 3-13.⁴⁰⁰ These issues will be discussed further in Section 3.3.1.2.

3.2.4.4 Distribution of profits, NCB's capital and financial provisions

The ECB is of the opinion that the annual accounts should be adopted by the NCB's decision-making bodies, assisted by independent accountants, and may be subject to ex post approval by third parties (e.g. the government or parliament) and that the NCB's decision-making bodies should be able to decide on the calculation of the profits independently and professionally.⁴⁰¹ However, there are several NCB Statutes that also foresee a role for the Minister of Finance or the national Parliament in this regard.⁴⁰² Moreover, the ECB has criticised the practices of the Swedish Parliament,

³⁹⁶ See (1) Article 37(1) of the Austrian NCB Statute; (2) Article 15 of the Luxembourg NCB Statute. The Good Practices also refer to Greek law as not enabling the multi-year mandate; however, the respective NCB Statute appears to be silent about that matter. For non-Eurosystem NCBs: (1) Article 18 of the Danish NCB Statute; (2) Article 31(1) of the Estonian NCB Statute;

³⁹⁷ It has also been stated that the state audit should be carried out on a non-political, independent and purely professional basis; see ECB Convergence Report, May 2010, (p. 22).

³⁹⁸ (1) Articles 18 and 22, with the exception of Article 22(4), as well as Article 23 of the Finnish NCB Statute; (2) Article 6H of the Irish NCB Statute; (3) Article 43(2) of the Latvian NCB Statute; (4) Chapter 10, Article 3 of the Swedish NCB Statute.

³⁹⁹ See Article 54(6) of the Portuguese NCB Statute.

⁴⁰⁰ (1) Article 48(3) of the Bulgarian NCB Statute; (2) Article 60(1)(b) of the Cypriot NCB Statute; (3) Article 26(3), 26(5) and 26(6) of the German NCB Statute; (4) Article 45(2) of the Hungarian NCB Statute; (5) Article 4(2) of the Spanish NCB Statute.

⁴⁰¹ ECB Convergence Report, May 2010, (p. 22).

⁴⁰² See (1) Article 6H of the Irish NCB Statute; (2) Article 21 of the Maltese NCB Statute; (3) Article 69(3) of the Polish NCB Statute; (4) Article 54 of the Portuguese NCB Statute; (5) Article 4(2) of the Spanish NCB Statute; (6) Chapter 10, Article 4 of the Swedish NCB Statute; (7) Article 4 of the United Kingdom NCB Statute.

noting that reliance on non-binding instruments with regard to profit distribution⁴⁰³ undermines the NCB's financial independence.

With regard to profit allocation, the ECB has suggested that the NCB Statutes may prescribe how their profits are to be allocated.⁴⁰⁴ Indeed, as is apparent from Table 3-14, there are several NCB Statutes establishing rules for profit distribution.⁴⁰⁵ Furthermore, in its Convergence Reports the ECB has noted that in the absence of such provisions, decisions on the allocation of profits should be taken by the NCB's decision-making bodies on professional grounds,⁴⁰⁶ and should not be subject to the discretion of third parties unless there is an express safeguard clause stating that this is without prejudice to the financial means necessary for carrying out the NCB's ESCB-related tasks.⁴⁰⁷ For the sake of an NCB's financial independence, any amendment to its profit distribution rules should only be initiated and decided in cooperation with the NCB, which is best placed to assess its required level of reserve capital.⁴⁰⁸

Usually, the NCB Statutes note the size of the NCB's statutory capital,⁴⁰⁹ the ability to create provisions and/or reserves⁴¹⁰ and the mechanism of profit distribution.⁴¹¹ In

⁴⁰³ ECB Convergence Report, May 2010 (pp. 261-262), (2008, p. 254) and December 2006 (p. 232).

⁴⁰⁴ ECB Convergence Report, May 2010, (p. 22).

⁴⁰⁵ For the Eurosystem NCBs, see (1) Article 69 of the Austrian NCB Statute; (2) Articles 30, 31 and 32 of the Belgian NCB Statute and Articles 46, 47, 48, 49, 50, 54 and 55 of the Belgian NCB Articles of Association; (3) Article 59 of the Cypriot NCB Statute; (4) Article 21 of the Finnish NCB Statute; (5) Article 27 of the German NCB Statute; (6) Article 71(1) of the Greek NCB Statute; (7) Article 39 of the Italian NCB Statute; (8) Article 31 of the Luxembourg NCB Statute; (9) Article 53 of the Portuguese NCB Statute; (10) Articles 50 and 50a of the Slovenian NCB Statute. For the non-Eurosystem NCBs, see (1) Article 47(2) of the Czech NCB Statute; (2) Article 19 of the Danish NCB Statute; (3) Article 30 of the Estonian NCB Statute; (4) Articles 18¹ and 19 of the Latvian NCB Statute; (5) Article 23(3) of the Lithuanian NCB Statute; (6) Article 43 of the Romanian NCB Statute.

⁴⁰⁶ For example, (1) Article R 144-4 of the French NCB Statute; (2) Article 65(1) of the Hungarian NCB Statute; (3) Article 22 of the Maltese NCB Statute; (4) Article 22 of the Dutch NCB Articles of Association; (5) Article 69(4) of the Polish NCB Statute; (6) Articles 39(3) and 39(4) of the Slovak NCB Statutes; (7) Article 4(2) of the Spanish NCB Statute; (10) Chapter 10, Article 4 of the Swedish NCB Statute.

⁴⁰⁷ See Article 6G of the Irish NCB Statute. In the United Kingdom, the Treasury and the Bank of England shall agree on the amount of the dividend.

⁴⁰⁸ ECB Convergence Report, May 2010, (p. 23). See also ECB Opinion CON/2009/83 of 29 October 2009 on the distribution of Lietuvos bankas profits, available at http://www.ecb.int/ecb/legal/pdf/en_con_2009_83_f_sign.pdf and ECB Opinion CON/2009/53 of 24 June 2009 on the distribution of Latvijas Banka's profits, available at http://www.ecb.int/ecb/legal/pdf/en_con_2009_53.pdf.

⁴⁰⁹ For example, (1) Article 8(1) of the Austrian NCB Statute; (2) Article 7 of the Bulgarian NCB Statute; (3) Article 56 of the Cypriot NCB Statute; (4) Article 25 of the Estonian NCB Statute; (5) Article 2 of the German NCB Statute; (6) Article 8(1) of the Greek NCB Statute; (7) Article 46(5) of the Hungarian NCB Statute; (8) Article 3 of the Italian NCB Statute; (9) Article 18 of the Latvian NCB Statute; (10) Article 20 of the Lithuanian NCB Statute; (11) Article 4(1) of the Luxembourg NCB Statute; (12) Article 19(1) of the Maltese NCB Statute; (13) Article 5(1) of the Dutch NCB Articles of Association; (14) Article 61 of the Polish NCB Statute; (15) Article 4(1) of the Portuguese NCB Statute; (16) Article 38(1) of the Romanian NCB Statute; (17) Article 5(1) of the Slovenian NCB Statute; (18) Article 1 of Chapter 10 of the Swedish NCB Statute.

very rare cases the method of distributing the NCB's assets in the case of its liquidation is also regulated.⁴¹²

The size of the NCB capital is an open issue – the level of statutory capital varies between NCBs and in most cases it appears to be more related to history, i.e. when the NCB was established or reorganised.⁴¹³ From the theoretical point of view, Alex Cukierman suggests that positive capital constitutes a safeguard for the central bank's independence, while the presence of negative capital gives the political establishment tools to control the central bank's actions.⁴¹⁴ For the purpose of establishing the size of the NCB's capital, Alex Cukierman proposes six different aspects that need to be taken into account:

- (1) the magnitude of shocks to which the monetary policy is expected to react;
- (2) the width of the NCB's areas of responsibility;
- (3) the expectations regarding the size of the government's deficit;
- (4) the NCB's role in the exchange rate arrangement;
- (5) the level of NCB assets held in foreign currency; and
- (6) the credibility of an NCB for being committed to the maintenance of price stability.⁴¹⁵

⁴¹⁰ (1) Articles 67(2) and 69(4) of the Austrian NCB Statute; (2) Articles 30 and 31 of the Belgian NCB Statute and Articles 46, 47, 54 and 55 of the Belgian NCB Articles of Association; (3) Articles 8 and 36 of the Bulgarian NCB Statute; (4) Article 58 of the Cypriot NCB Statute; (5) Article 47(2) of the Czech NCB Statute; (6) Article 20 of the Finnish NCB Statute; (7) Article L 142-6 of the French NCB Statute; (8) Article 26(2) of the German NCB Statute; (9) Article 71(1) of the Greek NCB Statute; (10) Articles 39 and 40 of the Italian NCB Statute; (11) Article 19 of the Latvian NCB Statute; (12) Article 23 of the Lithuanian NCB Statute; (13) Article 31 of the Luxembourg NCB Statute; (14) Article 22(1) of the Maltese NCB Statute; (15) Article 19(4) of the Dutch NCB Articles of Association; (16) Article 53(1) of the Portuguese NCB Statute; (17) Articles 43(3) and 43(4) of the Romanian NCB Statute; (18) Article 38(1) of the Slovak NCB Statute; (19) Article 49a of the Slovenian NCB Statute; (20) Chapter 10, Article 4(1) of the Swedish NCB Statute. See Tables 3-12 and 3-14 for more details.

⁴¹¹ See footnote 405.

⁴¹² (1) Article 78 of the Austrian NCB Statute; (2) Article 11 of the Belgian NCB Articles of Association; (3) Article 44 of the German NCB Statute; (4) Article 74 of the Greek NCB Statute; (5) Article 17 of the Latvian NCB Statute. These provisions are not reflected in the Tables.

⁴¹³ However, from time to time the NCB statutory capital is adjusted and this adjustment is also reflected in the NCB Statutes. See Paragraph 2 of the ECB Opinion CON/2008/17 of 15 April 2008 at the request of the Luxembourg Minister for the Treasury and the Budget on a draft law improving the legislative framework for Luxembourg as a financial centre and on a draft law relating to social insurance contributions, available at http://www.ecb.eu/ceb/legal/pdf/en_con_2008_17_f_sign.pdf.

⁴¹⁴ See Cukierman (2010). However, Cukierman notes that there are some exceptions, such as Chile. A similar thesis was also expressed by the ECB in Paragraph 8 of ECB Opinion CON/2003/22 of 15 October 2003 at the request of the Finnish Ministry of Finance on a draft government proposal to amend the Suomen Pankki Act and other related acts, available at http://www.ecb.int/ceb/legal/pdf/EN_CON_2003_22_f_sign.pdf.

⁴¹⁵ Cukierman (2010).

It follows from the above that the size of the NCB statutory capital is important and the financial independence of an NCB would be better protected if it is regulated by law. However, not regulating the size of the capital seems to be an exception; some of the NCB Statutes that regulate the size of the statutory capital have also provisions regarding loss of capital.⁴¹⁶ Even when no provision is included in the NCB Statute regarding the size of the statutory capital, a reduction of de facto statutory capital is considered to be a problem. A Member State may not impose reductions of capital on an NCB without the ex ante agreement of the NCB's decision-making bodies, which must aim to ensure that it retains sufficient financial means to fulfil its mandate under Article 127(2) TFEU and Article 3 of the Statute.⁴¹⁷

Historically, the ECB has been consulted on a national legislative proposal containing: (i) a substantial reduction of primary capital forcing the NCB to sell part of its foreign reserve assets; (ii) an obligation to transfer 100% of profits to the State; and (iii) a strict limitation on the right to create financial provisions.⁴¹⁸ The ECB was of the opinion that the combined effect of these measures would weaken the NCB's financial position over time, increasing the risk that it may not have sufficient resources in the future to carry out its ESCB-related and other tasks and making it dependent on the decisions of third parties in such situations.⁴¹⁹ The ECB therefore concluded that the weakening of the financial position of an NCB forming part of the Eurosystem cannot be seen in isolation from the system as a whole, and that the legislative proposal in question would have an adverse effect on the credibility and financial standing of the Eurosystem as a whole.⁴²⁰

In its Convergence Reports, the ECB has stated that profits may be distributed to the State budget only after any accumulated losses from previous years have been covered⁴²¹ and financial provisions deemed necessary to safeguard the real value of the NCB's capital and assets have been created.⁴²² Temporary or *ad hoc* legislative measures amounting to instructions to the NCBs in relation to the distribution of their

⁴¹⁶ (1) Article 9 of the Bulgarian NCB Statute; (2) Article 30(6) of the Estonian NCB Statute; (3) Article 51 of the Slovenian NCB Statute. See Table 3-14 for details.

⁴¹⁷ ECB Convergence Report, May 2010 (p. 23).

⁴¹⁸ Paragraph 4 of ECB Opinion CON/2003/22.

⁴¹⁹ See footnote 418.

⁴²⁰ See footnote 418.

⁴²¹ See paragraph 4.3 of the ECB Opinion CON/2009/85 of 27 October 2009 on Národná banka Slovenska's independence, available at http://www.ecb.int/ecb/legal/pdf/en_con_2009_85_f_sign.pdf.

⁴²² ECB Convergence Report, May 2010 (p. 23).

profits are not admissible.⁴²³ Similarly, a tax on an NCB's unrealised capital gains would also impair the principle of financial independence.⁴²⁴

3.2.4.5 *Autonomy in staff matters*

In 2008, the ECB included a new section in its Convergence Reports as a result of two Opinions issued on this matter.⁴²⁵ The ECB's policy is that Member States may not impair an NCB's ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaties and the Statute. In addition, an NCB may not be put into a position where it has limited control or no control over its staff or where the government of a Member State can influence its policy on staff matters.⁴²⁶ As is shown in Table 3-16, with the exception of the NCB Statutes of Germany⁴²⁷ and Luxembourg,⁴²⁸ the NCBs enjoy full autonomy.

3.2.4.6 *Financial liability for supervisory authorities*

In many Member States which have adopted supervisory models based on an independent financial supervisory authority, the NCB either provides members of the FSA decision-making body or plays an institutional role in the appointment and

⁴²³ See paragraphs 3.1 to 3.4 of the ECB Opinion CON/2009/26 of 24 March 2009 at the request of Lietuvos bankas on behalf of the Ministry of Finance of Lithuania on a draft law amending the Law on Lietuvos bankas as regards the rules on the distribution of the profits of Lietuvos bankas, available at http://www.ecb.eu/ ECB/legal/pdf/en_con_2009_26_f_sign.pdf.

⁴²⁴ See ECB Opinion CON/2009/63 of 24 July 2009 on an amended draft legislative provision on the taxation of the Banca d'Italia's gold reserves and ECB Opinion CON/2009/59 of 14 July 2009 on the taxation of the Banca d'Italia's gold reserves, available respectively at http://www.ecb.eu/ ECB/legal/pdf/en_con_2009_63_f_sign.pdf and http://www.ecb.eu/ ECB/legal/pdf/en_con_2009_59_it_taxation_of_banca_ditalias_gold.pdf.

⁴²⁵ ECB Convergence Report, May 2008 (p. 22). See also ECB Opinion CON/2008/9; also ECB Opinion CON/2008/10.

⁴²⁶ See paragraph 3.1 to 3.5 of ECB Opinion CON/2010/69 of 26 August 2010 on further measures for the restoration of budgetary balance, available at http://www.ecb.europa.eu/ ECB/legal/pdf/en_opinion_con_2010_69_ro_draft_emergency_ordinance.pdf; paragraph 2.5 of ECB Opinion CON/2010/59 of 29 July 2010 on the careers of Deutsche Bundesbank civil servants, available at http://www.ecb.europa.eu/ ECB/legal/pdf/en_con_2010_59_f_sign.pdf; paragraphs 3.2 and 3.5 of ECB Opinion CON/2010/56 of 12 July 2010 on amendments to the Law on the Magyar Nemzeti Bank introducing salary reductions, available at http://www.ecb.europa.eu/ ECB/legal/pdf/en_con_2010_56_f_sign.pdf; paragraphs 4.3 and 4.4 of ECB Opinion CON/2010/42 of 18 May 2010 on the legal status of Lietuvos bankas's assets, terms of office and remuneration of Board members, immunity of foreign reserves of foreign central banks and annual financial statements of Lietuvos bankas, available at http://www.ecb.europa.eu/ ECB/legal/pdf/en_con_2010_42_f_sign.pdf.

⁴²⁷ See Article 31(3) of the German NCB Statute referring to the civil servants of the German NCB as indirect Federal civil servants.

⁴²⁸ See Article 14(3)(a) of the Luxembourg NCB Statute regarding the officials authorised to exercise public power.

dismissal of the FSA decision-making body.⁴²⁹ However, the links between the financial supervisory authority and an NCB may go deeper – there are some cases in which the supervisory authority and an NCB are merged. The Committee of European Banking Supervisors (CEBS) has listed Bulgaria, Cyprus, the Czech Republic, Spain, Greece, Italy, Lithuania, the Netherlands, Portugal, Romania, Slovenia and Slovakia as the Member States where the prudential supervision of credit institutions is entrusted to the NCBs; in the remaining EU Member States, the supervisory powers are entrusted to stand-alone integrated financial supervisors (Austria, Belgium, Germany, Denmark, Estonia, Finland, France, Hungary, Ireland, Luxembourg, Latvia, Malta, Poland, Sweden and the United Kingdom).^{430, 431}

With regard to such cases, the ECB has noted that: (i) an NCB being merged with a supervisory authority, together with the potential exposure of an NCB to liabilities resulting from the supervisory authority's activity, could be seen as a threat to the NCB's overall institutional and financial independence;⁴³² and (ii) it is important to ensure that decisions adopted by such supervisory authorities do not endanger the finances of the NCB as a whole, in which cases, the national legislation should enable the NCBs to have ultimate control over any decision by the supervisory authorities that could affect an NCB's independence, in particular its financial independence.⁴³³

The NCB Statutes reviewed in this thesis tend not to provide such safeguards, as shown in Table 3-15, except for the Irish NCB Statute, which provides for the Regulatory Authority to have a duty to act in a way that is consistent with the performance by the Governor and the Board of their respective functions in relation to the Bank; for the purpose of verifying compliance with that duty, the Regulatory

⁴²⁹ See paragraph 3.2.3 of ECB Opinion CON/2006/15.

⁴³⁰ See Committee of European Banking Supervisors, 2009, p. 13. This is also reflected by the respective NCB Statutes, with the exception of Italy. See Table 4-1 for details.

⁴³¹ Another source lists NCBs performing supervisory functions in Austria (in part), Cyprus, the Czech Republic, Germany (in part), Greece, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia, and Spain, (Schinasi & Teixeira, *The Lender of Last Resort in the European Single Financial Market*, Working Paper Series No. 43, 2006, p. 7). Note that Bulgaria and Romania were then not members of the European Union and could not therefore be used in the survey. Another, more recent, source, however, lists only Spain, Italy, Portugal, Greece, the Netherlands, and the Czech Republic as Member States in which the NCBs still have a supervisory role. See *The European Union Committee of the House of Lords*, 2009, p. 14.

⁴³² See Paragraph 6 of ECB Opinion CON/2002/16 of 5 June 2002 at the request of the Irish Department of Finance on a draft Central Bank and Financial Authority of Ireland Bill of 2002, available at http://www.ecb.eu/ceb/legal/pdf/EN_CON_2002_16_f_sign.pdf.

⁴³³ ECB Convergence Report, May 2010 (p. 23). See also paragraph 4.1 of ECB Opinion CON/2008/16; ECB Opinion CON/2006/15; ECB Opinion CON/2005/24 of 15 July 2005 at the request of the Ministry of Finance of the Czech Republic on a draft law on the integration of financial market supervisors, available at http://www.ecb.europa.eu/ceb/legal/pdf/en_con_2005_24_f_sign.pdf; ECB Opinion CON/2003/23; ECB Opinion CON/2002/23; ECB Opinion CON/2002/16; ECB Opinion CON/2001/10;

Authority shall provide the Governor or the Board with such information as the Governor or the Board reasonably require or as it considers appropriate.⁴³⁴

However, when errors or omissions in the performance of the financial supervisory authority occur and the NCB has to pay damages, either the NCB Statute or another law should stipulate the State reimbursement mechanism. The ECB has criticised the draft reimbursement mechanism for the Finnish Financial and Insurance Supervisory Authority, noting that instead of using the NCB's budget as a buffer, the compensation for damage suffered by third parties as a result of errors or omissions in the performance of supervisory authority's tasks should be paid directly from the State budget; alternatively, the expenses relating to the supervisory authority's supervisory liability should be reimbursed immediately after such expenses have been incurred and presented for repayment by the NCB.⁴³⁵ In addition, the ECB has traditionally been concerned by national provisions establishing legal succession obligations for the NCBs, claiming non-compliance with the monetary financing prohibition under Article 123 TFEU [former Article 101 TEC].⁴³⁶

3.3 The Eurosystem's voice in a Member State

3.3.1 The notion of accountability

3.3.1.1 *Material aspect of accountability*

There are no EU-wide harmonised rules on central bank accountability and the matter has not been addressed in the ECB Convergence Reports. The basic argument for the democratic accountability of NCBs is that delegation of powers to non-elected officials can only be acceptable in a democratic society if central banks are accountable to democratically elected institutions in one way or another.⁴³⁷ Lastra has noted that democratic legitimacy is a prerequisite for the establishment of an independent central bank.⁴³⁸ In her earlier work, she outlined four elements for accountability:

⁴³⁴ See Article 33B of the Irish NCB Statute.

⁴³⁵ See paragraph 4.2(c) of ECB Opinion CON/2008/16. See also Table 3-15 for details.

⁴³⁶ See paragraphs 8 to 12 of the ECB Opinion CON/2005/24, and the ECB Convergence Report of May 2010 (p. 25).

⁴³⁷ See Amtenbrink & de Haan, *The European Central Bank: an Independent Specialised Organisation of Community Law - A Comment*, 2002, p. 73.

⁴³⁸ Lastra R. M., 2010, pp. 53-54.

1. a holder of power (the ‘accountable’);
2. an authority to whom accountability is owed (the ‘accountee’);⁴³⁹
3. the content of obligation;
 - 3.1. to give an account of his decisions or actions;
 - 3.2. to explain or justify the decision or the course of action taken; and
 - 3.3. where error is proved or harm inflicted, to own the responsibility and take appropriate measures of amendment or redress;
4. criteria of assessment – accountability implies an obligation to comply with certain standards in the exercise of power or to achieve specific goals.⁴⁴⁰

Following this line of argument, one can conclude that a central bank is the accountable party and that either the executive government and/or parliament are the parties in charge of the review.⁴⁴¹ It has been suggested that to the extent that central banks are independent, mechanisms of democratic accountability are required in order to legitimise the position of the central bank within a given constitutional system as central banks do not operate in a constitutional vacuum.⁴⁴² According to Lastra, parliamentary accountability should be exercised through a variety of procedures and mechanisms, including annual reports and regular appearances of public officials before parliament, including in emergency situations.⁴⁴³

There is also another dimension which has not been previously addressed and which relates to the discussion in Sections 3.2.3.4 and 3.2.3.5 describing the beneficiaries of the Governor’s duties. The main reason why the Governors (and the central banks

⁴³⁹ According to Lastra (2006) there are various types of accountability according to the authority that extracts it. Judicial accountability would occur in the context of a judicial review of administrative actions or omissions, when parliament is the accountee we refer to parliamentary accountability and the accountability to the public means that the general public is the accountee.

⁴⁴⁰ See Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, pp. 67-68. See also ECB Monthly Bulletin, which breaks the accountability down into four elements: (i) whenever decisions are taken by a collegial body, members can be held accountable for the decisions collectively or individually; (b) accountability presupposes the existence of a mandate or task, for which the institution and/or its decision-makers can be held accountable; (c) accountability can be direct, i.e. vis-à-vis the citizens for whom the “public good” is provided, or to their elected representatives, i.e. parliaments or governments; (d) accountability can be guaranteed in different ways – through openness about the decisions taken, through scrutiny of policy decisions and activities, and through other means such as dismissal procedures and judicial review (European Central Bank, 2002, pp. 48-49).

⁴⁴¹ See Amttenbrink, *A Comparative Study of the European Central Bank*, 1999, p. 38; Kapteyn & VerLoren van Themaat, 2008, p. 957.

⁴⁴² See Kapteyn & VerLoren van Themaat, 2008, p. 957. However, it is arguable whether the conduct of monetary policy forms part of economic policy under the Treaties and the Statute as pursuant to Article 282(2) TFEU, Article 127(1) TFEU and Article 2 of the Statute the primary objective of the ESCB shall be price stability and the ESCB shall support, without prejudice to that objective, the general economic policies in the Union in order to contribute to the achievement of the latter’s objectives.

⁴⁴³ See Lastra R. M., 2010, p. 55.

operated by them) are made accountable appears to be because of the duty of loyalty (and to some extent the duty of non-competition) owed to the democratically elected institutions that have appointed the Governor.⁴⁴⁴ This theory conflicts neither with Amtenbrik's thesis⁴⁴⁵ nor the analogy with the theory of judicial legitimacy,⁴⁴⁶ but rather complements the studies. In this regard, accountability is to be considered as placing the NCB within the existing system of checks and balances in relation to the three branches of the State – legislative, executive and judiciary;⁴⁴⁷ this is the approach taken in the NCB Statutes. There is, of course, an alternative view calling for greater transparency and closer monitoring of the ECB and NCBs, which results in changes to the Treaties and the Statute.⁴⁴⁸

3.3.1.2 Formal aspect of accountability

Under the formal aspect of accountability central banks are to provide an ex post justification of its actions. As independence constitutes only one side of the coin, an NCB must be accountable in a democratic State.⁴⁴⁹ Lastra has referred to accountability from a legal perspective as being diversified to include parliamentary accountability as well as a judicial review of the [agency's] acts and decisions and a degree of cooperation with the executive to ensure consistent overall policy-making.⁴⁵⁰ With the exception of judicial accountability, this diversification is also reflected in Table 3-17.

In the literature, central bank accountability is explained by the fact that in societies based on the rule of law, central banks lie within and not outside the system of

⁴⁴⁴ The Governor's duties are similar to those of a director in a private company with regard to the company's shareholders.

⁴⁴⁵ See Amtenbrink, *A Comparative Study of the European Central Bank*, 1999. The Amtenbrink's thesis has a wider scope than merely the legal aspect of accountability. Amtenbrink assesses the following: (1) the legal basis of the central bank; (2) the monetary policy objectives; (3) the relationship with the executive branch of the government; (4) the appointment and dismissal procedures; (5) the override mechanism; (6) the relationship with the parliament; (7) transparency; (8) budgetary accountability. However, it has been stated that ESCB is a central bank system whose democratic link back to the European and national government and parliaments is relatively weak (Kapteyn & VerLoren van Themaat, 2008, p. 958).

⁴⁴⁶ See Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 64.

⁴⁴⁷ Lastra has described this as 'the lawyers' view' (Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 69).

⁴⁴⁸ The views presented by some authors would lead to a conclusion that the choice made in the Treaty of Maastricht was fundamentally wrong. (Kapteyn & VerLoren van Themaat, 2008, pp. 958-959). They assume that monetary policy is subordinated to economic policy [of a Member State]; it also fails to take account of the decentralised nature of the Eurosystem.

⁴⁴⁹ See Lastra, *The Independence of the European System of Central Banks*, 1992, p. 496; and footnote 438.

⁴⁵⁰ See Lastra R. M., 2010, p. 55.

democratically organised political power.⁴⁵¹ A further argument may derive from the fact that monetary policy has traditionally been considered to be a part of economic policy, and it is therefore natural to assume that the authorities entrusted with overall economic policy (such as the Government) and monetary policy (such as the NCB) should report to national parliament. Moreover, it has been said that the relationship between the democratically elected government and the NCB is usually referred to as a principal-agent relationship; this framework requires proper arrangements to be made for accountability.⁴⁵² In order to hold someone accountable, an act of legitimisation is necessary.⁴⁵³ The methods of subjecting central banks to public scrutiny differ greatly – there are central banks whose decision-making bodies are to appear before the national parliament, while for others regular reporting on their activities is the means by which their accountability is assured; where central banks are independent, the relationship with the executive and legislative branches of the Government helps to foster a climate of understanding for monetary policy decisions and furthers the alignment of fiscal and monetary policies.⁴⁵⁴

Accountability to executive bodies

According to Lastra, in order to avoid an undemocratic ‘state within the state’ the central bank should provide certain information, reports and advice to the Government upon demand.⁴⁵⁵ Against this background, the ECB President shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB as set forth in Article 284(2) TFEU[former Article 113(2) TEC]. As shown in Table 3-17, accountability (often also referred to as the duty to cooperate) to the Government is present in several NCB

⁴⁵¹ See Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 63; and Torrent, 1999, p. 1234.

⁴⁵² See Amtenbrink & de Haan, *The European Central Bank: an Independent Specialised Organisation of Community Law - A Comment*, 2002, pp. 66-73. Amtenbrink and de Haan consider it possible for the agent to be assigned a specific and restricted objective, while the principal has a number of possibly conflicting objectives; as long as the principal decides on the objective, the agent can focus on its task without bothering about the principal’s other objectives; see (p. 69).

⁴⁵³ See Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 63.

⁴⁵⁴ See Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, p. 169.

⁴⁵⁵ See Lastra R. M., *The Independence of the European System of Central Banks*, 1992, p. 497.

Statutes.⁴⁵⁶ The duty to cooperate with the executive branch of the Government usually concerns advice on matters of economic policy, central bank functions or similar issues. Sometimes an NCB may be asked to comment on draft national legislation.⁴⁵⁷ In order to accomplish these tasks, an NCB Governor is often invited to participate in the meetings of the Government.

This cooperation duty is subject to the exceptions described in Sections 3.2.2.2, 3.2.2.6 and exhibited in Table 3-6.⁴⁵⁸ The only Member State that has copied the text from the ECB Convergence Reports appears to be Malta.⁴⁵⁹ Some of the exceptions have been reflected in the NCB Statutes of Austria,⁴⁶⁰ Cyprus,⁴⁶¹ France,⁴⁶² Ireland⁴⁶³ and Spain.⁴⁶⁴ These provisions usually refer either to the NCB's independence or to professional secrecy in the context of regular reporting to the Government or Parliament. Most of the reviewed NCB Statutes therefore comply with the list of prohibitions discussed in Section 3.2.2; submission of the draft monetary policy guidelines to the Parliament and/or the Government is required in two cases only,⁴⁶⁵ and in another two cases there is a duty to inform the Minister prior to making a monetary policy decision of major importance.⁴⁶⁶

⁴⁵⁶ For the Eurosystem, see (1) Articles 22 of the Belgian NCB Statute and Articles 41 and 42 of the Belgian NCB Articles of Association; (2) Articles 53(1), 53(2) and 54(1) of the Cypriot NCB Statute; (3) Article 4(2) of the Finnish NCB Statute; (4) Article L 143-1 of the French NCB Statute; (5) Article 13 of the German NCB Statute; (6) Articles 5B(1) and 5B(3) of the Greek NCB Statute; (7) Article 6A(3), 6A(4), 6A(5) and 6I of the Irish NCB Statute; (8) Article 41 of the Italian NCB Statute; (9) Article 11(2) and 30 of the Luxembourg NCB Statute; (10) Articles 21(2), 21(3), 25 and 29 of the Maltese NCB Statute; (11) Articles 14 and 18 of the Dutch NCB Statute and Article 12 of the Dutch NCB Articles of Association; (12) Articles 54(1) and 54(2) of the Portuguese NCB Statute; (13) Articles 12(2) and 13 of the Slovak NCB Statute; (14) Article 27 of the Slovenian NCB Statute; (15) Article 10(1) of the Spanish NCB Statute. For the non-Eurosystem, see (1) Article 3 of the Bulgarian NCB Statute; (2) Articles 4(2) and 4(4) of the Estonian NCB Statute; (3) Articles 36, 37, 41(2), 41(3) and 42 of the Hungarian NCB Statute; (4) Articles 6(1), 28(4) and 43(1) of the Latvian NCB Statute; (5) Article 41 of the Lithuanian NCB Statute; (7) Articles 21 and 23 of the Polish NCB Statute; (8) Articles 3(2) and 3(3) of the Romanian NCB Statute; (9) Chapter 4, Articles 1 and 2, Chapter 6, Articles 2 and 3 of the Swedish NCB Statute; (10) Article 4, 12, 19(1) and 19(2) of the United Kingdom NCB Statute.

⁴⁵⁷ Such national consultations do not obviate the need to consult the ECB under Article 127(4) TFEU [former Article 105(4) TEC] and Article 4 of the Statute.

⁴⁵⁸ The compatibility criteria are: (i) the consultation does not result in interference with the independence of the members of the NCB's decision-making bodies; (ii) the special status of Governors in their capacity as members of the ECB's General Council is fully respected; and (iii) confidentiality requirements resulting from the Statute are observed. See ECB Convergence Report, May 2010 (p. 19).

⁴⁵⁹ Article 29 of the Maltese NCB Statute.

⁴⁶⁰ Article 32(5) of the Austrian NCB Statute.

⁴⁶¹ Article 55(2) of the Cypriot NCB Statute.

⁴⁶² Article L 143-1 of the French NCB Statute.

⁴⁶³ Article 6A(5) of the Irish NCB Statute.

⁴⁶⁴ Article 10(1) of the Spanish NCB Statute.

⁴⁶⁵ (1) Article 3 of the Bulgarian NCB Statute; (2) Article 23(1) of the Polish NCB Statute.

⁴⁶⁶ (1) Article 41(3) of the Hungarian NCB Statute; (2) Chapter 6, Article 3 of the Swedish NCB Statute.

Accountability to legislative bodies

Reporting to parliament and to the general public ensures that they are informed of the NCB's assessment of the state of the economy, its views on the stability of prices and the past or intended activities to ensure the fulfilment of the NCB's mandate.⁴⁶⁷ Making an NCB answerable to the legislature could mean either: (i) the NCB is subject to periodic and extraordinary reporting requirements; or (ii) the NCB is operating under the control of the national Parliament. Both these options will be discussed below.

However, there is a need to clarify the reporting requirement under Union law. Article 284(3) TFEU [former Article 113(3) TEC] and Article 15.3 of the Statute stipulate that the ECB shall address an annual report ('ECB Annual Report') on the activities of the ESCB and on the monetary policy of both the previous and current year⁴⁶⁸ to the European Parliament, the Council and the Commission,⁴⁶⁹ and 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.⁴⁷⁰

Antenbrink and de Haan argue that since the Treaties and the Statute do not require NCB Governors to appear before the European Parliament, there would be a problem as more than half of the members of the Governing Council cannot be asked to explain their conduct before the European Parliament and it is questionable whether this role can be performed by national parliaments.⁴⁷¹ However, this argument does

⁴⁶⁷ See Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, pp. 169-170.

⁴⁶⁸ There has been some criticism of the fact that the ECB does not publish its forecasts. The ECB's explanation that publication of forecasts may have an adverse effect has been declared 'not convincing' (Randzio-Plath, 2000, p. 15).

⁴⁶⁹ Against this background, it is recalled that under Article 284(1) TFEU [former Article 113(1) TEC] 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. Pursuant to Article 284(2) TFEU [former Article 113(2) TEC], 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.

⁴⁷⁰ Some authors have noted that the appearance before the European Parliament under these provisions cannot be concluded to amount to an obligation; a practice has been established whereby the ECB President appears before the European Parliament Committee on Economic and Monetary Affairs on a quarterly basis (Kapteyn & VerLoren van Themaat, 2008, p. 960).

⁴⁷¹ See Antenbrink & de Haan, *The European Central Bank: an Independent Specialised Organisation of Community Law - A Comment*, 2002, p. 75.

not take into account the decentralised nature of the Eurosystem under the last paragraph of Article 12.1 of the Statute; Amtenbrink and de Haan also do not take into account that national parliaments have no one other than the NCB Governor who can report to them.⁴⁷² The Governors are appointed in accordance with their respective national procedures; their membership in the Governing Council is automatic and is not subject to an act of confirmation at the EU level. One may therefore assume the existence of a national reporting arrangement.

The ECB has stated that for a Eurosystem NCB, monetary policy will no longer be subject to national scrutiny; in addition, an NCB Governor may still ask to be heard or be requested to provide information or answer any questions related to the implementation of the Eurosystem's monetary policy and decisions before a national parliament, provided that the NCB's independence and the Eurosystem's communication rules⁴⁷³ are respected.⁴⁷⁴ In an earlier opinion, the ECB stated that the Governors can report to their national Parliaments, provided that such a duty is to be understood as an obligation to inform ex post and that the provisions of [then Article 38 of the Statute] on professional secrecy must be respected.⁴⁷⁵ Therefore, ECB Opinion CON/2006/23 changed the previous policy line, which assumed that NCB Governors should not give account of their actions as members of the Governing Council to their national parliaments, as national parliaments would lack the legitimacy to judge how NCB Governors perform their Eurosystem duties,⁴⁷⁶ and established that an NCB Governor may be heard or be requested to provide information or answer any questions related to the implementation of the Eurosystem's monetary policy and decisions before a national parliament, subject to

⁴⁷² To date, the ECB President has exceptionally appeared before the German Parliament in May 2010. Usually, neither the ECB President nor any of the ECB Executive Board members appear before national parliaments. The ECB has taken the view that a system of individual accountability of the members of the Governing Council and the Executive Board would be inconsistent with the institutional structure and policy substance. As far as the NCB Governors are concerned, no EU body plays any role in their appointment and they cannot therefore be held accountable to the European Parliament.

⁴⁷³ The Eurosystem's communication rules are not defined. The notion is first mentioned by Ms Sirkka Hämäläinen, then a member of the ECB Executive Board, in a speech delivered at "Old Age, New Economy and Central Banking Conference" in Helsinki on 14 September 2001 (European Central Bank, 2001).

⁴⁷⁴ See Paragraph 2.6 of ECB Opinion CON/2006/23 of 22 May 2006 at the request of the Central Bank of Malta concerning a draft law amending the Central Bank of Malta Act.

⁴⁷⁵ Paragraph 10 of EMI Opinion CON/97/30 of 15 December 1997 at the request of the Austrian Ministry of Finance on a draft law amending the Central Bank Act and other related laws.

⁴⁷⁶ See ECB Monthly Bulletin, November 2002 (p. 49). The NCB's reporting commitments to the national parliaments are understood in the context of Article 14.4 of the Statute for tasks which are not part of the functions of the ESCB-related tasks; see pp 51-52. These statements are repeated by Scheller (Scheller, 2006, p. 129).

limitations set by the Treaties and the Statute and the Eurosystem's communication rules.

The general duty to inform Parliament involves policy reporting⁴⁷⁷ (see Table 3-17) and financial reporting as discussed in Sections 3.2.4.2, 3.2.4.3 and 3.2.4.4 (see Tables 3-12 and 3-13). The traditional duty to provide information to the national Parliament normally takes place when the NCB has already adopted its decisions (ex post) and cannot therefore be regarded as ex ante consultation.⁴⁷⁸

The case of Sweden is somewhat different, due to the fact that the Swedish Parliament is the authority that approves the accounts of the Swedish NCB, thereby becoming a final decision-maker. The reporting of the Swedish NCB is therefore not ex post and could also be interpreted as ex ante reporting. However, the Swedish NCB does also report ex post, regarding the measures taken in view of the Swedish National Audit Office's observations, for example.⁴⁷⁹

Dismissal of the members of the NCB decision-making bodies is often regarded as included under accountability. However, such dismissals cannot be undertaken in a discretionary manner on the grounds of past policy performance but only in line with clearly stipulated circumstances as discussed earlier in Section 3.2.3.7.

Accountability to judicial bodies

Judicial review of the agency's actions and decisions (conducted by an independent and depoliticised judiciary) is essential to prevent and control the arbitrary and unreasonable exercise of discretionary powers. In addition, the accountee may be the judiciary, especially when a judicial review is conducted.⁴⁸⁰ The judiciary should

⁴⁷⁷ See (1) Article 32(5) of the Austrian NCB Statute; (2) Article 50 of the Bulgarian NCB Statute; (3) Article 55(2) of the Cypriot NCB Statute; (4) Articles 3, 3a and 45d of the Czech NCB Statute; (5) Article 31(3) of the Estonian NCB Statute; (6) Article 27 of the Finnish NCB Statute; (7) Article L 143-1 of the French NCB Statute; (8) Articles 5B(1) and (2) of the Greek NCB Statute; (9) Articles 2 and 35 of the Hungarian NCB Statute; (10) Articles 6(1), 28(4) and 43(1) of the Latvian NCB Statute; (11) Article 52 of the Lithuanian NCB Statute; (12) Article 11(2) of the Luxembourg NCB Statute; (13) Article 19 of the Dutch NCB Statute; (14) Articles 22 and 23 of the Polish NCB Statute; (15) Article 54(4) of the Portuguese NCB Statute; (16) Article 35(4) of the Romanian NCB Statute; (17) Article 10(1) of the Spanish NCB Statute; (18) Chapter 1, Articles 1 and 2, Chapter 6, Article 4, Chapter 10, Articles 3, 4 and 5 of the Swedish NCB Statute; (19) Articles 19(3), 19(4) and 19(5) of the United Kingdom NCB.

⁴⁷⁸ However, the national parliaments appear to have strong powers to ask for clarifications or a new report under Article 3(4) and 47(3)-(5) of the Czech NCB Statute.

⁴⁷⁹ Article 5 Chapter 10 of the Swedish NCB Statute.

⁴⁸⁰ See Lastra R. M., 2010, p. 55.

control the lawfulness of the central bank's operations and decisions in the fulfilment of its functions.⁴⁸¹

Judicial accountability can be divided into two:

- 1) Judicial control of the actions or omissions of central banks;
- 2) Management audit performed by State Audit Offices.

Under Article 263 TFEU, the Court of Justice shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank,⁴⁸² 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 for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of (i) lack of competence, (ii) infringement of an essential procedural requirement, (iii) infringement of the Treaties or of any rule of law relating to their application, or (iv) misuse of powers.

According to settled case law of the Court of Justice, the principle of proportionality is one of the general principles of Union law and requires that measures implemented through Union law provisions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them.⁴⁸³ The principle of legal certainty expresses the fundamental premise that the Union legislation must be clear and predictable.⁴⁸⁴ According to the standard formula used by the Court of Justice, in order to establish whether a provision of Union law is consistent with the principle of proportionality, it is necessary to

⁴⁸¹ See Lastra R. M., *The Independence of the European System of Central Banks*, 1992, p. 500.

⁴⁸² Also repeated in Article 35.1 of the Statute.

⁴⁸³ See Case C-58/08 *The Queen*, on the application of *Vodafone Ltd and Others v Secretary of State for Business, Enterprise and Regulatory Reform* [2010] ECR not yet reported, paragraph 51, referring also to Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 68 and the case-law cited.

⁴⁸⁴ The Court of Justice has consistently endorsed the principles of legal certainty and the protection of legitimate expectations, by virtue of which the effect of Community legislation must be clear and predictable for those who are subject to it (Joined Cases 212/80 to 217/80 *Meridionale Industria Salumi and Others* [1981] ECR 2735, paragraph 10).

establish whether (i) the means it employs to achieve the aim correspond to the importance of the aim and whether (ii) they are necessary for its achievement.⁴⁸⁵

Article 264 TFEU establishes that if the action is well founded, the Court of Justice shall declare the act concerned to be void, which means that the institution whose act has been declared void⁴⁸⁶ shall be required to take the necessary measures to comply with the judgment of the Court of Justice pursuant to Article 266 TFEU.

Pursuant to Article 35.3 of the Statute, the ECB shall be subject to the liability regime provided for in Article 340 TFEU while the NCBs shall be liable according to their respective national laws.

Although several NCBs are entitled to issue legal instruments, the respective NCB Statutes are silent regarding their judicial review.⁴⁸⁷

However, some NCB Statutes have addressed the accountability to the State Audit Office. As noted in Section 3.2.4.3, only the Swedish Riksbank is solely audited by the respective National Audit Office but its mandate is different from a management audit. The ECB has said in its Convergence Reports that where an NCB's operations are subject to the control of a state audit office or similar body charged with controlling the use of public finances, the scope of the control should be clearly defined by the legal framework and should be without prejudice to the activities of the NCB's independent external auditors.⁴⁸⁸ The ECB is of the view that National Audit Offices cannot be regarded as independent auditors; for example, the Irish Comptroller and Auditor General was nominated for recommendation as an external

⁴⁸⁵ See also Case 66/82 *Fromançais SA v Fonds d'orientation et de régularisation des marchés agricoles (FORMA)* [1983] ECR 395, para 8. Article 5 of Protocol No 2 on the application of the principles of subsidiarity and proportionality establishes, inter alia, that (a) 'draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality', (b) 'any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality', (c) 'the reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators' and (d) 'draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved'.

⁴⁸⁶ For example, Decision ECB/1999/5 of 7 October 1999 on fraud prevention was annulled by the ECJ in its judgment of 10 July 2003, Case C-11/00.

⁴⁸⁷ The power to issue legal instruments has been laid down in (1) Article 22(1) of the Belgian NCB Statute and Article 41(1) of the Belgian NCB Articles of Association; (2) Article 49b(6) of the Czech NCB Statute; Articles 9(9) and 11(6) of the Estonian NCB Statute; (3) Article 33 of the German NCB Statute; (4) Article 33D(3) of the Irish NCB Statute; (5) Article 42 of the Latvian NCB Statute; (6) Article 60(2) of the Hungarian NCB Statute; (7) Articles 53 and 54 of the Polish NCB Statute; (8) Article 56 of the Romanian NCB Statute; Article 34 of the Slovenian NCB Statute; and (9) Article 3(2) of the Spanish NCB Statute. See Tables 3-4 and 3-18 for details.

⁴⁸⁸ ECB Convergence Report, May 2010 (p. 22).

auditor for the Central Bank of Ireland before the start of Stage Three of EMU but rejected as not being an independent external auditor within the meaning of Article 27.1 of the Statute.⁴⁸⁹

The activities of a National Audit Office shall not interfere with the review of the ESCB-related tasks of the NCB to be undertaken by the NCB's independent external auditor and these activities may not jeopardise its independence.⁴⁹⁰ Similarly, in ECB Opinion CON/2002/22⁴⁹¹ it is noted that the ECB and several Eurosystem NCBs are subject to additional statutory audits or controls outside the scope of Article 27.1 of the Statute. The ECB also issued Opinion CON/2006/33 concluding that a national draft law should provide safeguards including '*guarantees that the Auditor General cannot interfere with the independent external auditor's control of the ESCB-related accounts of the CBC [Central Bank of Cyprus] and that the Auditor General may not jeopardise the independence of the CBC*'.⁴⁹² By analogy, in the case of the ECB the European Court of Auditors carries out a management audit which is specifically limited to the operational efficiency of the management of the ECB but does not include an audit of the ECB accounts, under Article 284 TFEU [former Article 248 TEC] and Article 27.2 of the Statute.

3.3.2 Central bank transparency

In a democratic environment, the institutional set-up of a central bank cannot be less transparent than the absolute minimum which is regarded acceptable by the general public – being transparent means that the public can better understand what the central bank's intentions are.⁴⁹³ The ECB describes quite extensively its policy on

⁴⁸⁹ This information is provided in footnote 5 of the ECB Opinion CON/2002/22 of 2 September 2002 at the request of the Swedish Ministry of Finance on a draft legislative proposal establishing the National Audit, available at https://www.ecb.int/ecb/legal/pdf/EN_CON_2002_22_f_sign.pdf.

⁴⁹⁰ See paragraphs 5 to 7 of ECB Opinion CON/2002/22; paragraph 2.3 of ECB Opinion CON/2006/4 of 27 January 2006 at the request of the Central Bank of Cyprus on a draft law amending the Central Bank of Cyprus Laws of 2002 and 2003, available at http://www.ecb.int/ecb/legal/pdf/en_con_2006_4_f_sign.pdf; Paragraph 2.3 of ECB Opinion CON/2006/33 of 28 June 2006 at the request of the Cypriot Ministry of Finance on a draft law amending the Central Bank of Cyprus Laws of 2002 and 2003, available at http://www.ecb.eu/ecb/legal/pdf/en_con_2006_33_f_sign.pdf; paragraph 3.2 of ECB Opinion CON/2006/44 of 25 August 2006 at the request of the Banca d'Italia on the amended Statute of the Banca d'Italia, available at http://www.ecb.int/ecb/legal/pdf/en_con_2006_44_f_sign.pdf.

⁴⁹¹ ECB Opinion CON/2002/22.

⁴⁹² The powers of the Cypriot Auditor General were analysed in the following ECB Opinions: CON/2006/4; CON/2006/33; and ECB Opinion CON/2006/50 of 26 October 2006 at the request of the Cypriot Ministry of Finance on a draft law amending the Central Bank of Cyprus Laws of 2002 and 2003, available at http://www.ecb.int/ecb/legal/pdf/en_con_2006_50_f_sign.pdf.

⁴⁹³ See Demertzis, 2007.

transparency,⁴⁹⁴ outlining the need to provide the general public and the markets with all relevant information on its strategy, assessments and policy decisions as well as its procedures in an open, clear and timely manner. Transparency requires the central bank to make the interpretation of its mandate clear and is consequently forthcoming about its policy goals – this helps the public to monitor and evaluate the central bank’s performance.⁴⁹⁵

It follows from Article 10.4. of the Statute, which sets forth that the proceedings of the meetings shall be confidential and that the Governing Council may decide to make the outcome of its deliberations public, that the ECB is statutorily barred from publishing minutes of the meetings of the Governing Council. Therefore, different opinions voiced during these hearings and the subsequent voting behaviour are not disclosed and the ECB also does not appear inclined to make public such information even after the events in question. The only possible means of detecting any patterns of discussion would be to follow the subsequent press releases and transcripts of the press conferences.⁴⁹⁶

Monetary policy decisions are by their nature internal decisions regulating the price for money that the central banks are willing to lend to the commercial banks. The fact that such decisions are communicated to the general public does not provide the latter with any formal mechanisms to hold the ECB decision-making bodies accountable. One could therefore conclude that communication on monetary policy decisions does not form a part of central bank accountability, although it is true that accountability mechanisms can be used to obtain information about past monetary policy decisions. In this respect, one can conclude that accountability complements central bank independence. The ECB is therefore of the opinion that monetary policy communication forms part of central bank transparency. The elements of transparency are:

- 1) political transparency, incorporating information disclosure on the central bank’s goals – a formal statement of the targets and how they are prioritised;

⁴⁹⁴ Available at <http://www.ecb.eu/ecb/orga/transparency> (visited on 29 August 2010).

⁴⁹⁵ ECB Monthly Bulletin, November (2002, pp. 59-60).

⁴⁹⁶ For example, with references to decisions adopted ‘with an overwhelming majority’ (European Central Bank, 2010). Louis notes that the Governor of German NCB made public his negative vote in a series of declarations on the crisis that did not contribute to the authority of the ECB and to the strength of the euro (Louis, Guest editorial: The No-Bailout Clause and Rescue Packages, 2010, p. 975).

- 2) economic transparency, considering the disclosure of knowledge about the economy which is used for monetary policy-making;
- 3) procedural transparency, considering the procedures used to make monetary policy decisions;
- 4) policy transparency, which is present when the central bank announces and explains its policy decisions immediately and when it indicates the future policy paths;
- 5) operational transparency, considering openness about how the central bank implements its monetary policy actions by being open about mistakes or misjudgements.⁴⁹⁷

Similarly to the discussion in Section 3.3.1, the transparency obligation seems to have its roots in the Governor's duty of loyalty. Apart from making the Governors subject to conflict of interest and wealth declarations, the Governors have the general duty to explain their activities to the other branches of the State to the extent that they are not regulated by the provisions on accountability as well as to the general public.

The elements of transparency can be found in Article 15.1 of the Statute, whereby the ECB is required to draw up and publish reports on the activities of the ESCB at least quarterly. These reports are entitled "Monthly Bulletin". ECB publications published under Article 15 of the Statute shall be made available free of charge, as stipulated in Article 15.4 of the Statute. A reading of Article 15 in conjunction with Article 12 of the Statute suggests that the reporting should cover monetary policy definitions, approaches, objectives and instruments.⁴⁹⁸

Out of all NCB Statutes reviewed in Table 3-18, the transparency requirement is probably the clearest in the Romanian NCB Statute, which sets forth that the objective of [central bank] communication is to provide the general public, the domestic and international business communities, public administration and the academic community with a clear image of policies and the measures adopted by the Romanian NCB.⁴⁹⁹ The NCB Statutes usually require NCBs to publish: (a) balance sheets and

⁴⁹⁷ See van der Crujisen & Eijffinger, January 2008.

⁴⁹⁸ See Randzio-Plath, 2000, p. 14.

⁴⁹⁹ Articles 3(4) and 56(3) of the Romanian NCB Statute.

other financial information,⁵⁰⁰ (b) reports on monetary developments, such as balance of payments (including statistics),⁵⁰¹ (c) reports on financial stability⁵⁰² and financial market supervision⁵⁰³ and occasionally also scientific papers.⁵⁰⁴ Sometimes the NCB Statutes also describe the format of publications, such as the content of the NCB journal,⁵⁰⁵ or stipulate that both hard copies as well as electronic copies of the documents should be available.⁵⁰⁶

The downside of transparency appears to be that private agents tend to refrain from gathering their own information and rely a little too much on what the central bank communicates.⁵⁰⁷

3.3.3 Confidentiality and professional secrecy

Accountability and transparency are not unrestricted, although the underlying principle of the European Union is that its institutions, bodies, offices and agencies shall, in order to promote good governance and ensure the participation of civil society, conduct their work as openly as possible under Article 15(1) TFEU.

Pursuant to the first sub-paragraph of Article 15(3) TFEU, any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with Article 15(3) TFEU. It further stipulates

⁵⁰⁰ (1) Article 49(1) of the Bulgarian NCB Statute; (2) Articles 43, 57(3) and 61 of the Cypriot NCB Statute; (3) Articles 48(4)-(5) of the Czech NCB Statute; (4) Article 31(4) of the Estonian NCB Statute; (5) Articles 19(2) and 19(4) of the Finnish NCB Statute; (6) Articles 53 and 54 of the Greek NCB Statute; (7) Article 41 of the Italian NCB Statute; (8) Articles 15 and 43(2) of the Latvian NCB Statute; (9) Article 51 of the Lithuanian NCB Statute; (10) Article 30 of the Luxembourg NCB Statute; (11) Article 21(2) of the Maltese NCB Statute; (12) Article 54(1) of the Polish NCB Statute; (13) Article 54(3) of the Portuguese NCB Statute; (14) Article 56(4) of the Romanian NCB Statute; (15) Article 38(3)-(4) of the Slovak NCB Statute; (16) Article 49(6) of the Slovenian NCB Statute; (17) Article 18 of the United Kingdom NCB Statute.

⁵⁰¹ (1) Article 49b of the Czech NCB Statute; (2) Articles 2(8) and 21(5) of the Estonian NCB Statute; (3) Article 18 of the German NCB Statute; (4) Articles 4(6), 28(2) and 41(1) of the Hungarian NCB Statute; (5) Article 5A(1)(g) of the Irish NCB Statute; (6) Article 51 of the Lithuanian NCB Statute; (7) Article 32(3) of the Luxembourg NCB Statute; (8) Article 21(1) of the Maltese NCB Statute; (9) Article 56(4) of the Romanian NCB Statute; (10) Article 3(2) of the Slovak NCB Statute; (11) Article 5(f) of the Spanish NCB Statute; (12) Chapter 6, Article 4 of the Swedish NCB Statute.

⁵⁰² (1) Article 3a and 48(4) of the Czech NCB Statute; (2) Article 28(2) of the Hungarian NCB Statute; (3) Article 55 of the Lithuanian NCB Statute.

⁵⁰³ (1) Article 45d of the Czech NCB Statute; (2) Article 31(3) of the Estonian NCB Statute; (3) Article 51 of the Lithuanian NCB Statute.

⁵⁰⁴ (1) Article 59 of the Polish NCB Statute; (2) Article 56(4) of the Romanian NCB Statute.

⁵⁰⁵ For example, Article 44 of the Slovak NCB Statute.

⁵⁰⁶ Article 49b(8) of the Czech NCB Statute.

⁵⁰⁷ See Demertzis (2007), referring to quotes of Messrs T. Padoa-Schioppa and L. Bini Smaghi.

that general principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure; each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate its own Rules of Procedure defining specific provisions regarding access to its documents, in accordance with the regulations referred to in the second sub-paragraph of Article 15(3) TFEU; the Court of Justice, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

At the moment it is unclear how the fourth sub-paragraph of Article 15(3) TFEU should be interpreted with regard to the ECB. Currently, the ECB Public Access Decision is in force and regulates the treatment of information at the ECB vis-à-vis the general public. The first indent of Article 4(1)(a) of the ECB Public Access Decision provides that the ECB shall refuse access to a document where disclosure would undermine the protection of the public interests as regards the financial, monetary or economic policy of the Union or a Member State. Moreover, if the source of information is a document originating outside the ECB, Article 4(4) of the ECB Public Access Decision sets forth that the ECB shall consult the third party concerned before deciding either to disclose or not disclose the document. For sensitive commercial information, disclosure can be refused under the first indent of Article 4(2), while the third indent obliges the ECB not to disclose the purpose of inspections, investigations and audits;⁵⁰⁸ however, one has to bear in mind that these documents could be disclosed if there is an overriding public interest in disclosure.

As regards possible requests by the general public to access the information which is to be deemed classified, a Union institution has to assess the balance between the interest of private individuals and its own interest.^{509, 510} Where the institution in

⁵⁰⁸ The Court of Justice of the European Union has held that, during the investigative phase, the reasoned opinion must be maintained as confidential (Case T-309/97 *The Bavarian Lager Company Ltd v Commission of the European Communities* [1999] ECR II-3217). This requirement of confidentiality in relation to the reasoned opinion has been upheld even after the matter has been brought before the Court of Justice of the European Union (Case T-191/99 *David Petrie, Victoria Jane Primhak, David Verzoni and Others v Commission of the European Communities* [2001] ECR II 3677). In a similar fashion, the Commission can rely on Article 4(2) of Regulation 1049/2001 governing the “protection of the purpose of inspections, investigations and audits” to refuse access to documents relating to infringement proceedings.

⁵⁰⁹ Green Paper: Public Access to documents held by institutions of the European Community. A review COM(2007) 185 final, p. 5, 11 and 15. Available at <http://ec.europa.eu/transparency>, visited on 7 September 2010.

⁵¹⁰ Case T-198/03 *Bank Austria Creditanstalt AG v Commission*, [2006] Page II-1429.

question refuses such access, according to well-established case law it must demonstrate in each individual case, on the basis of the information at its disposal, that the documents to which access is sought do indeed fall within the exceptions.⁵¹¹ Under that case law, the institution which has refused access to a document therefore has to provide a statement of reasons from which it is possible to understand and ascertain, first, whether the document requested does in fact fall within the scope of the stated exception and, second, whether the need for protection relating to that exception is genuine.⁵¹²

Against that background, it is important to bear in mind that the duty of professional secrecy pursuant to Article 37.1 of the Statute [former Article 38.1 of the Statute] applies to the ECB and the NCBs. Therefore, one would need to explain the nature of professional secrecy and the conditions under which a certain document would qualify as classified and subject to exemption from the ECB Public Access Decision.

Article 37.1 of the Statute sets forth that the members of the governing bodies and the staff of the ECB and the NCBs shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.⁵¹³ Article 37.1 of the Statute does not provide a definition of professional secrecy. As is shown in Table 3-19, the notion of ‘professional secrecy’ in the NCB Statutes, usually refers to all information of which persons become aware as a consequence of their position in the central bank and which is not available to the

⁵¹¹ Joined Cases T-110/03, T-150/03 and T-405/03 *Sison v Council* [2005] ECR II-1429, paragraph 60, and Case T-93/04 *Kallianos v Commission* [2006] ECR II-0000, paragraph 90; regarding the 1993 Code of Conduct, see Joined Cases C-174/98 P and C-189/98 P *Netherlands and van der Wal v Commission* [2000] ECR I-1, paragraph 24, and Case C-41/00 P *Interporc v Commission* [2003] ECR I-2125, paragraph 56.

⁵¹² Joined cases T-110/03, T-150/03 and T-405/03 *Sison v Council*, paragraph 61.

⁵¹³ Further limits arise from specific legal provisions, such as Articles 10.4 of the Statute, referring to the confidentiality of the ECB Governing Council meetings or Article 23.1 of the ECB Rules of Procedure, establishing that the proceedings of the decision-making bodies of the ECB and of any committee or group established by them shall be confidential unless the Governing Council authorises the President to make the outcome of their deliberations public. This Article has been often referred to in the ECB’s press releases, for example ‘Statement by the President of the ECB at the public hearing at the European Parliament on the interception of bank transfer data from the SWIFT system by the US secret services’, on 4 October 2006, available at <http://www.ecb.int/press/key/date/2006/html/sp061004.en.html>, or ‘Remarks by the European Central Bank on a resolution passed by the European Parliament relating to the operations of SWIFT’, on 15 February 2007, available at <http://www.ecb.int/press/pr/date/2007/html/pr070215.en.html>; see also Bini Smaghi, L., remarks at the Workshop “Financial turmoil and missing risks: new challenges for bankers and regulators”, on 12 June 2008, available at <http://www.ecb.int/press/key/date/2008/html/sp080612.en.html> (visited on 7 September 2010).

general public.⁵¹⁴ In this regard, the Court of First instance has stated that *'[I]n order that information be of the kind to fall within the ambit of the obligation of professional secrecy, it is necessary, first of all, that it will be known only to a limited number of persons. It must then be information whose disclosure is liable to cause serious harm to the person who has provided it or to third parties. Finally, the interests liable to be harmed by disclosure must, objectively, be worthy of protection. The assessment as to the confidentiality of a piece of information thus requires the legitimate interests opposing disclosure of the information to be weighed against the public interest that the activities of Community institutions take place as openly as possible.'*⁵¹⁵

Pursuant to Article 10.4 of the Statute, the proceedings of the Governing Council meetings are confidential and the Governing Council may decide to make the outcome of its deliberations public. The same principle is also applicable to the ESCB committees.⁵¹⁶

The obligation of professional secrecy is linked to the duty of loyalty, discussed in Section 3.2.3.4. Several NCB Statutes have introduced the principle that the non-disclosure of professional secrets shall be for an indefinite period.⁵¹⁷ With regard to the NCB Statutes that do not provide for this, one could always assume the direct applicability of Article 37.1 of the Statute, but for the sake of legal certainty, one would need to codify the legal obligations deriving from the Statute.

Professional secrecy does not mean that confidential information should never leave central bank – quite often there is a need to exchange information between the central banks, other public authorities entrusted with the oversight of payment systems,

⁵¹⁴ (1) Article 45 of the Austrian NCB Statute; (2) Article 23 of the Bulgarian NCB Statute; (3) Article 49 of the Czech NCB Statute; (4) Article 15 of the Danish NCB By-laws; (5) Article 35 of the Estonian NCB Statute; (6) Article 32 of the German NCB Statute; (7) Articles 35A(5) and 38(2) of the Greek NCB Statute; (8) Article 54(1) of the Hungarian NCB Statute; (9) Article 33AK(1) of the Irish NCB Statute; (10) Article 45 of the Italian NCB Statute; (11) Article 33 of the Latvian NCB Statute; (12) Article 33 of the Luxembourg NCB Statute; (13) Article 23 of the Dutch NCB Articles of Association; (14) Article 55 of the Polish NCB Statute; (15) Article 52(1) of the Romanian NCB Statute; (16) Article 40 of the Slovak NCB Statute; (17) Article 47 of the Slovenian NCB Statute; (18) Article 6 of the Spanish NCB Statute.

⁵¹⁵ See footnote 510, paragraph 71.

⁵¹⁶ See footnote 88.

⁵¹⁷ (1) Article 45 of the Austrian NCB Statute; (2) Articles 13(1) and 23(2) of the Bulgarian NCB Statute; (3) Article 25(1) of the Cypriot NCB Statute; (4) Article 50(1) of the Czech NCB Statute; (5) Articles 21(1¹) and 35(2) of the Estonian NCB Statute; (6) Article 32 of the German NCB Statute; (7) Article 54(1) of the Hungarian NCB Statute; (8) Article 33 of the Latvian NCB Statute; (9) Article 33 of the Luxembourg NCB Statute; (10) Article 55 of the Polish NCB Statute; (11) Article 52(1) of the Romanian NCB Statute; (12) Article 41 of the Slovak NCB Statute; (13) Article 47(1) of the Slovenian NCB Statute; (14) Article 6 of the Spanish NCB Statute.

public authorities responsible for the supervision of credit institutions, etc.⁵¹⁸ However, as is apparent from Table 3-19,⁵¹⁹ very few NCB Statutes list the recipients of classified information,⁵²⁰ although others foresee the option to disclose the information on an *ad hoc* basis.⁵²¹ This has not prevented NCBs from becoming signatories to various memoranda of understanding on the exchange of confidential information. Since 2001 cooperation between the central banks and supervisory institutions in the European Union has been regulated, apart from the cooperation clauses stipulated in Articles 44 to 52 of Directive 2006/48/EC and numerous bilateral Memoranda of Understanding, by the following umbrella Memoranda of Understanding:

- 1) Memorandum of Understanding on Co-operation between the Financial Supervisory Authorities, Central Banks and Finance Ministries of the EU on Cross-Border Financial Stability of 1 June 2008;⁵²²
- 2) Memorandum of Understanding on co-operation between the Banking Supervisors, Central Banks and Finance Ministries of the European Union in Financial Crisis situations of 18 May 2005;⁵²³ and
- 3) Memorandum of Understanding on high-level principles of co-operation between the banking supervisors and central banks of the European Union in crisis management situations of 10 March 2003.⁵²⁴

The 2008 Memorandum of Understanding replaced that of 2005 and provides for further detailed crisis management procedures and structures, including, *inter alia*, (a) common principles for cross-border financial crisis management (Article 2); (b) cooperation arrangements (Articles 3 and 4); (c) information exchange and confidentiality (Articles 5 and 8); (d) public communication (Article 6); and (e)

⁵¹⁸ See for example, Agreement between the European Police Office (Europol) and the European Central Bank (ECB), OJ C 23, 25.1.2002, p. 9, or template agreements between ECB and the accession countries NCBs (the template is available at http://www.ecb.int/ecb/legal/pdf/c_16020030709en00070011.pdf (visited on 6 September 2010).

⁵¹⁹ A further survey in Table 4-2 illustrates the arrangements for exchanging supervisory information by the NCBs. Some of the information in the Tables overlap.

⁵²⁰ (1) Article 35 of the Belgian NCB Law and Article 56 of the Belgian NCB Statute; (2) Article 25(2) of the Cypriot NCB Statute; (3) Article 26(2) of the Finnish NCB Statute; (4) Article 48 of the Greek NCB Statute; (5) Article 33 of the Luxembourg NCB Statute; (6) Articles 3(6), 3(7), 3(14) and 52(2) of the Romanian NCB Statute; (7) Article 41 of the Slovak NCB Statute; (8) Article 47(2) of the Slovenian NCB Statute; (9) Article 6(2) of the Spanish NCB Statute.

⁵²¹ Article 50(2) of the Czech NCB Statute and Article 32 of the German NCB Statute.

⁵²² Published on 20 June 2008 at <http://www.ecb.int/pub/pdf/other/mou-financialstability2008en.pdf>.

⁵²³ See European Central Bank, 2005.

⁵²⁴ See European Central Bank, 2003.

contingency planning (Article 7). The 2008 Memorandum of Understanding has two annexes: Annex 1 establishes “Common practical guidelines for crisis management” and Annex 2 constitutes a template for voluntary specific cooperation agreements among the Finance Ministers, NCBs and the supervisory authorities.⁵²⁵ The Memoranda of 2003 and 2005 have not been published, except to the extent that was necessary for the respective press releases.⁵²⁶

Memoranda of Understanding are by definition not legally binding documents. Article 10.1 of the 2008 Memorandum of Understanding expressly provides that its provisions are not legally binding on the parties and may therefore not give rise to any legal claim on behalf of any party or parties in the course of their practical implementation.⁵²⁷

The ECB has observed that virtually all Member States that have adopted supervisory models based on an independent financial supervisory authority have included provisions stipulating a duty of cooperation and authorising the exchange of information between central banks and supervisory authorities.⁵²⁸

As Article 37.2 of the Statute distinguishes between professional secrecy and data covered by Union legislation imposing an obligation of secrecy, one may conclude that information covered by Article 37.1 of the Statute is separate from other classified information an NCB may have. The analysis of some NCB Statutes confirms this conclusion,⁵²⁹ whereby state secrets are expressly distinguished from bank secrets, securities secrets or business/official secrets.

⁵²⁵ This template has a further annex, “Template for a systemic assessment framework”, which provides for a common methodology to assess the systemic implications of a crisis.

⁵²⁶ See footnotes 523 and 524.

⁵²⁷ Smits is of the view that it miserably failed (Smits, *Ten legal gaps Europe's regulators must close*, 2010, p. 39). Discretionary exercise of responsibilities by national authorities has also been mentioned by Schinasi and Teixeira (Schinasi & Teixeira, *The Lender of Last Resort in the European Single Financial Market*, 2006, p. 9) (Schinasi & Teixeira, *The Lender of Last Resort in the European Single Financial Market*, Working Paper Series No. 43, 2006, p. 8). In a similar occasion concerning an arrangement between the CESR members, Avgerinos expressed his doubts whether the response to a potential emergency situation would be facilitated by the time-consuming procedure that is, first, informal and, second, not legally binding. He notes that cooperation through Memoranda of Understanding raises the questions of effective coordination of supervision, supervisory methods and the content of information exchange (Avgerinos, 2003, p. 187).

⁵²⁸ See Bini Smaghi, *Supervision and central banking: improving the exchange of information*, 12 June 2008. See also paragraph 2.4.1 of the ECB Opinion CON/2007/33 of 5 November 2007 at the request of Austrian Ministry of Finance on a draft law amending the Law on banking, the Law on savings banks, the Law on the Financial Market Supervisory Authority and the Law on the Oesterreichische Nationalbank; paragraph 2.2.2 of the ECB Opinion CON/2006/15 of 9 March 2006 at the request of the Polish Minister of Finance on a draft law on the supervision of financial institutions.

⁵²⁹ (1) Article 4(2) of the Bulgarian NCB Statute; (2) Article 54(1) of the Hungarian NCB Statute; (3) Articles 19(2) and 19(3) of the Lithuanian NCB Statute.

Finally, there appears to be no document describing the ESCB confidentiality rules, although several NCB Statutes expressly provide for an option to transfer classified documents to the ECB but do not specify the regime governing the procedure for so doing.⁵³⁰ Further exceptions concern the disclosure of information in criminal proceedings or on other statutory grounds.⁵³¹ A few NCB Statutes also refer to sanctions in case of unauthorised disclosure.⁵³²

3.4 Conclusions of Chapter 3

Functional independence is referred to in the assessed NCB Statutes and the maintenance of price stability is, subject to deviations by some NCBs, indeed the primary objective. With regard to the secondary objectives, some NCB Statutes still maintain a ‘national flavour’.

With regard to the five prohibitions under the concept of institutional independence, some Member States limit central bank independence to ESCB-related tasks, while the others do not make such a distinction. In fact, as the ESCB-related tasks are actually basic central bank activities, NCBs are to be independent of any third party while carrying out their tasks. It would be compliant with EU law for NCBs to receive instructions and guidelines from the ECB.

Like any legal person, a monetary authority takes its decisions through the members of its decision-making bodies. In fact, no monetary authority is adequately shielded from outside influence if the members of its decision-making bodies are not.

Providing an adequate protection for ‘a Governor’ would mean that there is a need to define the notion first as this is not done in EU law. As a result of the review of 27 NCB Statutes, it can be concluded that a Governor is expected to be a natural person, a well-educated citizen of a Member State with a high reputation, who carries out

⁵³⁰ (1) Article 45 of the Austrian NCB Statute; (2) Article 35(2) of the Belgian NCB Law and Article 56(2) of the Belgian NCB Statute; (3) Article 25(2)(b) of the Cypriot NCB Statute; (4) Article 21(1¹) of the Estonian NCB Statute; (5) Article 26(3) of the Finnish NCB Statute; (6) Article 33(2) of the Luxembourg NCB Statute; (7) Article 41 of the Slovak NCB Statute; (8) Article 47(1) of the Slovenian NCB Statute.

⁵³¹ (1) Article 35(2) of the Belgian NCB Law and Article 56(2) of the Belgian NCB Statute; (2) Article 25(1) of the Cypriot NCB Statute; (3) Article 50(2) of the Czech NCB Statute; (4) Article 26(2) of the Finnish NCB Statute; (5) Article 32 of the German NCB Statute; (6) Article 46(2) of the Lithuanian NCB Statute; (7) Article 33(3) of the Luxembourg NCB Statute; (8) Article 41 of the Maltese NCB Statute; (9) Articles 3(6), 3(7), 3(14), 3(15), 52(1), 52(2) of the Romanian NCB Statute; (10) Articles 6(2) and 6(3) of the Spanish NCB Statute; (11) Schedule 7 I(3) of the United Kingdom NCB Statute.

⁵³² (1) Article 35(3) of the Estonian NCB Statute; (2) Article 55C(5), 55C(6) and 55C(7) of the Greek NCB Statute; (3) Article 33(1) of the Luxembourg NCB Statute; (4) Article 52(3) of the Romanian NCB Statute; (5) Article 6(1) of the Spanish NCB Statute; (6) Schedule 7 I(4) of the United Kingdom NCB Statute.

executive functions on behalf of the NCB and who serves the NCB full time, participates in the meetings of the Governing Council and General Council and is accountable simultaneously to the Governing Council as well as to the national authorities. It is, however, arguable whether Governors fulfil these duties in their personal capacity; the analysis of the beneficiaries of their duties, as well as the use of alternates, tends to suggest that Governors act as representatives of their respective NCBs, which is also confirmed by the ECB's practice to accept alternates when the Governor's term of office is over.

It is difficult to outline the considerations that are taken into account in the recruitment process in the Member States, as the NCB Statutes tend to be rather general as far as appointment procedures are concerned. It is true that the criteria for incompatibility for the office are not harmonised among the Member States and it remains to be studied whether there is a need for such a harmonisation. After all, the NCBs have largely remained national institutions and the appointment of the Governors is also a national matter, despite the fact that the new Governor of a Eurosystem NCB will also become a member of the Governing Council and the General Council. Therefore, it is not surprising that the appointment procedure as well as the eligibility criteria may differ among the Member States. Nonetheless, the term of office for the Governors complies with Article 14.2 of the Statute in all Member States. With regard to re-appointments, there appears to be no link between the length of the period in office and the possibility for the Governor to be re-appointed.

During his term of office, a Governor is mostly bound by the duty of loyalty, which is supported by the duty of non-competition. The duty of loyalty has no time limits to ensure that the ESCB/NCB is protected against unfair use of confidential information by those who have retired from office. The duty of non-competition means that the Governor may be engaged outside his assignments as a Governor if there is no conflict of interest. Unlike the duty of loyalty, the duty of non-competition applies to the Governor while the latter is in the office as well as one year after retiring from office.

The authority to appoint an alternate is based on the fact that a Governor in office is physically prevented from acting, whereby the alternate is his/her agent or representative and the Governor bears ultimate responsibility. From the legal point of view, problems would occur if the Governor's term of office expires, no successor has

been appointed and the NCB Statute contains no provisions on how to address the situation. In the absence of clear legal provisions on the Governor's substitution, any solution adopted *ad hoc* remains legally open to question.

A Governor may be removed from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. The conditions required for the performance of the Governors' duties are usually defined in national law. As the conditions required for the performance of the Governors' duties (eligibility criteria) may differ among the Member States, the reasoning behind the removal of a Governor is therefore also not uniform but could still comply with Article 14.2 of the Statute as far as non-fulfilment of the conditions is concerned. For the NCB Statutes that do not prescribe the conditions required for the performance of the Governor's duties but still refer to Article 14.2 of the Statute with regard to dismissal, the Governor can only be removed on the grounds of serious misconduct.

The notion of 'serious misconduct' can be explained as a 'breach of obligations' to which the Governor was subject – such as the duty of loyalty or the duty of non-competition or any other duty to which the Governor was subject. The notion is part of Union law and is not defined in national law. Where the person has duly performed the mission entrusted to him, he cannot be dismissed even when the outcome of the person's activities was regarded as unsatisfactory. In order to dismiss a Governor from office (a) 'serious misconduct' actually has to have occurred; (b) there has to be an authority to decide that the Governor is guilty of breaching his duties; and (c) once the preconditions (a) and (b) have been fulfilled, a Governor can be removed from office. In the case of a dispute, the Court of Justice shall be competent to hear the case.

Financial independence aims at securing the central bank's autonomy by enabling its decision-making bodies to determine its own budget, establish its own accounting rules, create clear framework for the distribution of profits from its independently audited accounts and prevent it from becoming subject to financial obligations from areas outside its mandate.

With a few exceptions, most NCBs are in charge of adopting their budgets. The accounting rules appear to be greatly harmonised. For example, financial year means

the same in the majority of NCB Statutes. Sometimes, instead of describing the system in use, the NCB Statutes refer, in various ways, to the accounting legal instruments adopted by the ECB under Article 26.4 of the Statute. Moreover, several NCB Statutes refer to the Statute or Guideline and adapt their internal rules accordingly. Pursuant to Article 27.1 of the Statute, the accounts of the ECB and NCBs shall be audited by independent external auditors recommended by the Governing Council and approved by the ECOFIN Council; the auditors shall have full power to examine all books and accounts of the ECB and NCBs and obtain full information about their transactions. The external auditors of the ECB and of the NCBs need not be identical, although this does not prevent the ECB's external auditor from carrying out some audit work directly at the NCBs. It is remarkable that the Statutes of non-Eurosystem NCBs apply the same principle according to which that the external auditors have to be independent; the exception is the Swedish NCB, which is audited by the National Audit Office.

The common principle in the Eurosystem/ESCB is that annual accounts should be adopted by the NCB's decision-making bodies, assisted by independent accountants, and may be subject to ex post approval by third parties (e.g. the government or parliament) and that the NCB's decision-making bodies should be able to decide on the calculation of the profits independently and professionally. Some NCB Statutes establish the size of their statutory capital, their ability to create provisions and/or reserves and the mechanism of profit distribution; in very rare cases the method of distributing the NCB's assets in case of its liquidation is also regulated. With regard to profit distribution, profits may be distributed to the State budget only after any accumulated losses from previous years have been covered and financial provisions deemed necessary to safeguard the real value of the NCB's capital and assets have been established.

When the NCB is associated with a financial supervisory authority, errors or omissions in the performance of the financial supervisory authority occur and the NCB would become liable for damages, either the NCB Statute or another law should stipulate the mechanism for reimbursement from the State.

There are no EU-wide harmonised rules regarding central bank accountability and the matter has not been addressed in the ECB Convergence Reports. The reason Governors (and the central banks operated by them) are made accountable is because

of the duty of loyalty and the duty of non-competition owed to the democratically elected institutions that have appointed the Governor. Accountability can take three forms – legislative, executive and judiciary.

The duty to cooperate with the executive branch of the Government usually concerns advice in matters of economic policy, central bank functions or similar matters. Sometimes an NCB may be asked to comment on draft national legislation.

Making an NCB answerable to the legislature could mean either: (i) the NCB is subject to periodic and extraordinary reporting requirements; or (ii) the NCB operates under the control of the national Parliament. The latter is not usually the case. An NCB Governor may be heard or requested to provide information or answer any questions related to the implementation of the Eurosystem's monetary policy and decisions before a national parliament, subject to limitations set by the Treaties and the Statute and the Eurosystem's communication rules. The general duty to inform Parliament involves policy reporting and ex post financial reporting.

Judicial accountability can be divided into two: judicial control of the actions or omissions of central banks and the management audit performed by State Audit Offices. Several NCBs issue legal instruments and it is therefore natural for these legal instruments also to be subject to judicial scrutiny. If the NCB's operations are subject to the control of a State Audit Office or similar body charged with controlling the use of public finances, the scope of the control should be clearly defined by the legal framework and should be without prejudice to the activities of the NCB's independent external auditors. However, it is arguable whether it is possible, given the differences among the NCBs, to establish common rules for their accountability, with the exception of information regarding the accounts and financial reports.

The transparency requirement is included in a few NCB Statutes and usually provides that its objective is to give the general public a clear image of policies and the measures adopted by the NCB. The NCB Statutes usually require NCBs to publish balance sheets and other financial information, reports on monetary developments, such as balance of payments (including statistics), reports on financial stability and financial market supervision and occasionally also scientific papers. The NCBs differ considerably in their approach to transparency and it is also difficult to establish

transparency requirements by law – a lot would depend on the general public and its demands on the central bank.

Transparency and accountability are not without limitations. Article 37.1 of the Statute sets forth that members of the governing bodies and the staff of the ECB and the NCBs shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy. Several NCB Statutes have introduced the principle according to which non-disclosure of professional secrets shall be for an indefinite period. The notion of ‘professional secrecy’ in the NCB Statutes usually refers to all information of which persons become aware as a consequence of their position in the central bank and which is not available to the general public. Exchange of information within the ESCB is usually an exception, although there may also be other grounds for disclosing information. Unauthorised disclosure is subject to sanctions.

4 The stability of the financial system

4.1 Financial stability as a central banking task and its limitations

The purpose of this chapter is to address issues related to the stability of financial systems and to analyse the legal duties and obligations of NCBs in this respect.

The chapter is divided into two main issues: “Financial stability as an ESCB-related task”, and “Limitations to the central banks’ role in contributing to financial stability”.

Regarding “Financial stability as an ESCB-related task”, I will analyse the legal norms regulating the contribution to the financial stability as far as the central banks are concerned (see Section 4.2.1). In this context, I will assess the role of the Eurosystem/ESCB in prudential supervision, the composition of the BSC and the proposed European Systemic Risk Board (ESRB).

I will then go on to assess the role of the ECB as a supervisory authority (see Section 4.2.2), pointing out the legal interpretation of Article 127(6) TFEU [former Article 105(6) TEC] as well as of Article 25.2 of the Statute, both from the historical perspective as well as from the perspective of practical application. I will therefore propose an alternative to the new European financial supervisory architecture on the basis of Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute.

Finally, in “Limitations to the central banks’ role in contributing to financial stability” I will discuss the role of central banks as the providers of emergency liquidity assistance (ELA, see Section 4.3.1) and the way in which this function is limited by the monetary financing prohibition (see Section 4.3.2).

Due to limitations set on this thesis, prudential supervision of credit institutions, its purpose, principles and regulation, all of which naturally belongs to the discussion on financial stability, has not been explored. For the same reason, the interplay between ELA and State aid rules under EU law will not be addressed.

4.2 Financial stability as an ESCB-related task

4.2.1 Financial stability and the role of central banks

4.2.1.1 Contribution to financial stability

Before the creation of EMU, it has already been noted that some coordination or centralisation of central bank operations/banking supervision for systemic stability would probably be needed under EMU.⁵³³ The ECB has traditionally favoured the involvement of central banks in prudential supervision, expressing the view that an institutional framework in which the Eurosystem's responsibilities for monetary policy in the euro area are coupled with the extensive supervisory responsibilities of NCBs in domestic markets and with enhanced cooperation at a euro area wide level is the most appropriate means of tackling the changes triggered by the introduction of the euro.⁵³⁴

Article 127(5) TFEU [former Article 105(5) TEC], replicated in Article 3.3 of the Statute, sets forth that 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. Neither Article 127(5) TFEU [former Article 105(5) TEC] nor Article 3.3 of the Statute shall, however, apply to the Member States with a derogation under Article 139(2)(c) TFEU and Article 42.1 of the Statute.⁵³⁵ Article 65(1)(b) TFEU [former Article 58(1)(b) TEC] and Article 127(5) TFEU [former Article 105(5) TEC] read in conjunction can be interpreted as the prudential supervision of financial institutions being a competence of the Member States, with the ECB and the Eurosystem NCBs only being

⁵³³ See Lastra R. M., *The Independence of the European System of Central Banks*, 1992, pp. 513-514, Schoenmaker, *Banking Supervision in Stage Three of EMU*, 1998, p. 585.

⁵³⁴ See European Central Bank, 2001, p. 7. In paragraph 4.3 of ECB Opinion CON/2008/42 of 10 September 2008 at the request of the Banque centrale du Luxembourg on amendments to the draft law improving the legislative framework for Luxembourg as a financial centre and amending the Law of 23 December 1998 on monetary status and on the Banque centrale du Luxembourg, available at http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2008_42.pdf, it was stated that *'In general, the ECB has consistently favoured the involvement of central banks in prudential supervision to support the Eurosystem's task of contributing to the adequate monitoring of risks to financial stability in the euro area. This is of particular importance in a context in which the nature and scope of these risks are affected by the introduction of the euro and the enhanced integration of financial markets. In this respect, adequate access of central banks to prudential information and cooperation between financial supervisory authorities and central banks are essential. Furthermore, the recent market turmoil has confirmed the importance of liquidity supervision over financial institutions and, in particular, the central banks' interest in banks' liquidity risk management'*. See also paragraph 2.1.2 of ECB Opinion CON/2009/89 of 4 November 2009 on the composition of the Board of the Central Bank and Financial Services Authority of Ireland and the membership of the Irish Financial Services Regulatory Authority, (available at http://www.ecb.int/ecb/legal/pdf/en_con_2009_89_f_sign.pdf).

⁵³⁵ Protocol No 16 on certain provisions relating to Denmark makes it clear that Denmark is to be treated as a Member State with a derogation. The United Kingdom is exempted under Articles 4 and 7 of Protocol No 15 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland.

entitled to contribute to the conduct of policies of competent authorities but not to conduct these policies as a Eurosystem task.⁵³⁶

Some authors have noted that there is often a separation between the tasks of central banking and of banking supervision,⁵³⁷ separated also in those euro area Member States in which the NCB is the supervisory authority (because the Eurosystem NCB no longer controls money creation).⁵³⁸ A Eurosystem central bank could, pursuant to Article 127(5) TFEU [former Article 105(5) TEC] and Article 3.3 of the Statute, “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. A non-Eurosystem NCB would need to rely on Article 14.4 of the Statute⁵³⁹ in order to lawfully contribute to the financial stability.

Maintaining close involvement of central banks in prudential supervision is an important condition for allowing the Eurosystem to contribute adequately by monitoring the risks to financial stability in the euro area, in accordance with Article 127(5) TFEU [former Article 105(5) TEC] and Article 3.3 of the Statute, and to safeguard smooth cooperation between the central bank functions exercised at the Eurosystem level and the supervisory functions carried out at a national level.⁵⁴⁰ A majority of Member States (e.g. Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Malta,

⁵³⁶ Supervisory functions are performed on the responsibility and liability of NCBs and are not regarded as being part of the functions of the ESCB under Article 14.4 of the Statute (Doherty & Lenihan, 2005, pp. 214-215). In addition, Lastra has concluded that the provision of lender of last resort assistance to specific illiquid individual institutions is a national task (Lastra R. M., 2010, p. 65).

⁵³⁷ This separation has been commented by Goodhart as a precondition for any financial crisis to be handled by a committee (Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, p. 39).

⁵³⁸ Some authors find it odd that a Eurosystem NCB would be entitled to provide emergency liquidity assistance (see Section 4.3.1) but has no monetary policy responsibilities (Schinasi & Teixeira, *The Lender of Last Resort in the European Single Financial Market*, Working Paper Series No. 43, 2006, p. 6).

⁵³⁹ Article 14.4 of the Statute sets forth that NCBs may perform functions other than those specified in the Statute unless the Governing Council finds, by a majority of two-thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of NCBs and shall not be regarded as being part of the functions of the ESCB.

⁵⁴⁰ See paragraph 2.1.2 of ECB Opinion CON/2009/89; paragraph 2.3 of ECB Opinion CON/2006/39; paragraph 2.1.2 of ECB Opinion CON/2006/15 of 9 March 2006 at the request of the Polish Minister of Finance on a draft law on the supervision of financial institutions, available at http://www.ecb.int/ecb/legal/pdf/en_con_2006_15_f_sign.pdf; paragraph 5 of ECB Opinion CON/2001/35 of 8 November 2001 at the request of the German Ministry of Finance on a draft law establishing an integrated financial services supervision, available at http://www.ecb.int/ecb/legal/pdf/EN_CON_2001_35_f_sign.pdf; paragraph 4 of ECB Opinion CON/2001/10.

the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden)⁵⁴¹ have explicit recognition of the NCB's financial stability role in their NCB Statutes. The situation is less clear regarding the other Member States.^{542, 543} The respective national provisions in English can be found in Table 4-1.

In substance, those provisions are similar to each other; however, some NCB Statutes also contain elements that do not have an equivalent in other Statutes. For example, in Article 23 of the Belgium NCB Statute, it is stated that for all decisions and transactions made in the context of its contribution to the stability of the financial system, the Bank shall enjoy the same degree of independence as that determined by Article 108 TEC [now Article 130 TFEU]. Since Article 130 TFEU and Article 7 of the Statute, which establish the principle of central bank independence, provide that 'when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute' [My emphasis, AT.], and given that the contribution 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] has been set forth in Article 127(5) TFEU [former Article 105(5) TEC] and replicated in Article 3.3 of the Statute, one can conclude that the concept of central bank independence applies to all tasks that the NCB would have to carry out, and that the Belgian NCB Statute has clearly stated what can be concluded in its interpretation of the above Treaty and Statute provisions. However, at the same time decisions independently made by the NCB in contributing to the stability of the financial system are subject to repayment.⁵⁴⁴ Under Belgian law, the State shall guarantee the NCB the repayment of any credit granted in the context of its contribution to the stability of the financial system and guarantee the Bank

⁵⁴¹ See (1) Article 44b of the Austrian NCB Statute; (2) Articles 20 and 23 of the Belgian NCB Articles of Association; Articles 9 and 12 of the Belgian NCB Statute; (3) Article 2(6) of the Bulgarian NCB Statute. Note that Bulgarian law does not refer to financial stability but to the 'stability of the banking system'; (4) Article 6(2)(e) of the Cypriot NCB Statute; (5) Article 2(2) of the Czech NCB Statute; (6) Article 2(5) of the Estonian NCB Statute. The same principle is also established in Article 2(3)(3) of the new Estonian NCB Statute that enters into force upon the adoption of the euro; (7) Article 3(2)(3) of the Finnish NCB Statute; (8) Article 3 of the German NCB Statute; (9) Article 55A(4) of the Greek NCB Statute referring to the stability and effectiveness of credit system and of the financial sector in general; (10) Article 4(7) of the Hungarian NCB Statute; (11) Article 6A(2)(a) of the Irish NCB Statute; (12) Article 5(1)(c) of the Maltese NCB Statute; (13) Article 3(2) of the Dutch NCB Statute; (14) Article 3(2)(6a) of the Polish NCB Statute; (15) Article 12(c) of the Portuguese NCB Statute; (16) Article 2(2)(b) of the Romanian NCB Statute; (17) Article 2(3) of the Slovak NCB Statute; (18) Article 4(3) of the Slovenian NCB Statute; (19) Article 7(5)(b) of the Spanish NCB Statute; (20) Chapter 4 Article 3 and Chapter 6 Article 9 of the Swedish NCB Statute.

⁵⁴² With regard to the United Kingdom, financial stability is mentioned in the Memorandum of Understanding between HM Treasury, the Bank of England and the Financial Services Authority, agreed on or about 22 March 2006, available at <http://www.bankofengland.co.uk/financialstability/mou.pdf> or <http://www.fsa.gov.uk/pages/Library/Communication/PR/2006/025.shtml> (visited on 6 September 2010).

⁵⁴³ With regard to the NCBs of Denmark, France, Italy and Latvia there is no information in their respective Statutes about whether the financial stability forms a part of their tasks or not. In Lithuania, it could be assumed the task of financial stability is included as the Lithuanian NCB is simultaneously in charge of the supervision of credit institutions.

⁵⁴⁴ Article 20 of the Belgian NCB Articles of Association; Article 9 of the Belgian NCB Statute.

against any loss incurred as a result of any transaction necessary in this regard. This provision aims at protecting the financial independence of the NCB as well as at ensuring compliance with the monetary financing prohibition under Article 123 TFEU [former Article 101 TEC] (see also Section 4.3.2).

In Slovenia, the objective to strive for financial stability appears to oblige the Slovenian NCB to take account of the principles of an open market economy and free competition.⁵⁴⁵ In Slovenia, the NCB has been expressly made responsible for the banking system's general liquidity.⁵⁴⁶

The financial stability function can also cover the oversight of the payment systems. However, as payment systems oversight is subject to a different regulatory regime, it will not be discussed here.

4.2.1.2 The role of the Eurosystem in banking supervision

In order to determine the Eurosystem's role in banking supervision, one needs to establish the meaning of 'contribution to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system'.

As indicated above, neither Article 127(5) TFEU [former Article 105(5) TEC] nor Article 3.3 of the Statute shall apply to the Member States with a derogation. Therefore, in interpreting these legal provisions, one should only refer to the Eurosystem and not to the ESCB as a whole.⁵⁴⁷ In 2001, the ECB had already noted that it would seem appropriate for the changes triggered by the introduction of the euro to be tackled by an institutional framework in which the Eurosystem's responsibilities for monetary policy in the euro area are coupled with extensive supervisory responsibilities of NCBs in domestic markets and with reinforced cooperation at an area-wide level.⁵⁴⁸ The following key issues were put forward by the ECB: (1) systemic focus becoming increasingly relevant; (2) conflicts of interests and concentration of power are not a real concern; and (3) conglomeration arguments need to be restated.⁵⁴⁹ The ECB then concluded that, when viewed from a Eurosystem perspective, the attribution of

⁵⁴⁵ Article 4(3) of the Slovenian NCB Statute.

⁵⁴⁶ The third indent of Article 11 of the Slovenian NCB Statute.

⁵⁴⁷ Note that the title of this Section differs from the similar previously one used by Smits earlier (Smits, *The role of the ESCB in banking supervision*, 2005, p. 199).

⁵⁴⁸ See European Central Bank, 2001, p. 7.

⁵⁴⁹ See European Central Bank, 2001, pp. 7-8.

extensive supervisory responsibilities (i.e., both macro- and micro-prudential) to NCBs is likely to prove beneficial.⁵⁵⁰

The ECB saw the following benefits: (1) it would allow the networking of supervisors within the Eurosystem to be exploited, with improved monitoring of risks to financial stability in the single currency area and closer coordination with central banking functions exercised at the Eurosystem level; (2) the NCBs' involvement might also extend beyond the banking sector, since systemic concerns are more and more related to the presence of large, cross-sectoral organisations.⁵⁵¹

Article 25.1 of the Statute provides that the ECB may offer advice and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.⁵⁵² Past ECB opinions on draft national legislation reforming the institutional framework for prudential supervision in Member States have noted that:

1. NCBs have traditionally been closely involved in the prudential supervision of credit institutions due to their pivotal role in the financial system, in particular regarding implementing monetary policy and ensuring the proper functioning of payment systems;⁵⁵³ or that
2. maintaining close involvement of NCBs in prudential supervision is an important condition for allowing the Eurosystem to contribute adequately to monitoring the risks to financial stability in the euro area, and to safeguard a smooth coordination

⁵⁵⁰ See European Central Bank, 2001, p. 9.

⁵⁵¹ See European Central Bank, 2001, p. 9.

⁵⁵² While Article 25.1 of the Statute applies to all Member States, the general consultative function of the ECB in respect of draft legislation in its fields of competence under Article 127(4) TFEU and Article 4 of the Statute does not apply to the UK under Articles 4 and 7 of Protocol No 15 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland.

⁵⁵³ See paragraph 2.1.2 of ECB Opinion CON/2009/89; paragraph 2.2 of ECB Opinion CON/2008/16, paragraph 2.1.2 of ECB Opinion CON/2007/33 of 5 November 2007 at the request of the Austrian Ministry of Finance on a draft law amending the Law on banking, the Law on savings banks, the Law on the Financial Market Supervisory Authority and the Law on the Oesterreichische Nationalbank http://www.ecb.eu/ecb/legal/pdf/en_con_2007_33_f_sign.pdf, paragraph 2.1.2 of ECB Opinion CON/2006/15; paragraph 4 of ECB Opinion CON/2004/24 of 19 November 2003 at the request of the Irish Department of Finance on a draft Central Bank and Financial Services Authority of Ireland Bill (No. 2) 2003, http://www.ecb.eu/ecb/legal/pdf/en_con_2003_24_f_sign.pdf; paragraph 6 of ECB Opinion CON/2003/23 of 24 October 2003 at the request of the Ministry of Finance of the Netherlands on a draft law on provisions concerning the merger of De Nederlandsche Bank and the Pensions and Insurance Supervisory Authority Foundation, http://www.ecb.eu/ecb/legal/pdf/en_con_2003_23_f_sign.pdf.

between the central banking functions exercised at the Eurosystem level and the supervisory functions carried out at national level;⁵⁵⁴ or that

3. both of the above apply at the same time.⁵⁵⁵

The de Larosière Report also called for greater cooperation between the supervisory authorities and the central banks, noting in Paragraph 126 that *'Supervisors should act as early as possible in order to address the vulnerabilities identified in a given institution, and use all means available to them to this effect (e.g. calling on contributions from shareholders, fostering the acquisition of the institution concerned by a stronger one). In this respect, the role of central banks which are by essence well placed to observe the first signs of vulnerability of a bank is of crucial importance. Therefore in countries where supervision is not in the hands of the central bank, a close collaboration must be ensured between supervisors and central banks.'*⁵⁵⁶

There are NCBs that are themselves competent national authorities regarding the prudential supervision of financial undertakings (the ECB's task of prudential supervision will be discussed in Section 4.2.2). As shown in Table 4-1, the Eurosystem NCB Statutes of Cyprus, Greece, the Netherlands, Portugal, Slovakia, Slovenia and Spain also reflect the status of those NCBs as supervisors and establish their rights and obligations in this regard (outside the Eurosystem, similar provisions can be found in the NCB Statutes of Bulgaria, the Czech Republic, Lithuania and Romania).^{557, 558}

⁵⁵⁴ Paragraph 2.1.2 of ECB Opinion CON/2009/89, paragraph 2.1.2 of ECB Opinion CON/2007/33, paragraph 5 of ECB Opinion CON/2001/35, paragraph 4 of ECB Opinion CON/2001/10 of 25 May 2001 at the request of the Austrian Ministry of Finance on a draft Article of the Federal law establishing and organising the financial market supervisory authority and amending the laws relating to banking, securities supervision, investment funds, equities funds, savings banks, building societies, mortgage banks, mortgage bonds, the IAPL, the stock exchange (1989), insurance supervision, motor vehicle third party liability insurance (1994), pension funds, capital markets, the Commercial Code, companies limited by shares, limited liability companies and the National Bank (1984) (available at http://www.ecb.int/ecb/legal/pdf/EN_CON_2001_10_f_sign.pdf).

⁵⁵⁵ Paragraph 2.1.2 of ECB Opinion CON/2009/89, paragraph 2.2 of ECB Opinion CON/2008/16, paragraph 2.1.2 of ECB Opinion CON/2007/33, and paragraph 2.1.2 of ECB Opinion CON/2006/15.

⁵⁵⁶ See de Larosière, et al., 2009.

⁵⁵⁷ See (1) Articles 2(6) and 20(3) of the Bulgarian NCB Statute; (2) Article 6(2)(d) of the Cypriot NCB Statute; (3) Articles 2(2), 44, 44a, 45, 45a, 45b, 45d, and 46 to 46f of the Czech NCB Statute; (4) Articles 2(1)(d) and 55A of the Greek NCB Statute; (5) Articles 8(1), 42, 43, 44, 45, 46 and 46¹ of the Lithuanian NCB Statute as well as Article 8(2) of the new Lithuanian NCB Statute; (6) Article 4(1) of the Dutch NCB Statute; (7) Article 17 of the Portuguese NCB Statute; (8) Article 2(2)(b) and 25 of the Romanian NCB Statute; (9) Article 2(3) of the Slovak NCB Statute; (10) Article 12(1), 18 and 23 of the Slovenian NCB Statute; and (11) Article 7(6) of the Spanish NCB Statute. The Czech and Lithuanian NCB Statutes are particularly detailed in this regard; see Table **Tõrge! Ei leia viiteallikat.** CEBS also lists Italy as an NCB with the supervisory powers, although the Italian NCB Statute is silent about it.

⁵⁵⁸ Doherty and Lenihan describe in great detail the supervisory role of NCBs under national laws, noting that the supervision of credit and financial institutions is organised under a wide variety of legal structures, with varying degrees of central bank involvement and referring to all of those different cases (Doherty & Lenihan, 2005, pp. 215-218).

The most valuable commodity for the ECB and the NCBs (both in the Eurosystem and outside) is the information relevant for addressing the systemic concerns. Table 4-2 illustrates the arrangements for exchanging supervisory information by the NCBs, in addition to the provisions listed in Table 3-19 and the discussion provided in Section 3.3.3. Some non-Eurosystem NCB Statutes express clear distinction between national and cross-border supervisory information sharing mechanisms.⁵⁵⁹ On the other hand, for the Eurosystem NCBs it seems that it is possible to share supervisory information without separating national and cross-border arrangements,⁵⁶⁰ especially in those cases where the NCB is also the supervisory authority.⁵⁶¹ The third alternative is to establish in the NCB Statutes that the duty of confidentiality will not apply in certain situations (those NCBs all belong to the Eurosystem).⁵⁶² In the opposing six cases (most of them outside the Eurosystem), however, the information sharing arrangement in the NCB Statutes is explicitly made subject to the duty of professional secrecy.⁵⁶³

The information normally subject to confidentiality and professional secrecy requirements may be shared between supervisory authorities and NCBs for the purposes of the exercise of their respective tasks.⁵⁶⁴ The Eurosystem NCBs of Austria⁵⁶⁵ and Ireland⁵⁶⁶ and the non-Eurosystem NCBs of Estonia⁵⁶⁷ and Latvia⁵⁶⁸ are statutorily entitled to receive prudential information from competent national authorities for further processing and analysis. It should be noted that in Estonia and Ireland the supervisory authority forms part of the legal personality of the NCB, which is not the case in Austria and Latvia. In Sweden, which is a

⁵⁵⁹ (1) Articles 4(2) and 5 of the Bulgarian NCB Statute; (2) paragraphs 7, 8 and 9 of Article 23 of the Polish NCB Statute; (3) paragraphs 5 to 19 of Article 3 of the Romanian NCB Statute;.

⁵⁶⁰ See (1) Article 56 of the Belgian NCB Statute, Article 35 of the Belgian Organic Act; (2) Articles 4(3) and 32a(2) of the Slovak NCB Statute; (3) Article 48 of the Slovenian NCB Statute; and (4) Article 7(8) of the Spanish NCB Statute. See also Article 2(3) of the Czech NCB Statute; (5) Article 47 of the Lithuanian NCB Statute (also Articles 47 and 54(2) of the new Lithuanian NCB Statute).

⁵⁶¹ On all occasions but one listed in footnote 560; only the Belgian NCB is not a supervisory authority.

⁵⁶² See (1) Article 25(2)(b) of the Cypriot NCB Statute, which provides that the obligation to maintain professional secrecy shall not apply to the provision of information to the ECB in compliance with the provisions of the Treaty and the Statute. See also (2) Article 26 of the Finnish NCB Statute; (3) Article L 144-1(2) of the French NCB Statute; (4) Article 33(2) of the Luxembourg NCB Statute; (5) paragraphs 1 and 2 of Article 41 of the Maltese NCB Statute.

⁵⁶³ For the Eurosystem, see Article 56 of the Belgian NCB Statute, Article 35 of the Belgian Organic Act. For the non-Eurosystem, see (1) Article 4(2) of the Bulgarian NCB Statute; (2) Article 47 of the Lithuanian NCB Statute; (3) Article 41(3) of the Maltese NCB Statute; (4) Article 23(9) of the Polish NCB Statute; and (5) paragraphs 6, 11, 14 and 16 of Article 3 of the Romanian NCB Statute.

⁵⁶⁴ No specific legal framework for the exchange of information may be needed between the NCB and the national prudential supervision authority when both institutions are chaired by the same person. See Paragraph 2.4.2 of ECB Opinion CON/2006/15.

⁵⁶⁵ See paragraphs (2) and (3) of Article 44b of the Austrian NCB Statute.

⁵⁶⁶ See Article 33C(9) of the Irish NCB Statute.

⁵⁶⁷ See Article 2(5) of the Estonian NCB Statute.

⁵⁶⁸ Article 6(2) of the Latvian NCB Statute.

Member State with a derogation, the reporting line appears to be turned the other way around, so that the Swedish NCB has to consult the national supervisory authority.⁵⁶⁹

4.2.1.3 Banking Supervision Committee

The BSC is an ESCB committee (see Section 2.3.2), which was established by the Governing Council in 1998 to take over the functions previously performed by the Banking Supervisory Sub-Committee, created by the Committee of Governors in 1990⁵⁷⁰ and subsequently established at the EMI in 1994.⁵⁷¹

The BSC is composed of high-level representatives from the national banking supervisory authorities, NCBs and the ECB, the latter also providing the Secretariat to the Committee.⁵⁷²

The Commission and the CEBS have observer status in the BSC.⁵⁷³ Membership of the BSC extends to the entire European Union and is not restricted to euro area Member States only since financial institutions' activities are not necessarily confined to the euro area but may encompass the EU's single financial market as a whole.⁵⁷⁴ As was noted in Section 2.3.2, the ESCB committees meet in different compositions, the standard composition for the Eurosystem NCBs and the extended composition for the entire ESCB. The standard composition appears not to be the prevalent *modus operandi* of the BSC.⁵⁷⁵

The BSC's mandate is not publicly available.⁵⁷⁶ According to Scheller, the BSC's mandate, which was reviewed in 2004,⁵⁷⁷ is to assist the Eurosystem in carrying out its statutory tasks in the field of the prudential supervision of credit institutions and in ensuring the stability of

⁵⁶⁹ See Chapter 4 Article 3 of the Swedish NCB Statute.

⁵⁷⁰ Other sources claim that the Banking Supervisory Sub-Committee of the Committee of Governors of the European Community was set up in 1989 (Papademos, 2007, p. 28).

⁵⁷¹ See Scheller, 2006, p. 113.

⁵⁷² See Papademos, 2007, p. 28. However, Papademos refers to 'high-level representatives from the EU banking supervisory authorities', while in fact they are national banking supervisory authorities. The Commission and CEBS are mentioned separately.

⁵⁷³ See footnote 572.

⁵⁷⁴ See Papademos, 2007, p. 29.

⁵⁷⁵ See Papademos, 2007, p. 29.

⁵⁷⁶ Apart from the ECB Rules of Procedure describing general conditions for the establishment and reporting of the ESCB committees, there is no ECB legal instrument describing the tasks of the BSC. Even ECB Opinion CON/2009/88 and ECB Opinion CON/2008/63 of 7 November 2008 on a draft Commission decision establishing the Committee of European Banking Supervisors, OJ C 45, 24.2.2009, p. 1, are silent on this, although the division of labour between CEBS and BSC is mentioned. A vague reference has been made in paragraph 7 of ECB Opinion CON/2004/7 of 20 February 2004 at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council, in order to establish a new financial services committee organisational structure (COM(2003) 659 final), OJ C 58, 6.3.2004, p. 23.

⁵⁷⁷ The reason for that was the extension of the Lamfalussy approach for financial regulation and supervision to all financial sectors at the end of 2003. That led to the establishment of CEBS and the mandate of BSC therefore had to be revised to reflect these developments (Papademos, 2007, p. 29).

the financial system.⁵⁷⁸ The creation of the BSC did not imply a move in the direction of establishing a single supervisory authority, but rather aimed at establishing the conditions that would allow the national supervisors to operate as effectively as a single authority.⁵⁷⁹

In accordance with its mandate, the tasks of BSC can be divided into three.⁵⁸⁰ The first and primary task of the BSC is the contribution to monitoring and assessing developments in the euro area and EU banking and financial sectors from a financial stability perspective. By analysing the financial sector from the macro-prudential perspective, the BSC contributes, *inter alia*, to the preparation of the ECB's Financial Stability Review.⁵⁸¹ A second task of the BSC is the contribution to the design of financial regulation and supervisory tools from a macro-prudential perspective, thereby enforcing Article 25.1 of the Statute. The third task of the BSC is the promotion of cooperation between central banks and banking supervisors on issues of common interest, including cooperation with the CEBS, Committee of European Securities Regulators (CESR) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

As an ESCB committee, the BSC has no decision-making powers of its own and reports to the Governing and General Councils of the ECB.

4.2.1.4 European Systemic Risk Board

Although there does not seem to have been any criticism of the work of BSC, the de Larosière Report proposed, in Paragraph 153, that *'[T]he present EU supervisory arrangements place too much emphasis on the supervision of individual firms, and too little on the macro-prudential side. The fact that this failing is duplicated elsewhere in the world makes it a greater, not a lesser, issue. The Group believes that to be effective macro-prudential supervision must encompass all sectors of finance and not be confined to banks, as well as the wider macro-economic context. This oversight also should take account of global issues. Macro-prudential supervision requires, in addition to the judgements made by individual Member States, a judgement to be taken at EU level. The Group believes that this requires that an Institution at EU level be entrusted with this task. It recommends that the*

⁵⁷⁸ See footnote 571. The creation of the BSC became instrumental in fostering smooth cooperation between the Eurosystem and the national banking supervisory authorities after 1 January 1999 where the jurisdiction for the single monetary policy, which was supranational, and the jurisdiction for banking supervision, which remained national, no longer coincided and the BSC provided a platform to bridge this institutional asymmetry (Papademos, 2007, pp. 28-29).

⁵⁷⁹ See Papademos, 2007, p. 29.

⁵⁸⁰ The distribution of the BSC's tasks into three was provided by Papademos (2007), who also described them in detail.

⁵⁸¹ See European Central Bank, 2009, p. 9.

*ECB/ESCB be explicitly and formally charged with this responsibility in the European Union.*⁵⁸²

The Commission has proposed that in the new European financial supervisory architecture macro-prudential supervision should be conferred on the European Systemic Risk Board (ESRB).⁵⁸³ The proposal consisted of two elements: (1) the Commission's Proposal for a Regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board and (2) the Commission's Proposal for a Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board.⁵⁸⁴ The legal basis for the draft Council Regulation was Article 95 TEC, which is now Article 114 TFEU, and Article 105(6) TEC, which is now Article 127(6) TFEU, for the draft Council Decision. ECB Opinion CON/2009/88, reflected no objections about this legal arrangement or the proposal as such.⁵⁸⁵ However, the creation of the ESRB does create matters for debate, not only because that there will be no EU institution formally charged with regulation, as proposed by De Larosière Report, but mostly because the Council appears to be regulating something that was already up and running as an ESCB committee.⁵⁸⁶

According to the proposal, the ESRB will be established as an independent body, without legal personality, responsible for macro-prudential oversight across the EU financial system. In this regard, the ESRB differs from the European Supervisory Authorities (ESAs), which would have legal personality. The ESRB is expected to provide high quality macro-prudential assessments, as well as issue risk warnings and recommendations whenever potential imbalances may pose a threat to financial stability.

The objectives of the ESRB are threefold. The first objective is to develop a framework for macro-prudential supervision in Europe so as to better address the issue of fragmented risk

⁵⁸² See de Larosière, et al., 2009.

⁵⁸³ Originally, the reference was made to the European Systemic Risk Council that was to replace the Banking Supervision Committee (de Larosière, et al., 2009, p. 44). Recine and Teixeira reveal that the ECOFIN Council of 9 June 2009 renamed the proposed macro-prudential body as the European Systemic Risk Board, possibly in order to follow the terminology used for the setting-up of the Financial Stability Board by the G-20 in April 2009 (Recine & Teixeira, 2009, p. 16).

⁵⁸⁴ See Commission's Proposal for a Regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, COM (2009) 499 final 2009/0140 (COD), 2009; and Commission's Proposal for a Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board, COM(2009) 500 final, 2009/0141 (AVC), 2009.

⁵⁸⁵ Moreover, no reference to the legal bases was made by the ECB in its Financial Stability Review of December 2009 (European Central Bank, 2009).

⁵⁸⁶ A further issue is whether central bank independence would be breached or whether the proposals would violate Article 25 of the Statute as discussed in Section 4.2.2.

analysis at the national level. The second objective of the ESRB is to enhance the effectiveness of early warning systems by improving the interaction between micro- and macro-prudential analyses. The final objective of the ESRB is to translate risk assessments into action by the relevant authorities. The objectives of the ESRB are slightly different from those of the BSC. For example, there is no reference to the contribution to the design of financial regulation and supervisory tools, which exists for the BSC.

The ECON Reports propose that the ESRB must (a) identify and/or collect the relevant data from financial institutions and through the ESAs; (b) declare the existence of an emergency situation, where appropriate; (c) issue warnings where risks are deemed to be significant and, where appropriate, make them public; (d) develop a common set of quantitative and qualitative indicators (risk dashboard), which would serve as the basis to assign a supervisory rating to cross-border institutions that potentially could pose a systemic risk.⁵⁸⁷ Furthermore, a new element, not repeated in any other ECON Report, in the report on the ESRB proposes that in order to enhance the awareness of risks in the European economy and to prioritise such risks, the ERSB, in close cooperation with the European System of Financial Supervisors (ESFS), shall elaborate a colour-coded system corresponding to situations of different risk levels.⁵⁸⁸

The ESRB will not have any binding powers to impose measures on Member States or national authorities. The powers of the ESRB consist of (1) warnings and recommendations and (2) information analysis. When significant risks occur, the ESRB shall provide warnings and, where appropriate, issue recommendations for remedial action. Recommendations may be either general or specific in nature and shall have an addressee (in addition, they shall also be transmitted to the Council and, if sent to several national supervisory authorities, to the ESAs). Warnings and recommendations may be made public if the General Board of the ESRB so decides, provided that the addressee is also made aware of this decision prior to the publication of a warning or recommendation. Recommendations shall include a specified timeline for the policy response. The addressees shall communicate the actions undertaken in response to the recommendations made to the ESRB or explain why they have not acted (the Council and, where relevant, the ESAs shall be informed). In order to fulfil its mission, the ESRB will be entitled to the collection and analysis of information. This will be made in close cooperation with the ESAs, the NCBs and the Member States and the ESRB may

⁵⁸⁷ Available at <http://www.europarl.europa.eu/oeil/file.jsp?id=5804642> (visited on 7 September 2010).

⁵⁸⁸ See footnote 587.

request information from them. Although the principle is that the information shall be provided in summary or collective form so that individual financial institutions cannot be identified, it is also possible for the ESRB to request ESAs to provide data that are not in summary or collective form.

The internal organisation of the ESRB will include (1) a General Board, (2) a Steering Committee and (3) a Secretariat. The General Board will be the main decision-making body of the ESRB and will be composed of voting and non-voting members. The voting members will be the Governors of the NCBs, the President and the Vice-President of the ECB, a member of the European Commission, and the chairpersons of the three ESAs. The non-voting members of the General Board will be one high-level representative per Member State of the competent national supervisory authorities and the President of the Economic and Financial Committee (EFC). The composition is slightly different from that of the BSC but in substance as it constitutes a forum for the central bankers and the supervisors.

Although the ESRB has no regulatory powers, its decision-making is meticulously regulated. The decisions will be taken by simple majority, with the exception of decisions concerning the publication of a warning or recommendation. In such cases, a majority of two-thirds of the votes is required.

A Steering Committee will assist in the decision-making process of the ESRB by preparing the meetings of the General Board, reviewing the documents to be discussed and monitoring the progress of ongoing work. The Steering Committee will be formed by the Chair and Vice-Chair of the General Board, the chairpersons of the three ESAs, the President of the EFC, a member of the Commission and five members of the General Board who are also members of the General Council of the ECB.

The ECB will act as the Secretariat and therefore provide analytical, statistical, logistical and administrative support for the ESRB.⁵⁸⁹ This includes, among other activities, the preparation of the meetings, the collection and processing of qualitative and quantitative information, and the conduct of analysis and assessments necessary for the fulfilment of the ESRB tasks. The Secretariat will also support the Advisory Technical Committee,⁵⁹⁰ which will, on request by the General Board, provide advice and assistance for the General Board on a number of issues that are within the scope of the ESRB. The budgetary cost related to the ESRB will be

⁵⁸⁹ One could observe that similar duties are performed by the ECB with regard to the BSC.

⁵⁹⁰ Also referred to as the Advisory Scientific Committee in the ECON Report on ESRB; see footnote 587.

borne by the ECB and will not have any direct implication for the EU budget as the ECB will provide its staff and resources to fulfil the tasks of the Secretariat of the ESRB. It is noteworthy that the same tasks are in substance carried out by the ECB while hosting the BSC.

When assessing whether the ESRB meets the core principles of the institutional framework for prudential supervision the following can be observed. While the ESRB's responsibility for macro-prudential supervision⁵⁹¹ within the European Union is stated fairly clearly, it is arguable whether the ESRB is operationally independent.⁵⁹² It is not a legal person and its decision-making bodies are composed of persons who already hold positions in the institutions and bodies of the European Union. There is no power for the ESRB to issue binding rules and it does not have the ability to independently cooperate with bodies other than the ESFS, the Commission or the ECB. It appears to fulfil the sound governance principle, as it is operating through collegial decision-making bodies. However, it is arguable whether the decision-making bodies are too large to be efficient.⁵⁹³ It is obvious that this EU body does not enjoy any budgetary independence as it is dependent on the ECB's contributions and nowhere in the Commission's Proposal for a Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board or the Commission's Proposal for a Regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board is the budgetary aspect of the ESRB addressed, except in the explanatory memorandum stating that the budgetary cost related to the ESRB will be borne by the ECB and will not have any direct implication for the Union's budget.⁵⁹⁴

⁵⁹¹ The draft Regulation actually uses the word 'oversight' in Article 3.

⁵⁹² One could even argue that in terms of operational independence, there is very little difference between the ESRB and the BSC, apart from the fact that the ESRB is more prominent than any other ESCB committee.

⁵⁹³ Sibert claims that the structure of the ESRB is far from ideal. 'It is to be composed of the 27 EU national central bank governors, the ECB President and Vice-President, a Commission member and the three chairs of the new European Supervisory Authorities. In addition, a representative from the national supervisory authority of each EU country and the President of the Economic and Financial Committee may attend meetings of the ESRB, but may not vote. This lumbering army of 61 central bankers and related bureaucrats is a body clearly designed for maximum inefficiency; it is too big, it is too homogeneous, it lacks independence, and its members are already sufficiently employed.' (Sibert, 2010).

⁵⁹⁴ See European Commission, 2009, p. 4.

Finally, in terms of transparency and accountability, the draft proposal recognises the right of the general public to have access to the ESRB's documents⁵⁹⁵ and provides that the ESRB shall report at least annually to the European Parliament and the Council. However, the disclosure of warnings and recommendations has been left to the discretion of the General Board without any guidance on the principles or criteria for the minimum disclosure of information.

4.2.2 Role of the ECB as a supervisory authority

4.2.2.1 History

Throughout its history, the ECB has never performed a supervisory function in its traditional, micro-prudential sense. However, granting prudential supervision rights to the ECB had been an option,⁵⁹⁶ and Article 25.2 of the draft Statute prepared by the Committee of Governors provided that the ECB may formulate, interpret and implement policies relating to the prudential supervision of credit and other financial institutions for which it is designated as competent supervisory authority.⁵⁹⁷ The outcome of the fierce debate at the Intergovernmental Conference was a rejection of this proposal and led to an agreement in Maastricht to insert in TEC an enabling clause under which the political authorities of the Community can confer further tasks upon the ECB.⁵⁹⁸

Article 105(6) TEC therefore provided that the ECOFIN Council may, acting unanimously, confer on the ECB specific tasks in the area of prudential supervision. It can act only on a proposal from the Commission and after consulting the ECB, and the European Parliament's assent is required.

The procedure following the entry into force of the Lisbon Treaty is different: the European Parliament now needs only to be consulted together with the ECB, and so the Parliament

⁵⁹⁵ Interestingly, the draft Regulation refers to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43; and not to the ECB Public Access Decision, as one might have expected, since the ESRB is institutionally located with the ECB under the Commission's Proposal for a Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board.

⁵⁹⁶ See van den Berg, 2005, pp. 271-287.

⁵⁹⁷ See Committee of Governors of the Central Banks of the Member States of the European Economic Community, 1990, p. 9. In the Commentary to the draft Statute it was explained that the ability of the NCBs and other competent national authorities to conduct prudential supervision will not be affected. The draft Article 25.2 of the Statute offers the possibility of designating the ECB as a competent supervisory authority, in which case it might formulate, interpret and implement supervisory policies. Any future transferral of competence to the ECB should be specified by Community legislation for which the Treaty would have to provide an enabling clause (Committee of Governors of the Central Banks of the Member States of the European Economic Community, 1990, p. 26).

⁵⁹⁸ See Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, p. 356.

could no longer veto a Council's regulation conferring the prudential supervision task on the ECB.⁵⁹⁹

Under the new legal regime, there is also an option not to follow this procedure but to opt for an ordinary procedure. The so called 'passarelle' clause enables the Council to amend the procedure for adopting a legislative act from a special legislative procedure to the ordinary one under Article 48(7) TEU; there is a unanimity requirement for the Council as well as the European Parliament's involvement (while Article 48(7) TEU requires consent as a general rule, in a number of articles there is a consultation requirement).⁶⁰⁰ Sometimes other institutions and bodies besides the European Parliament are also consulted.⁶⁰¹ In addition, pursuant to Article 48(7) TEU, all national parliaments must be notified and if any single one makes known its opposition within six months, the decision is not adopted.⁶⁰²

4.2.2.2 Statutory provisions and applicability

Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute set forth that the Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the ECB, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings. Furthermore, this is also confirmed by Article 25.2 of the Statute,⁶⁰³ which provides that in accordance with any regulation of the Council under Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute, the ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions, with the exception of insurance undertakings.

⁵⁹⁹ Frankal, Arruga Oleaga and Coussens however do not refer to 'regulation' as it is stated in TFEU but 'decision' instead (Frankal, Arruga Oleaga, & Coussens, 2007-2008/2, p. 144).

⁶⁰⁰ For example: (1) Article 21(3) TFEU; (2) Article 22 TFEU; (3) Article 23 TFEU; (4) Article 64(3) TFEU; (5) Article 77(3) TFEU; (6) Article 81(3) TFEU; (7) Article 87(3) TFEU; (8) Article 89 TFEU; (9) Article 113 TFEU; (10) Article 115 TFEU; (11) Article 118 TFEU; (12) Article 126(14) TFEU; (13) Article 127(6) TFEU; (14) Article 153(2) TFEU; (15) Article 182(4) TFEU; (16) Article 192(2) TFEU; (17) Article 194(3) TFEU; (18) Article 203 TFEU (19) Article 262 TFEU; (20) Article 308 TFEU; (21) Article 311 TFEU; (22) Article 333 TFEU; and (23) Article 349 TFEU provide for consultation requirement.

⁶⁰¹ For example: (1) Article 113 TFEU; (2) Article 115 TFEU ; (3) Article 126(14) TFEU (4) Article 127(6) TFEU; (5) Article 153(2) TFEU; (6) Article 182(4) TFEU; (7) Article 192(2) TFEU; (8) Article 308 TFEU.

⁶⁰² See Frankal, Arruga Oleaga, & Coussens, 2007-2008/2, pp. 137-138.

⁶⁰³ Remarkably, the task of prudential supervision has not been placed in Article 3 of the Statute together with other tasks of the ESCB. The rationale may be that this was a task foreseen for the ECB alone and not for the entire ESCB. However, Smits points out that Article 127(6) TFEU is not a separate article but a paragraph in an article describing the tasks of the ESCB (Smits, European Central Bank Institutional Aspects, 1997, reprinted with corrections 2000, p. 355). Smits' observation is supported by the language of Article 132(1) TFEU, which stipulates, among others that '[I]n order to carry out the tasks entrusted to the ESCB, [...]', while one of the legal bases for the ECB regulations is also Article 25.2 of the Statute.

It is noteworthy that under Article 139(2)(c) TFEU Article 127(6) TFEU [former Article 105(6) TEC] shall apply to all members of the ESCB, not just the Eurosystem. In addition, Article 42 of the Statute, which specifies the provisions not applicable to the Member States with a derogation, does not list Article 25.2 of the Statute. Even Articles 4 and 7 of Protocol No 15 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland do not exclude the applicability of Article 127(6) TFEU [former Article 105(6) TEC] or of Article 25.2 of the Statute to the United Kingdom.

However, this EU-wide supervisory competence has no EU-wide regulatory backing from the Statute. While the first indent of Article 132(1) TFEU [former Article 110(1) TEC] and Article 34.1 of the Statute authorise the ECB to make regulations to the extent necessary to implement the tasks defined in, *inter alia*, Article 25.2 of the Statute, those regulations would only be applicable to the Member States that have adopted the euro. In particular, Article 139(1)(e) TFEU provides that acts of the European Central Bank issued under Article 132 TFEU [former Article 110 TEC] shall not apply to Member States with a derogation.⁶⁰⁴ The same is also true for the United Kingdom.⁶⁰⁵ Therefore, while being lawfully competent to carry out prudential supervisory tasks throughout the EU once the Council has issued its regulation, the ECB's power to issue legal acts in this field would unfortunately be limited to the euro area Member States.⁶⁰⁶

However, even with those limitations, the issue of whether the creation of the ESRB was justified from the legal point of view would find some opposition.

4.2.2.3 Scope of the ECB's supervisory task

From the legal point of view, the ECB would be competent, if activated by the Council by its regulation, to conduct the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings of the euro area.⁶⁰⁷

Lastra has described supervision in a broad sense as a process with four stages: (1) licensing, authorisation or chartering (entry into business); (2) supervision *stricto sensu*;⁶⁰⁸ (3)

⁶⁰⁴ Respectively, Article 42.1 of the Statute and Article 34 of the Statute.

⁶⁰⁵ See Articles 4 and 7 of Protocol No 15 .

⁶⁰⁶ Padoa-Schioppa has noted that the simplified procedure is a highly significant indication that the drafters of the Treaty clearly understood the anomaly of the double separation and saw the potential difficulties arising from it; it could also be interpreted as a 'last resort clause', which might become necessary if the interaction between the Eurosystem and national supervisory authorities turned out not to work efficiently (Padoa-Schioppa, *Regulating Finance: Balancing Freedom and Risk*, 2004, p. 78).

⁶⁰⁷ Some authors have suggested that the Member States could delegate their supervisory powers to the ECB by means of a binding agreement with the ECB (Hertig, Lee, & McCahery, 2009, pp. 11, 27). However, from the legal point of view such an approach is controversial.

sanctioning or the imposition of penalties in the case of non-compliance with the rules; and (4) crisis management, which comprises lender of last resort, deposit insurance, and bank insolvency proceedings.⁶⁰⁹ In simple terms, prudential supervision is needed to ensure the safety and soundness of the banking system.⁶¹⁰

For some reason, the supervision of insurance undertakings has been omitted from the scope of the ECB's own supervisory tasks. It is difficult to understand why, as cross-border financial conglomerates tend to encompass credit institutions, securities and insurance undertakings,⁶¹¹ and if it were indeed omitted, there would be a risk of supervisory fragmentation.⁶¹² However, throughout the history of Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute there has been an understanding that an amalgamation of supervisory functions were to be considered by the governments and parliaments of all Member States, since such a function would require a 'full-blown' Treaty amendment'.⁶¹³

The Committee of Governors foresaw the supervision of not 'all' credit and financial institutions by the ECB but only those 'for which it is designated as competent supervisory

⁶⁰⁸ Supervision in a narrow sense refers to the oversight of financial firms' behaviour, in particular risk monitoring and risk control (Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 85). Corporate governance tools at the company level do not appear to contribute directly to financial stability – Wymeersch has studied the relationship between corporate governance and financial stability and concluded that it is an indirect one, as the stability of firms and markets are essential elements for maintaining financial stability (Wymeersch, *Corporate Governance and Financial Stability*, 2008). However, Mülbart is of the view that corporate governance interacts with prudential regulation (Mülbart, 2009), a view shared by Mullineux (Mullineux, 2006).

⁶⁰⁹ See Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, pp. 85-90. Lastra's earlier work was a basis for Quintyn & Taylor, *Regulatory and Supervisory Independence and Financial Stability*, 2002, to develop the principle of supervisory independence.

⁶¹⁰ The term 'regulation' refers essentially to rulemaking, while 'supervision' deals with applying the rules to a specific case. Supervision is naturally linked to regulation: regulators set the rules and supervisors implement and enforce such rules (Quinn, 1998, pp. 127-130) (Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 85) (Wymeersch, *The Structure of Financial Supervision in Europe: About single, twin peaks and multiple financial supervisors*, 2006, p. 3). However, sometimes the distinction is not that clear and it may therefore be that supervision often implies regulation, and there is no easy differentiation between regulators and supervisors (Grunbichler & Darlap, 2004).

⁶¹¹ Similar criticism has been made by Lastra (Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006). Considering the historical developments as described by van den Berg, it appears that early drafts contained reference to the supervision of credit institutions but not of other undertakings. At some point in July 1990 the references to 'banking supervision' were replaced by 'prudential supervision', with the aim of also embracing insurance and securities operations, but then it was felt that the decision as to whether supervision was a central banking function should be left to the political authorities (van den Berg, 2005, pp. 280-281).

⁶¹² Bini Smaghi has said, in discussing the merits of Article 127(6) TFEU [former Article 105(6) TEC], that 'first, such provision would not prohibit the attribution of responsibilities to the ECB as regards the supervision of financial conglomerates, as the related supervisory regime (as introduced by the Financial Conglomerates Directive) is only supplementary with regard to the conglomerate as a whole, and does not regard the direct supervision of insurance undertakings. Second, this is not an argument that could support the case for the attribution of supervisory responsibilities to a new European entity and not to the ECB: also in the former case the Treaty would need to be amended' (Bini Smaghi, *Financial crisis: Where does Europe stand?*, 2009).

⁶¹³ See Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, p. 358. Some reports also refer to clear political opposition to the idea of executing Article 127(6) TFEU (The European Union Committee of the House of Lords, 2009, p. 30).

authority'.⁶¹⁴ Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute make no distinction between micro- and macro-prudential supervision. It is therefore possible for the ECB to carry out either of them or even both. However, the exact scope of prudential supervision needs to be determined by the Council's regulation referred to in Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute. The first obstacle concerns licensing – at the moment it is a national competence and it is not clear whether licensing could remain national or become supranational for some financial undertakings. While the ECB could be supervising cross-border banking groups⁶¹⁵ or, for example, those registered as European companies (*Societas Europaea* or SE),⁶¹⁶ it is arguable whether the ECB should also license the entities that it could supervise or whether licensing could remain national and only supervision be supra-national. If licensing and supervision are conducted at a supra-national level, a practical cooperation and information sharing arrangement with national authorities would be needed in those Member States in which the supervised undertaking is operating.

The alternative to the above would be for the ECB to carry out macro-prudential supervision to the extent proposed for the ESRB, which would leave micro-prudential supervision as a national task.⁶¹⁷ The benefit of such an arrangement would be twofold: first, the ECB would be in charge of the prudential information and is also best placed to provide emergency liquidity assistance as discussed in Section 4.3.1.2; second, the ECB could issue soft law opinions, recommendations and warnings without being concerned about the non-applicability of Article 132 TFEU [former Article 110 TEC] outside the Eurosystem. Once the subjects of the ECB's own supervisory task, or the content of the macro-prudential supervision, is/are clear the respective future Council Regulation could also stipulate sanctioning or imposition of penalties in the case of non-compliance with the rules.

⁶¹⁴ See Committee of Governors of the Central Banks of the Member States of the European Economic Community, 1990, p. 9.

⁶¹⁵ Mr Sáinz de Vicuña has been quoted as saying that for large cross-border banks it would be desirable to have a single reporting structure and an interlocutor for all supervisory arrangements of their multi-jurisdictional operations rather than having to deal with a plurality of national supervisors that cooperate 'in a very soft and vague manner' (The European Union Committee of the House of Lords, 2009, p. 32).

⁶¹⁶ The Nordea group has often been used as an example to explain how the distribution of responsibilities between national authorities will change. While previously all supervisors that licensed banks within a group were involved in its supervision, a unified group will be under the full jurisdiction and responsibility of a single national supervisor (Schinasi & Teixeira, *The Lender of Last Resort in the European Single Financial Market*, Working Paper Series No. 43, 2006, p. 5). However, Nordea's transformation into an SE appears to be ongoing (Nordea, 2009).

⁶¹⁷ Other authors have proposed that ECB supervision could be limited to managing EU-wide prudential risks (Hertig, Lee, & McCahery, 2009, p. 26).

Yet another issue, related to the licensing and supervision competence *stricto sensu*, concerns crisis management, which comprises the lender of last resort function, deposit insurance and bank insolvency proceedings. The lender of last resort function both nationally and supra-nationally will be discussed in Section 4.3, together with the monetary financing prohibition under EU law. Apart from emergency liquidity assistance, bailing out any financial undertaking at the EU level has traditionally been deemed to be close to impossible as there was no EU budget for financial distress and therefore rescue packages and recovery plans have so far had to be national in origin.⁶¹⁸ However, on 26 May 2010 the European Commission adopted a Communication on Bank Resolution Funds that proposes that the European Union establish a EU network of bank resolution funds to ensure that future bank failures are not at the cost of the taxpayer and do not destabilise the financial system.⁶¹⁹

Deposit insurance and bank insolvency proceedings are also rooted in national law and as was concluded by the CEBS, there are significant differences among Member States in granting sanctioning powers and the powers regarding crisis management to the competent authorities. Therefore, if the ECB were to be granted the powers of competent authority, the respective future Council Regulation would need to address either the scope of the ECB's powers regarding macro-prudential supervision or the supranational aspect of licensing, the practical arrangements of supervision, sanctions and crisis management.

Since Article 130 TFEU [former Article 108 TEC] and Article 7 of the Statute, which establish the principle of central bank independence, provide that 'when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute' [My emphasis, AT.], and taking account of the fact that the supervisory task of the ECB originates from Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute, one can conclude that the concept of central bank independence would also spill over to the supervisory task under these circumstances.

The ECB is not just operationally but also institutionally independent and it serves as a role model in terms of institutional, personal and financial independence as discussed in Chapter 3. As far as sound governance is concerned, the decision-making powers in this regard would be entrusted to the Executive Board and Governing Council under Article 129(1) TFEU

⁶¹⁸ Padoa-Schioppa has noted that when assessing the existing mechanism for crisis management, the lender of last resort function is just one solution; the two other solutions would be (1) the provision of taxpayers' money with the issues related to State aid rules or, preferably, (2) private money should be used (Padoa-Schioppa, *The Euro and Its Central Bank: Getting United After the Union*, 2004).

⁶¹⁹ See Bank Resolution Funds, COM(2010) 254 final.

[former Article 107(1) TEC], since the General Council's capacity is limited to holding 'consultations concerning issues falling within the competence of the NCBs and affecting the stability of financial institutions and markets' as set forth in the fourth indent of Article 141(2) TFEU.⁶²⁰ Further, the discussion in Section 3.3 regarding transparency and accountability would also apply here.

4.3 Limitations to the central banks' role in contributing to financial stability

4.3.1 Emergency liquidity assistance

4.3.1.1 Definition of ELA and its terms

Having the duty to contribute to the stability of the financial system, a central bank has to monitor and assess the liquidity in the system, either through the oversight of the payment systems or by exercising banking supervision powers (or cooperating with the supervisory authorities).⁶²¹ Charles Goodhart has said that the separation between supervision and the central bank (providing emergency liquidity assistance) means that any financial crisis has to be handled by a committee rather than a single focus of power/decision.⁶²² In times of crisis, owing to their balance sheet mismatch, credit institutions may need assistance to cover their liquidity positions. Against this background, it can be concluded that the first line of defence against a banking crisis is liquidity support.⁶²³

⁶²⁰ This provision is not reflected in Article 46 of the Statute, which describes the responsibilities of the General Council. Under Article 46.1 of the Statute however, the General Council is responsible for contributing to the advisory functions referred to, *inter alia*, in Article 25.1 of the Statute. Mr Sáinz de Vicuña has expressed his view that Article 105(6) TEC [now Article 127(6) TFEU] could be applied through the General Council; such a provision would therefore be applicable to all EU Member States, not only members of the euro area (The European Union Committee of the House of Lords, 2009, p. 30).

⁶²¹ Some authors have suggested that in the case of the euro area, the existing infrastructure of the ECB/Eurosystem would certainly play a major role as the Eurosystem committees would have an operational role in collecting local information (Schinasi & Teixeira, *The Lender of Last Resort in the European Single Financial Market*, Working Paper Series No. 43, 2006, p. 10).

⁶²² See Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, p. 39.

⁶²³ See Lastra R. M., 2010, p. 61.

Emergency liquidity assistance (ELA)⁶²⁴ has been defined by the ECB as a specific tool available to central banks in crisis situations to provide liquidity for individual credit institutions against adequate collateral.⁶²⁵ According to the ECB's definition, the provision of liquidity assistance can take place:

- 1) in exceptional circumstances and on a case-by-case basis;
- 2) for a temporarily illiquid (but solvent) credit institution (against adequate collateral);
- 3) which cannot obtain liquidity through either the market or participation in monetary policy operations.⁶²⁶

The main guiding principle for the provision of ELA is that the competent NCB shall take the decision concerning an institution operating in its jurisdiction. ELA would therefore take place under the responsibility and at the cost of the NCB in question.⁶²⁷ The access to central bank liquidity will be exceptional and dependent on the discretion of the NCB, which will consider the relevant factors that may justify access to this lending of last resort (e.g. in order to prevent or mitigate potential systemic effects on financial institutions).⁶²⁸ Lastra has outlined four elements of ELA: (1) financial assistance should be made available to banks

⁶²⁴ Other authors have referred to ELA as 'lender of last resort' or LOLR (Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, pp. 28, 34), (Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, pp. 113-124), (Rossi & Sansonetti, 2007, p. 1356), (Lastra R. M., 2010, pp. 61-65). The name 'lender of last resort' owes its origins to Sir Francis Baring, who used this notion while referring to the Bank of England in 1797 (Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 113). Central banks provide liquidity when no other sources of liquidity are readily available (or at least are not available at 'reasonable market prices') (Lastra R. M., 2010, p. 61). Rossi and Sansonetti define LOLR as the discretionary provision of liquidity for a financial institution (or the market as a whole) by the central bank in reaction to an adverse shock which causes an abnormal increase in demand for liquidity which cannot be met from an alternative source (other than the central bank); the LOLR mechanism aims at preventing liquidity problems from impairing the solvency of individual banks and the stability of the banking system without, however, distorting the conditions of competition (the loan must be repaid) (Rossi & Sansonetti, 2007, p. 1356). Some authors use 'lender of last resort' and 'emergency liquidity assistance' interchangeably (Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, pp. 50, 61), (Schinasi & Teixeira, *The Lender of Last Resort in the European Single Financial Market*, Working Paper Series No. 43, 2006).

⁶²⁵ See European Central Bank, 2007, p. 80.

⁶²⁶ See European Central Bank, 2007, p. 80. The alternative ECB definition is that provision of liquidity assistance by central banks consists in giving support in exceptional circumstances and on a case-by-case basis to temporarily illiquid but solvent credit institutions; see paragraph 4.1 of ECB Opinion CON/2008/58 of 23 October 2008 at the request of the Banca d'Italia on behalf of the Italian Ministry for Economic Affairs and Finance on two Decree-Laws containing urgent measures to guarantee the stability of the banking system and the continuity of the provision of credit, available at https://www.ecb.int/ecb/legal/pdf/en_con_2008_58_f_sign.pdf. See also ECB Opinion CON/2008/42, paragraph 4.10 (footnote 16), and ECB Opinion CON/2008/46 of 8 October 2008 at the request of the Belgian Ministry of Finance on a preliminary draft law on measures promoting financial stability and in particular establishing a State guarantee for the provision of credit in the context of financial stability, paragraph 3.1, available at http://www.ecb.eu/ecb/legal/pdf/en_con_2008_46_f_sign.pdf. The ECB Financial Stability Review of December 2006, describes ELA as support given by central banks in exceptional circumstances and on a case-by-case basis to temporarily illiquid institutions and markets and does not refer to adequate collateral or to the third criterion ('*which cannot obtain liquidity through either the market or participation in monetary policy operations*') (European Central Bank, 2006, pp. 171-172).

⁶²⁷ The ECB also noted that ELA should not be seen as a primary means of ensuring financial stability, since it bears the risk of moral hazard.

⁶²⁸ See European Central Bank, 2007, p. 80.

that are illiquid but solvent; (2) the central bank should lend ‘freely’, that is it should lend as much as needed, but the rate of interest charged should be high;⁶²⁹ (3) the central bank should accommodate anyone who can provide ‘good’ collateral which is valued at lower than pre-panic prices but higher than it would have been valued, had the central bank not entered the market; and (4) while the central bank should let it be known in advance that it will be ready to lend, it will also exercise discretion as to whether or not to provide ELA.⁶³⁰

The provision of ELA is regulated neither in the Treaties nor in the Statute.⁶³¹ Nine NCB Statutes⁶³² out of 27 have regulated the provision of ELA as shown in Table 4-3 in addition to other forms of credit operations reflected in Table 4-1. All these NCB Statutes have been assessed in the light of six criteria: (1) central bank independence; (2) collateral requirement; (3) short-term nature; (4) solvency of the credit institution; (5) the credit institution as the eligible counterparty; and (6) exceptional circumstances.

The central bank independence requirement is derived from discussions in Sections 4.2.1.1, leading to the conclusion that contribution to financial stability is a task that is also subject to the central bank independence requirement. The independence requirement would also embrace the discretionary nature of the ELA provision. From the Table 4-3 it becomes apparent that none of the NCB Statutes contains an explicit independence safeguard or reference to the fact that granting ELA will be discretionary. However, almost all of the reviewed NCB Statutes use the word ‘may’ in the English language versions, which could be interpreted as if the matter is discretionary and the central bank is making the decision independently.⁶³³ The NCB’s pre-determined rules on the provision of ELA is referred to in

⁶²⁹ In her earlier works, Lastra has suggested that there should be a penalty rate, which has now been adjusted (Lastra R. M., *Legal Foundations of International Monetary Stability*, 2006, p. 114), see also Weenink & Schulze Steinen (2008). Goodhart has proposed in this regard that the preferential access scheme should be created (Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, p. 71), inducing all relevant banks always to be borrowing an initial tranche of funds from the central bank and thereby making it an additional monetary policy window.

⁶³⁰ See Lastra R. M., 2010, p. 62.

⁶³¹ Smits notes that this is not surprising, as the provision of ELA is normally not spelled out openly in advance in legislation (Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, p. 270).

⁶³² For the Eurosystem, see (1) Article 46(3) of the Cypriot NCB Statute; (2) Article 17(1)(g) of the Maltese NCB Statute; (3) Article 24 of the Slovak NCB Statute. For the non-Eurosystem, see (1) Articles 20(2), 33 and 45 of the Bulgarian NCB Statute; (2) Article 29(2) of the Czech NCB Statute; (3) Article 14 of the Hungarian NCB Statute; (4) Article 42 of the Polish NCB Statute; (5) Article 26 of the Romanian NCB Statute; and (6) Chapter 6 Article 9 of the Swedish NCB Statute. The United Kingdom has been omitted since it appears that the provision of ELA is subject to the Memorandum of Understanding between HM Treasury, the Bank of England and the Financial Services Authority, agreed on or about 22 March 2006.

⁶³³ See (1) Article 33(2) of the Bulgarian NCB Statute; (2) Article 46(3) of the Cypriot NCB Statute; (3) Article 29(2) of the Czech NCB Statute; (4) Article 14 of the Hungarian NCB Statute; (5) Article 42(1) of the Polish NCB Statute; (6) Article 26 of the Romanian NCB Statute; (7) Article 24 of the Slovak NCB Statute; and (8) Chapter 6 Article 9 of the Swedish NCB Statute. The situation is unclear with Article 17(1)(g) of the Maltese NCB Statute as the word ‘may’ seems to refer to collateral but not the central bank’s discretionary power.

only one NCB Statute, which would indicate that this NCB is deciding independently on the provision of ELA.⁶³⁴

The requirement for collateral protects the central bank's financial interest and its financial independence. Moreover, the principle that lending shall be based on adequate collateral is clearly established in Article 18.1 of the Statute. The conduct of credit operations with credit institutions and other market participants with lending based on adequate collateral is a Eurosystem task under Article 18.1 of the Statute. Under Article 42 of the Statute, this provision does not apply to the Member States with a derogation⁶³⁵ or to the United Kingdom.⁶³⁶ The requirement for collateral also arises from the Settlement Finality Directive (SFD)⁶³⁷ and the Financial Collateral Directive (FCD).⁶³⁸ Pursuant to the second indent of Article 1(c) of the SFD, the provisions of the SFD will apply to collateral security provided in connection with operations of the NCBs⁶³⁹ in their functions as central banks. Article 9(1) of the SFD provides that the rights of NCBs or the ECB to collateral security with which they are provided shall not be affected by insolvency proceedings against the participant or counterparty to NCBs or the ECB which provided the collateral security. Under subparagraphs (b) and (c) of Article 1(2) of the FCD, financial collateral arrangements assume that the collateral taker and the collateral provider must be, among other things, an NCB, the ECB or a financial institution subject to prudential supervision.

The requirement for adequate collateral is twofold: on the one hand, there is a need to protect the lender from credit default risk; on the other hand, the objective is to encourage credit institutions to undertake safer and less risky lending. Table 4-1 reveals that the principle of lending based on adequate collateral has been introduced in the majority of NCB Statutes.⁶⁴⁰

⁶³⁴ See Articles 20(2) and 33(2) of the Bulgarian NCB Statute.

⁶³⁵ See also Protocol No 16.

⁶³⁶ See Article 7 of Protocol No 15.

⁶³⁷ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems OJ L 166, 11.6.1998, p. 45.

⁶³⁸ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements OJ L 168, 27.6.2002, p. 43.

⁶³⁹ Recital 10 of the SFD describes operations of the NCBs as including the monetary policy operations.

⁶⁴⁰ For the Eurosystem, see (1) Article 47(2) of the Austrian NCB Statute; (2) Article 16(1) of the Belgian NCB Statute and Article 5(1) of the Belgian NCB Articles of Association; (3) Article 39(2)(b) of the Cypriot NCB Statute; (4) Article 7(1) of the Finnish NCB Statute, (5) Article 19(1) of the German NCB Statute; (6) Article 55(10) of the Greek NCB Statute; (7) Article 22(2) of the Luxembourg NCB Statute; (8) Article 17(1)(e) of the Maltese NCB Statute; (9) Article 8(1) of the Dutch NCB Statute; (10) Article 24(1)(c) of the Portuguese NCB Statute; (11) Article 23 of the Slovak NCB Statute; (12) Articles 12(1)(14) and 18 of the Slovenian NCB Statute; and (13) Article 9(1) of the Spanish NCB Statute. For the non-Eurosystem, see (1) Article 32 of the Bulgarian NCB Statute; (2) Article 29(1) of the Czech NCB Statute; (3) Article 14(5) of the Estonian NCB Statute and Article 14(1) of the new Estonian NCB Statute; (4) Article 7(a) of the Hungarian NCB Statute; (5) Article 36 of the Latvian NCB Statute; (6) Article 27 of the Lithuanian NCB Statute; (7) Article 50 of the Polish NCB Statute; (8) Articles 19 and 20 of the Romanian NCB Statute; (9) Chapter 6 Articles 5 and 7 of the Swedish NCB Statute.

In addition, Table 4-3 shows that the requirement for ELA collateral is present in six NCB Statutes⁶⁴¹ out of nine; in addition to regulating open market and credit operations, they also regulate the provision of ELA. Exceptionally, an NCB Statute permits ELA to be granted without collateral in one Member State.⁶⁴²

The requirement that the lending should be short term arises from the definition of ELA, which includes ‘exceptional circumstances’, and the fact that the concerned credit institution should be ‘temporarily illiquid’. Indeed, in four NCB Statutes the short-term nature is one of the criteria for providing ELA,⁶⁴³ and two of them even set the maturity at up to three months.⁶⁴⁴ Therefore, the notion of ‘short term’ is understood as ‘up to three months’. However, it is unclear whether ELA can be subject to renewal or whether the volume of ELA can be increased during the period of validity of the contract.

Similarly, solvency of the concerned credit institution is a criterion arising from the definition of ELA referring to ‘temporarily illiquid credit institutions’.⁶⁴⁵ One could understand this status of ‘temporary illiquidity’ as a situation where the credit institution is short of liquid funds (e.g. as a result of a bank run) but is not insolvent, bankrupt or in a similar legal situation. However, only one NCB Statute contains an explicit requirement for solvency,⁶⁴⁶ and in three NCB Statutes one could also interpret references to ‘maintaining a bank’s liquidity’ or ‘support of liquidity’ or the duty of overall assessment of the credit institution’s ability to repay the loan as falling within the solvency criterion.⁶⁴⁷ However, it may also be that the requirement for adequate collateral is understood as if only solvent counterparties would be able to provide it, in which case six NCB Statutes⁶⁴⁸ would include solvency as one of the ELA criteria. It has to be borne in mind that the solvency requirement is present for

⁶⁴¹ See (1) Article 33(2) of the Bulgarian NCB Statute; (2) Article 46(3) of the Cypriot NCB Statute; (3) Article 29(2) of the Czech NCB Statute; (4) Article 17(1)(g) of the Maltese NCB Statute; (5) Article 42(4) of the Polish NCB Statute; (6) Article 24 of the Slovak NCB Statute.

⁶⁴² See Article 26 of the Romanian NCB Statute.

⁶⁴³ See (1) Article 33(2) of the Bulgarian NCB Statute; (2) Article 46(3) of the Cypriot NCB Statute; (3) Article 29(2) of the Czech NCB Statute; (4) Article 24 of the Slovak NCB Statute.

⁶⁴⁴ See (1) Article 33(2) of the Bulgarian NCB Statute; (2) Article 29(2) of the Czech NCB Statute.

⁶⁴⁵ Lastra has noted that the central bank will assess whether the credit institution faces a situation of illiquidity or insolvency and will also consider whether the failure of the institution involved is likely to trigger contagion within the marketplace bringing with it the danger of other institutions (Lastra R. M., 2010, p. 63).

⁶⁴⁶ See Article 33(2) of the Bulgarian NCB Statute.

⁶⁴⁷ See (1) Article 29(2) of the Czech NCB Statute; and (2) Article 24 of the Slovak NCB Statute. Under Article 42(2) of the Polish NCB Statute, the NCB shall consider the capacity of the credit institution to repay the loan together with interest.

⁶⁴⁸ See footnote 641.

any open market operations,⁶⁴⁹ as well as the fact that under the ECB's definition of ELA any provision of liquidity is associated with exceptional circumstances that prevent participation in monetary policy operations.⁶⁵⁰

Originally, the ELA providing the central bank's counterparty was defined widely, with references to 'institutions and markets'⁶⁵¹ but then narrowed to 'credit institutions'.⁶⁵² Credit institutions as the only counterparties are referred to in eight NCB Statutes,⁶⁵³ while one NCB Statute⁶⁵⁴ also extends the provision to companies subject to supervision by the national financial supervisory authority. In the case of Poland and Slovakia, it is also possible for the NCB to grant ELA to the Deposit Protection/Guarantee Fund or the Investment Guarantee Fund.⁶⁵⁵

Finally, the requirement for exceptional circumstances refers to systemic risk or a situation in which, for some reason, a credit institution cannot obtain liquidity through either the market or participation in monetary policy operations. Seven NCB Statutes have this explicit requirement,⁶⁵⁶ while one only refers to 'purposes which the [Central] Bank may designate.'⁶⁵⁷ For one NCB, exceptional circumstances constitute a ground to terminate the loan contract.⁶⁵⁸ It is noteworthy that none of the NCB Statutes makes any reference to the requirement for charging a higher interest rate.⁶⁵⁹

⁶⁴⁹ The solvency requirement derives from Section 2.1 of Annex I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem, OJ L 310, 11.12.2000, p.1, as amended (General Documentation). Lastra has also argued that lending to insolvent institutions would be a departure from the classical ELA principles (Lastra R. M., 2010, p. 63).

⁶⁵⁰ However, in practice it is difficult to draw a line between illiquidity and insolvency unless a very formalistic approach is chosen whereby a credit institution becomes officially insolvent when declared so by the competent authorities. Lastra has pointed out that a situation of bank illiquidity (i.e. lack of liquid assets) can be an indicator of technical insolvency (i.e. value of liabilities exceeds market value of assets) or can quickly turn into insolvency if assets are sold at a loss in terms of their value (Lastra R. M., 2010, p. 63).

⁶⁵¹ See footnote 625.

⁶⁵² See footnote 626.

⁶⁵³ See (1) Article 33(2) of the Bulgarian NCB Statute; (2) Article 46(3) of the Cypriot NCB Statute; (3) Article 29(2) of the Czech NCB Statute; (4) Article 14 of the Hungarian NCB Statute; (5) Article 17(1) of the Maltese NCB Statute; (6) Article 42(1) of the Polish NCB Statute; (7) Article 26 of the Romanian NCB Statute; (8) Article 24(1) of the Slovak NCB Statute.

⁶⁵⁴ See Chapter 6 Article 9 of the Swedish NCB Statute.

⁶⁵⁵ See (1) Article 43 of the Polish NCB Statute; (2) Article 24(2) of the Slovak NCB Statute.

⁶⁵⁶ See (1) Article 33(2) of the Bulgarian NCB Statute; (2) Article 29(2) of the Czech NCB Statute; (3) Article 14 of the Hungarian NCB Statute; (4) Article 17(1) of the Maltese NCB Statute; (5) Article 26 of the Romanian NCB Statute; (6) Article 24 of the Slovak NCB Statute; (7) Chapter 6 Article 9 of the Swedish NCB Statute.

⁶⁵⁷ See Article 46(3) of the Cypriot NCB Statute.

⁶⁵⁸ See Article 42(6) of the Polish NCB Statute.

⁶⁵⁹ Although Article 42(2) of the Polish NCB Statute refers to the 'loan together with interest', it is not clear whether the reference is made to a higher rate of interest.

Therefore, ELA should be understood as short-term financial assistance for a solvent but illiquid credit institution, which is granted against adequate collateral by a central bank making an independent decision in a situation in which the credit institution cannot obtain liquidity through either the market or participation in monetary policy operations.

4.3.1.2 Is this national or supranational task?

The above definition of ELA can be applied to a central bank that is not in a monetary union; what is surprising is that the provision of ELA is also considered to be a national matter in the Eurosystem.⁶⁶⁰ Indeed, Article 14.4 of the Statute enables NCBs to perform functions other than those specified in the Statute, unless the Governing Council finds that these interfere with the objectives and tasks of the ESCB.⁶⁶¹ However, one has to take into account the fact that a decision to provide or not provide ELA will affect the liquidity situation in the entire euro area, not just in one Member State, and that this will be done outside the operations for the single monetary policy. The provision of ELA is, in the same fashion, performed outside any prudential supervisory policy.⁶⁶²

The other issue is that when extensive monetary financing of government deficits is considered to pose grave risks for internal price stability, and thus for the development of interest rates on the money capital markets (see Section 4.3.2), then it is remarkable that the provision of ELA is not regulated at all in the Statute (or in the Treaties) although the effects of the provision of ELA could be comparable to those that of monetary financing of government deficits and pose risks for price stability as well.

In the light of the above, there are two alternatives for how to treat the provision of ELA. The first alternative assumes that the provision of ELA is a national task and, owing to the risks for price stability, only needs to be coordinated at the Eurosystem level. The second alternative assumes that the provision of ELA is a Eurosystem task and will be decided by the Governing Council or alternatively could be delegated to an NCB under Article 14.3 of the Statute.

⁶⁶⁰ See footnote 538 for other authors previously noting this phenomenon.

⁶⁶¹ Note that Article 14.4 of the Statute applies also to the Member States with a derogation under Article 42 of the Statute, but not to the United Kingdom under Article 7 of Protocol No 15.

⁶⁶² Goodhart notes that the central banks have been able to inject liquidity into the system but they had virtually no instruments to contain the prior unsustainable expansion of leverage (Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, p. 40).

The first alternative appears to be the one preferred by the Eurosystem.⁶⁶³ The latter has set up a non-public agreement on ELA in order to make sure that any potential liquidity impact can be managed in a manner consistent with the maintenance of the appropriate single monetary policy stance.⁶⁶⁴ Furthermore, the second indent of Article 4.4 of the 2008 Memorandum of Understanding, sets forth that *‘without prejudice to the responsibilities of the supervisors of financial markets and financial infrastructures, in a crisis situation potentially affecting the performance of central banking functions, the relevant Central Bank shall coordinate actions among themselves in addressing the situation, and shall cooperate with Financial Supervisory Authorities and other Central Banks. Where a liquidity crisis could affect a cross-border financial group with the potential for systemic implications, the Central Bank in the home country will coordinate actions among relevant Central Banks. The ECB and the Eurosystem will be involved in accordance with their responsibilities. The Central Banks involved will cooperate closely with the banking supervisory authorities and are expected to inform the Finance Ministries in the case of provision of Emergency Liquidity Assistance at the national level in line with the existing national legal framework.’* [My emphasis, AT.] However, if the provision of ELA is regarded as a national task under Article 14.4 of the Statute, then the logical consequence is that Article 130 TFEU [former Article 108 TEC] and Article 7 of the Statute, which establish the principle of central bank independence and explicitly refer to ‘exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and this Statute’, will not apply.[My emphasis, AT.] Therefore, unless there is any provision in the national law granting the NCB the same degree of independence, it is permissible to seek or take instructions outside the NCB; third parties may also lawfully influence the decision-making bodies of the NCBs. This conclusion appears to be correct since the ECB has advised granting the same degree of independence regarding the provision of emergency liquidity assistance as with respect to the performance of its ESCB-related tasks.⁶⁶⁵

⁶⁶³ This position is also shared by Doherty and Lenihan (Doherty & Lenihan, 2005, pp. 214-215), as well as Lastra (Lastra R. M., 2010, p. 65).

⁶⁶⁴ See European Central Bank, 2000, p. 98. It is further stated that the ELA agreement is internal to the Eurosystem and therefore does not affect the existing arrangements between central banks and supervisors at the national level or bilateral and multilateral cooperation among supervisors and between the latter and the Eurosystem. See also European Central Bank, 2007, p. 81, explaining that the impact of an ELA intervention on aggregate liquidity conditions in the euro area can be managed by the information sharing procedures in a manner consistent with the maintenance of the appropriate single monetary policy stance.

⁶⁶⁵ See paragraph 3.3 of ECB Opinion CON/2008/46 and paragraph 4.11 of ECB Opinion CON/2008/42, in particular footnote 20 of it.

The second alternative appears in the legal literature and was a solution first discussed by Smits,⁶⁶⁶ establishing the link between the single monetary policy and the effects of exercising ELA.⁶⁶⁷ If the provision of ELA is considered to be part of the contribution to the financial stability under Article 127(5) TFEU [former Article 105(5) TEC] and Article 3.3 of the Statute, then provision of ELA is deemed to be one of the Eurosystem's tasks and Article 130 TFEU [former Article 108 TEC] and Article 7 of the Statute would apply (see also Section 4.2.1.1 for the independence analysis). Further, the provision of ELA changes the liquidity situation in the money markets and such operations are not part of the monetary policy operations.⁶⁶⁸ Therefore, since monetary policy operations in the euro area fall within the competence of the Eurosystem, one could assume that anything that might affect the supranational task can no longer be at the national level.⁶⁶⁹ In fact, it appears that the Eurosystem NCBs had to make an arrangement addressing the impact of an ELA intervention on aggregate liquidity conditions in the euro area to be managed by the information sharing procedures in a manner consistent with the maintenance of the appropriate single monetary policy stance.⁶⁷⁰ Assuming that this hypothesis is true, one could also have treated the provision of ELA as a matter falling within the competence of the Governing Council. The central banks' lender of last resort role and the provision of ELA therefore need to be seen in the context of maintaining price stability. It is unclear whether the provision of ELA forms part of the open market operations defined in Guideline ECB/2000/7 or whether it is another, but similar, measure of the provision of liquidity.⁶⁷¹

Would this mean that the NCBs would not be able to provide ELA? Apparently not, as Article 14.3 of the Statute provides that the NCBs are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. Under Article 14.3 of the Statute, the Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB and shall require that it be given any necessary

⁶⁶⁶ See Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, pp. 269-271.

⁶⁶⁷ In addition, in the economic literature the ECB is assumed to provide exceptional liquidity facilities (Adler, Kavanagh, & Ugryumov, 2010, p. 67). The same authors also assume that financial stability is one of the Commission's objectives, thereby leaving out the role of the Euro Group and ECOFIN.

⁶⁶⁸ See footnote 538, where Schinasi & Teixeira draw attention to this aspect.

⁶⁶⁹ This is, for example, true with regard to the foreign reserve assets held by NCBs, where Article 31.2 of the Statute provides that operations in foreign reserve assets that remain with the NCBs shall be, provided they are above a certain limit, subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Union.

⁶⁷⁰ See *European Central Bank*, 2007, p. 81.

⁶⁷¹ However, it is clear that the provision of ELA cannot take the form of bailing out the troubled credit institution without falling within the prohibition of monetary financing.

information.⁶⁷² Therefore the Eurosystem NCBs could continue providing ELA as a task delegated by the Governing Council and subject to its approval.

When assessing these two alternatives, it can be concluded that for the Eurosystem the provision of ELA should not be regarded as a national task. For the non-Eurosystem NCBs, provision of ELA remains a national task.

4.3.1.3 Compliance with disclosure requirements

The provision of ELA is likely to be closely monitored by the market participants and therefore one should consider carefully what messages are to be conveyed to the general public. It is arguable whether the provision of ELA should not be communicated – as a task carried out by an NCB the latter would need to report it through the applicable accountability framework and one should not forget that also the receiving end of ELA has a legal obligation to disclose its financial situation.⁶⁷³ There may also be statutory accountability or transparency requirements for the competent national supervisory authorities.⁶⁷⁴

Provisions that would require the ELA recipient to disclose the receipt of funds would arise from the Market Abuse Directive (MAD),⁶⁷⁵ the Prospectus Directive,⁶⁷⁶ the Transparency Directive⁶⁷⁷ and other EU legal instruments.⁶⁷⁸

Article 7 of the MAD specifies that the MAD ‘shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by a Member State, by the European System of Central Banks, by a national central bank or by any other officially designated body, or by any person acting on their behalf. Member States may extend this exemption to their federated States or similar local authorities in respect of the management

⁶⁷² Article 14.3 of the Statute does not apply to the Member States with a derogation under Article 42 of the Statute. It is also not applicable to the United Kingdom under Article 7 of Protocol No 15.

⁶⁷³ Sheller has pointed out that the ECB cannot be held accountable for non-Eurosystem functions that the NCBs perform under Article 14.4 of the Statute; the latter are therefore accountable by the national authorities under the legal provisions of the respective Member State (Scheller, 2006, p. 129).

⁶⁷⁴ See Gray, 2010.

⁶⁷⁵ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96, 12.4.2003, p. 16, as amended.

⁶⁷⁶ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Text with EEA relevance) OJ L 345, 31.12.2003, p. 64, as amended.

⁶⁷⁷ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390, 31.12.2004, p. 38.

⁶⁷⁸ For example, the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978, p. 11, as amended; the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts, OJ L 193, 18.7.1983, p. 1, as amended.

of their public debt.⁶⁷⁹ Financial assistance to a solvent but illiquid credit institution which is granted against adequate collateral by a central bank in a situation where the credit institution cannot obtain liquidity elsewhere, including monetary policy operations, would mean that the MAD applies notwithstanding whether the task is considered to be a national or a Eurosystem task.

A credit institution receiving ELA will be subject to a requirement specified in Article 6(1) of the MAD, obliging the company's management to immediately disclose (e.g. through a stock exchange or similar means) any 'inside information' as defined in Article 1(1) of the MAD.⁶⁸⁰ The MAD cannot be interpreted as obliging the NCBs to disclose their assistance; it is the duty of the recipient to disclose information that has an effect, for example, on the share price. As the provision of ELA would be indicative of trouble with the company (such as the inability to raise financing from any other sources), the receipt of ELA is likely to fall within the concept of 'inside information'⁶⁸¹ and it is therefore subject to the disclosure requirement. Although Article 6(2) of the MAD could enable the company to defer disclosure of inside information, provided that the competent authorities also agree, it is unlikely that ELA would be covered by secrecy indefinitely.⁶⁸² By the time that a credit institution applies for ELA the problems have already started⁶⁸³ and the fact that the assistance has been provided or is under way could restore confidence in the circles of depositors and investors. Haynes has proposed that the MAD be amended, that a company be permitted to issue

⁶⁷⁹ Recital 32 further specifies that 'Member States and the ESCB, NCBs or any other officially designated body, or any person acting on their behalf, should not be restricted in carrying out monetary, exchange-rate or public debt management policy'.

⁶⁸⁰ Inside information is understood as information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments. In relation to derivatives on commodities, 'inside information' shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices on those markets. For persons charged with the execution of orders concerning financial instruments, 'inside information' shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

⁶⁸¹ See also Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (Text with EEA relevance) OJ L 339, 24.12.2003, p. 70 (MAD Implementation Directive).

⁶⁸² For example, the negotiation phase could remain classified information until ELA is provided, applying by analogy Article 3(1)(a) of the MAD Implementation Directive.

⁶⁸³ Goodhart notes that banks usually know the approximate condition of their competitors because they are constantly dealing with each other; any large-scale and persistent application of ELA will become known over time to a widening range of people (Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, p. 62). Goodhart's position is supported by the fact that, for example, a competitor of Fortis Bank operating on the Belgian market lodged two complaints with the Commission on 4 November 2008 concerning the aid received by Fortis. See paragraph 20 of the Commission Decision N 574/08 of 19 November 2008 State guarantee in favour of Fortis Bank, OJ C 38, 17.2.2009, p. 2.

statements that it was receiving ELA, and that those statements be cleared by the central banks and regulators.⁶⁸⁴ In Articles 1.4.3 and 6 of the 2008 Memorandum of Understanding, it is foreseen that in a crisis situation the parties shall, to the maximum extent possible, coordinate public communications relating to the specific circumstances, make the statements public only after consulting the other parties and avoid making announcements to the public on their own, unless there are exceptional circumstances justifying such a move. This principle is also reflected in Article 6 of the Common Practical Guidelines attached to the 2008 Memorandum of Understanding. Furthermore, Article 1(6) of the Common Practical Guidelines refer to MAD and provide that *'consideration should be given beforehand on how to deal with publicly listed financial groups and infrastructure in the context of public intervention. In particular, a crisis situation affecting a publicly listed financial group should be addressed rapidly enough to allow legally required transparency rules to be fulfilled [...]*'.⁶⁸⁵

The Prospectus Directive would come into play if a credit institution receiving ELA offers shares or debt securities to the public, in which case it has to produce a prospectus under Article 3(1) of the Prospectus Directive. Pursuant to Article 5(1) of the Prospectus Directive, the prospectus shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. It is further specified in Article 5(1) that this information shall be presented in an easily analysable and comprehensible form. The short-term provision of ELA for a company that is actively seeking new long-term capital from private sources seems to be information that potential investors would like to know in order to make an investment decision. Although under Article 8(2) of the Prospectus Directive the competent authority of the home Member State may authorise the omission from the

⁶⁸⁴ See Haynes, 2009. The opposite has been suggested by Weenink and Schulze Steinen noting that the announcement of the ELA provided by the Bank of England to Northern Rock did not reassure the general public and that there is a danger of publishing ELA operations prematurely (Weenink & Schulze Steinen, 2008). However, Goodhart considers that the ELA was not the problem but rather a failure of the authorities to provide sufficient public reassurance (Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, p. 61).

⁶⁸⁵ In order to assure the general public about the soundness of the institutions, CEBS has issued a press release on the state of play with the 2010 EU-wide stress testing exercise (CEBS, 2010), also referring to the mandate from ECOFIN (Council of the European Union, 2009).

prospectus of certain information provided for in the Prospectus Directive,⁶⁸⁶ it is arguable whether any of the grounds listed in Article 8(2) would be applicable. Against this background, a recent ECB Opinion advocating secrecy on the grounds of financial stability perhaps fails to take account of the fact that keeping some information away may mislead investors and the general public, which would in turn undermine the credibility of the ELA-providing central bank.⁶⁸⁷

The Transparency Directive establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities have already been admitted to trading on a regulated market situated or are operating within a Member State. According to Articles 4 and 5, the companies must disclose their half-yearly and annual reports. Pursuant to Article 4(2), the annual financial report shall comprise: (a) the audited financial statements; (b) the management report; and (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they

⁶⁸⁶ The competent authority may decide that (a) disclosure of such information would be contrary to the public interest; (b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission is unlikely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates; or (c) such information is of minor importance only for a specific offer or admission to trading on a regulated market and is not such as will influence the assessment of the financial position and prospects of the issuer, offeror or guarantor, if any.

⁶⁸⁷ The ECB has advised that a clear legal framework should be put in place in order to facilitate the smooth and rapid conduct of central banks' lending or other liquidity facilities, including in crisis situations; information on central banks' lending or other liquidity facilities provided to a particular credit institution, including ELA, needs to be kept confidential in order to contribute to the stability of the financial system as a whole and maintain public confidence in a period of crisis. [My emphasis, AT] See paragraph 2.2 of ECB Opinion CON/2010/6 of 11 January 2010 on a proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2004/109/EC, OJ C 19, 26.1.2010, p. 1, available at http://www.ecb.int/ecb/legal/pdf/c_01920100126en00010004.pdf. The ECB's position largely follows the position taken by Weenink & Schulze Steinen (2008). However, the European Parliament did not take these concerns into account, as is apparent from the ECON Report of 26 March 2010, which included the proposals (<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2010-0102&language=EN>) and the final adopted text of 17 June 2010, which no longer contains any such references (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0227&language=EN&ring=A7-2010-0102#BKMD-3>) (visited on 7 September 2010).

face.⁶⁸⁸ The half-yearly report under Article 5 contains the same elements, although they are of an interim nature and cover six month of the financial year.

Furthermore, auditors have a duty under Article 53(1) of Directive 2006/48/EC to report promptly to the competent authorities any fact or decision concerning that credit institution of which they have become aware while carrying out that task which is liable to: (a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of credit institutions; (b) affect the continuous functioning of the credit institution; or (c) lead to refusal to certify the accounts or to the expression of reservations. The reporting auditors are deemed not to have breached the duty of professional secrecy under Article 53(2) of Directive 2006/48/EC. Therefore, any non-disclosure of the receipt of ELA may be reported by the credit institutions' auditors.

The provision of ELA for the credit institution whose shares are listed on a regulated market in one of the EU Member States is likely to be published in the company's annual report or, depending on the timing of the ELA provision, also in the half-yearly report. While the Prospectus Directive and MAD contained provisions that could enable transparency requirements to be circumvented, the Transparency Directive does not appear to have such clauses.

4.3.1.4 Problems with applying the ELA criteria in real time

While ELA is understood as short-term financial assistance given to a solvent but illiquid credit institution which is granted against adequate collateral by a central bank making an independent decision in a situation in which the credit institution cannot obtain liquidity through either the market or participation in monetary policy operations, the applicability of the criteria remains an issue for debate.

First, the principle that the credit institution shall be solvent but illiquid is difficult to implement in practice. Solvency could be understood as the opposite of insolvency, but the changeover from one to another could take a matter of days, if not hours.⁶⁸⁹ Weenink and

⁶⁸⁸ See the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978, p. 11, as amended; the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts, OJ L 193, 18.7.1983, p. 1, as amended.

⁶⁸⁹ The provision of ELA to Northern Rock was not deemed to be State aid with regard to the measures of 14 September 2007, but it constituted State aid with regard to measures taken from 17 to 20 September as well as the measures decided on 9 October 2007. See Paragraph 35 of Commission Decision NN 70/07 of 5 December 2007 Rescue aid Northern Rock, OJ C 43, 16.2.2008, p. 1.

Schulze Steinen note that there is a practical difficulty, since a decision as to whether or not ELA needs to be provided usually needs to be taken immediately, without all the relevant facts being at hand to determine whether the credit institution is illiquid or insolvent.⁶⁹⁰ The obvious route would be to consult the competent supervisory authority about the potential recipient's solvency status, but it is debatable whether the latter would be better informed.

Second, one may wonder what could constitute 'adequate collateral' in times of crisis and how the value of collateral could be determined when the markets are spiralling downwards. Goodhart has said that central banks cannot accept credit risk and that there is a likelihood that they will be offered the worst risk assets within the acceptable class held by the borrowing commercial bank.⁶⁹¹ In this context, a quick solution would be to ask for a State guarantee but this would lead to a potential breach of monetary financing prohibition. The ECB's criteria for State guarantees has been analysed in this respect.

Third, there may be doubts as to whether a central bank is indeed independent in its decision-making, especially in a crisis situation in which a central bank's refusal to contribute to the rescue measures or refusal to accept a State guarantee could lead, at least, to a negative public image. Failure by a central bank to act independently could raise doubts regarding monetary financing prohibition⁶⁹² as well as concerns over State aid.⁶⁹³

Fourth, if a credit institution cannot obtain liquidity through either the market or participation in monetary policy operations, then one may wonder whether the provision of ELA is indeed a general measure or not. If it is not a measure available to all participants in the market, it is likely to be governed by State aid rules. On the other hand, if it is a general measure, it should be regulated by means of legal instruments authorising the central bank to act and determining the criteria for the provision of ELA.⁶⁹⁴

Fifth, as the notion of 'short term' is defined only in a very few NCB Statutes, there seems to be a need to establish clearly what is understood by the term (e.g. up to three months) and whether the provision of ELA can be extended (e.g. to another three months or longer periods) so that the principle of 'short-term lending' would not be undermined.

⁶⁹⁰ See Weenink & Schulze Steinen, 2008, p. 521.

⁶⁹¹ See Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, p. 88.

⁶⁹² See Section 4.3.2.

⁶⁹³ See paragraphs 34 to 38 Commission Decision NN 36/08 of 31 July 2008 *Roskilde Bank*, OJ C 238, 17.9.2008, p. 5.

⁶⁹⁴ This would be in line with Goodhart's proposal that the preferential access scheme should be created (Goodhart C. A., *The Regulatory Response to the Financial Crisis*, 2009, p. 71).

Finally, if a credit institution operates in the euro area and is active in several Member States, the provision of ELA by a Eurosystem NCB is likely to affect the euro area money market and therefore influence the single monetary policy, although this falls within the competence of the ECB's Governing Council.

4.3.2 Monetary financing prohibition

4.3.2.1 Protection of the primary objective of monetary policy

As noted earlier, some NCB Statutes decisions independently made by the NCB in contributing to the stability of the financial system are subject to repayment.⁶⁹⁵ At first glance, the idea of protecting the financial independence of the NCB may appear welcome. However, at the same time one may find it difficult to see the link between an NCB or the ECB contributing to financial stability and the monetary financing prohibition under Article 123 TFEU [former Article 101 TEC].⁶⁹⁶

The monetary financing prohibition is of essential importance to ensure that the primary objective of monetary policy (namely, to maintain price stability) is not impeded; furthermore, central bank financing of the public sector lessens the pressure for fiscal discipline.⁶⁹⁷ The monetary financing prohibition is laid down in Article 123(1) TFEU [former Article 101(1) TEC], replicated in Article 21.1 of the Statute, which prohibits overdraft facilities or any other type of credit facility with the ECB or the NCBs in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States, and the purchase of debt instruments directly from these public sector entities by the ECB or NCBs. The precise scope of application of the monetary financing prohibition is further clarified by Council Regulation (EC) No 3603/93.

The Treaty contains one exception to the prohibition: it does not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, must be given the same treatment as private credit institutions (see Article 123(2) TFEU [former Article 101(2) TEC]). Therefore, lending by a central bank, including the provision of ELA (see Section 4.3.1) for a credit institution owned by public institutions, would not normally

⁶⁹⁵ (1) Article 9 of the Belgian NCB Statute; (2) Article 20 of the Belgian NCB Articles of Association.

⁶⁹⁶ Remarkably, the language of several NCB Statutes makes that connection between the ELA and monetary financing prohibition; see: (1) Article 45(2) of the Bulgarian NCB Statute; (2) Article 46(3) of the Cypriot NCB Statute; (3) Article 14 of the Hungarian NCB Statute; (4) Article 24(1) of the Slovak NCB Statute.

⁶⁹⁷ ECB Convergence Report, May 2010 (p. 24).

fall within the prohibition of monetary financing. This is by analogy with the level playing field for public and private enterprises that has been laid down in Article 106 TFEU [former Article 86 TEC], confirming the applicability of the Treaties and, in particular, rules on competition for actions of the Member States in relation to undertakings in conjunction with Article 345 TFEU [former Article 295 TEC], establishing the principle of ownership neutrality.

Moreover, Article 21.2 of the Statute provides a further exception to the prohibition on monetary financing to the extent that it permits the ECB and the NCBs to act as fiscal agents for the entities referred in Article 21.1 of the Statute.

In accordance with Article 139 TFEU and Article 42 of the Statute and the Protocols on certain provisions relating to Denmark⁶⁹⁸ and to the United Kingdom of Great Britain and Northern Ireland,⁶⁹⁹ the above provisions of TFEU and the Statute are applicable to all NCBs in the ESCB.

The proposal to prohibit monetary financing was made by the Committee of Governors in its Draft Statute; it was considered that any kind of direct monetary financing should be ruled out *'[...] since recourse to central bank credit could undermine the ability of the System to achieve its primary objective'*.⁷⁰⁰ As noted in a number of ECB Opinions, in 1993 the Committee of Governors of the central banks of the Member States of the European Economic Community had already noted that this prohibition is of essential importance to ensure that monetary policy is not hindered in the pursuit of its primary objective of price stability.⁷⁰¹ Furthermore, central bank financing of the public sector lessens the pressure for fiscal discipline. Therefore, in ensuring compliance with the monetary financing prohibition, the ECB has adopted the position that the prohibition must be interpreted strictly, subject

⁶⁹⁸ Protocol No 16.

⁶⁹⁹ Protocol No 15.

⁷⁰⁰ See Committee of Governors of the Central Banks of the Member States of the European Economic Community, 1990, p. 25. See also Smits, *European Central Bank Institutional Aspects*, 1997, reprinted with corrections 2000, p. 289. The reasoning is that the independence of a central bank is not guaranteed when the government can force the central bank to finance the government's expenditures; it was clear that forced monetary financing could not be allowed under EMU; the drafters of the Treaty went one step further: they also forbid a central bank to finance the government voluntarily, in order to prevent situations in which the central bank might feel obliged, although not necessarily forced, to help the government (van den Berg, 2005, p. 145).

⁷⁰¹ The most important escape from an undisciplined budgetary policy is so-called monetary deficit financing through credit facilities afforded by the NCB. Extensive monetary financing of government deficits poses grave risks for internal price stability, and thus for the development of interest rates on the capital markets. For this reason, Article 123 TFEU [former Article 101 TEC] prescribes a general prohibition of monetary deficit financing by the public sector in the wide sense (Kapteyn & VerLoren van Themaat, 2008, pp. 907-908).

only to certain limited exemptions contained in Article 123(2) TFEU [former Article 101(2) TEC] and Council Regulation (EC) No 3603/93.⁷⁰²

4.3.2.2 *Link between fiscal discipline and price stability*

This position is also compliant with the views reflected in the academic literature, which claims that the rules for deficit financing on the basis of strictly market conditions aim to confront national budgetary authorities with the financial consequences of a budgetary policy in deficit.⁷⁰³ The financial markets will, as a rule, reflect their confidence in the authority concerned in the terms under which they are prepared to provide capital. However, the effectiveness of this corrective effect of the markets depends on the confidence that the Union or other Member States will not be liable for or assume the commitments of Member States which pursue undisciplined budgetary behaviour. The consequence of the ‘no bail-out clause’ in Article 125(1) TFEU [former Article 103(1) TEC] is that weaker Member States have to offer higher interest rates on their government bonds.⁷⁰⁴ Article 125(2) TFEU [former Article 103(2) TEC]⁷⁰⁵ sets forth that the Council, on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibitions referred to in Articles 123, 124 and 125 TFEU.

When considering the wording of Article 125(2) TFEU [former Article 103(2) TEC], and taking account of the fact that there is no consultation requirement of the ECB while the latter has the authority to monitor the NCBs under Article 271(d) TFEU [former Article 237(d)

⁷⁰² Paragraph 6 of ECB Opinion CON/2005/1 of 3 February 2005 at the request of the Italian Ministry of Economic Affairs and Finance on a draft law amending Law Decree No 7 of 25 January 1999, as converted by Law No 74 of 25 March 1999, concerning urgent provisions on Italian participation in the International Monetary Fund’s interventions to confront severe financial crises of its member countries, available at http://www.ecb.int/ecb/legal/pdf/en_con_2005_1_f_sign.pdf; paragraph 11 of ECB Opinion CON/2005/50 of 1 December 2005 at the request of Národná banka Slovenska on a draft law amending the Act No 118/1996 Coll. on the protection of bank deposits and on amendments to certain laws, as last amended, available at http://www.ecb.int/ecb/legal/pdf/en_con_2005_50_f_sign.pdf; paragraph 2.2(b) of ECB Opinion CON/2009/59.

⁷⁰³ See also paragraph 3 of EMI Opinion CON/96/14. At that time, the EMI stated as follows: ‘*The Treaty recognises that budgetary discipline will be required in Stage Three of Economic and Monetary Union to ensure price stability. Starting from Stage Three, the Treaty prohibits to all Member States (an exception for the United Kingdom is provided for in Protocol No 11) excessive government deficits and includes provisions necessary to prevent and remedy excessive government deficits in Article 104(c). In order to safeguard the independence of the ESCB in the conduct of its monetary policy, with the primary objective to maintain price stability, Articles 104 and 104(a) rule out “monetary financing” of the public sector as well as “privileged access”, and Article 104(b) states that the Community and the Member States shall not be liable for or assume commitments of public entities of another Member State.*’

⁷⁰⁴ See Kapteyn & VerLoren van Themaat, 2008, p. 908. This provision however may be circumvented by the Member States agreeing on bilateral aid. As was reported by Eurointelligence.com on 12 February 2020, referring to FT Deutschland, one of the reasons explaining why Germany accepted the bail-out of Greece was that Hypo Real Estate, the German mortgage bank that had to be bailed out by the federal government and nationalised earlier last year, had an exposure of EUR 4billion to Greek debt. If this exposure had to be written off, the bank, and thus the German government, would need to strengthen the bank’s capital base by EUR 100 billion. In other words, bailing out Greece was a cheaper alternative for the German government (A Historic Political Agreement, 2010). Bailing out would still be unacceptable both legally as well as economically (Issing, Europe cannot afford to rescue Greece, 2010).

⁷⁰⁵ Note that the text of Article 125(2) TFEU is more advanced than the former Article 103(2) TEC.

TEC], one may conclude that Articles 123, 124 and 125 TFEU are addressed primarily to the executive branch of the Union and national governments and other public bodies. Indeed, these Articles are placed under Title VIII, Chapter 1 “Economic policy” TFEU with the powers regarding budgetary discipline of the Member States attributed to the Commission and the Council, and not in Chapter 2 “Monetary policy” under the same title that regulates the ESCB and the ECB decision-making bodies with regard to the maintenance of price stability.

On the other hand, the monetary financing prohibition contained in Article 123(1) TFEU [former Article 101 TEC] is concerned with fiscal discipline as a pre-requisite to enable the ESCB to achieve its primary objective of maintaining price stability. The important link between budgetary discipline and the prohibition of monetary financing was already emphasised by the EMI, which stated that *‘a lack of fiscal discipline would negatively affect the ability of the ESCB to achieve its primary objective of price stability, both through a direct demand effect and through an indirect effect on inflation expectations.’*⁷⁰⁶

It has been said that ‘[w]hen assessing the proposed structure’s compatibility with [now] Article 123 TFEU [former Article 101 TEC] and Article 21.1 of the Statute, not only is a strict literal interpretation of relevance, but the purpose of these provisions also has to be considered.’⁷⁰⁷ This stance implies that even if Article 123(1) TFEU [former Article 101(1) TEC] refers literally to ‘credit facilities’, i.e. with the obligation to repay such credit, this prohibition may also apply *a fortiori* to other forms of funding, i.e. without the obligation to repay, since Article 123 TFEU [former Article 101 TEC] has the overall aim of ensuring

⁷⁰⁶ The EMI Opinion further states that *‘Directly, fiscal imbalances can contribute to expanding aggregate demand, thereby obliging the central bank to offset them in order to maintain price stability. As a result, the economy may face a sub-optimal policy mix of higher deficits and higher interest rates. Furthermore, high and persistent fiscal imbalances typically raise the issue of sustainability and thereby indirectly fuel inflationary expectations. In order to prevent negative repercussions, fiscal policies should be geared towards achieving budgetary positions close to balance or in surplus and a convergence of high debt ratios to the 60% reference value or below. Fiscal discipline will be all the more important given that budgetary policies will have to cope with major challenges, in particular those resulting from high and persistent levels of unemployment and unfavourable demographic patterns. It is indeed the sustainability of government budgetary positions which will safeguard the Monetary Union against the risk that a situation arises in which an individual country is ultimately unable to service its debt from its own fiscal revenues. The fiscal convergence criteria are not to be seen as constraints on the conduct of national economic policies, but as an essential mechanism for preventing the recurrence of the experiences of several Member States in the past, when unsustainable fiscal developments adversely affected confidence, added risk premium to interest rates and hampered the achievement of long-term non-inflationary growth output and employment’*. See paragraph 4 and 5 of EMI Opinion CON/96/14.

⁷⁰⁷ See paragraph 2.5.2 of ECB Opinion CON/2009/83; paragraph 9 of ECB Opinion CON/2003/27 of 2 December 2003 at the request of the Austrian Federal Ministry of Finance on a draft Federal law on the National Foundation for Research, Technology and Development, available at http://www.ecb.eu/ecb/legal/pdf/en_con_2003_27_f_sign.pdf.

discipline in public finances and of prohibiting NCBs from financing the public sector consistent with the primary objective of price stability.⁷⁰⁸

However, contrary to what was maintained by Issing,⁷⁰⁹ history was made in early May 2010 with the creation of the European Financial Stabilisation Mechanism (EFSM)⁷¹⁰ and the European Financial Stability Facility (EFSF)⁷¹¹ by the Euro Group ECOFIN Ministers on the basis of Article 122(2) TFEU for the EFSM and as an intergovernmental arrangement without any Treaty basis for the EFSF. In addition, the IMF also committed to provide up to a maximum of EUR 250 billion in loans to euro area Member States on a country by country basis.

Article 122(2) TFEU [former Article 100(2) TEC] sets forth that where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken. In order to avoid any conflict with Article 125 TFEU [former Article 103 TEC], the aid is in the form of loans or credit lines, which have to be repaid with interest, and not in the form of grants.⁷¹²

Pursuant to Article 3(1) of the Council Regulation (EU) No 407/2010, the Member State seeking Union financial assistance shall discuss with the Commission, in liaison with the ECB, an assessment of its financial needs and submit a draft economic and financial adjustment programme to the Commission and the Economic and Financial Committee. Article 3(2) further stipulates that Union financial assistance shall be granted by a decision adopted by the Council, acting by a qualified majority on a proposal from the Commission.

Under Article 3(3) of the Council Regulation (EU) No 407/2010, the decision to grant a loan shall contain: (a) the amount, the average maturity, the pricing formula, the maximum number of instalments, the availability period of the Union financial assistance and the other detailed rules needed for the implementation of the assistance; (b) the general economic policy conditions which are attached to the Union financial assistance with a view to re-

⁷⁰⁸ See in this respect the eighth recital of the Council Regulation 3603/93 (see footnote 721), which speaks about the need to 'not help to shield the public sector from the discipline of market mechanisms'.

⁷⁰⁹ See footnote 704.

⁷¹⁰ Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12.5.2010, p. 1. The facility will be providing up to EUR 60 billion in loans or credit lines.

⁷¹¹ See Eurogroup, 2010.

⁷¹² See Articles 2 and 8(2) of the Council Regulation (EU) No 407/2010.

establishing a sound economic or financial situation in the beneficiary Member State and to restoring its capacity to finance itself on the financial markets; these conditions will be defined by the Commission, in consultation with the ECB; and (c) an approval of the adjustment programme prepared by the beneficiary Member State to meet the economic conditions attached to the Union financial assistance.

Under Article 3(4) of Council Regulation (EU) No 407/2010, the decision to grant a credit line shall contain: (a) the amount, the fee for the availability of the credit line, the pricing formula applicable for the release of funds and the availability period of the Union financial assistance and the other detailed rules needed for the implementation of the assistance; (b) the general economic policy conditions which are attached to the Union financial assistance with a view to re-establishing a sound economic or financial situation in the beneficiary Member State; these conditions will be defined by the Commission, in consultation with the ECB; and (c) approval of the adjustment programme prepared by the beneficiary Member State to meet the economic conditions attached to the Union financial assistance.

The Terms of Reference of the Eurogroup on the EFSF were made public on 7 June 2010.⁷¹³ Under the Terms of Reference, the objective of the EFSF is to collect funds and provide loans in conjunction with the IMF to cover the financing needs of euro area Member States in difficulty, subject to strict policy conditionality. Euro area Member States will provide guarantees for EFSF issuance up to a total of EUR 440 billion on a pro rata basis. The EFSF is a limited liability company established under Luxembourg law (Société Anonyme), and the shareholding of each Member State in the EFSF will correspond to its respective share in the paid-up capital of the ECB.⁷¹⁴ It is foreseen that the EFSF will issue bonds guaranteed by all euro area Member States for each individual bond issue.⁷¹⁵

There appears to be a mismatch in the interaction of procedures under the EFSM (up to EUR 60 billion) and the EFSF (up to a total of EUR 440 billion) and given that the legal framework for the two is different, one could wonder about the prospects of success for this arrangement. Moreover, the arrangement opens a new avenue for further interpretation of Article 125 TFEU [former Article 103 TEC] in those hypothetical situations in which a

⁷¹³ See footnote 711.

⁷¹⁴ The shareholders' agreement on the subject has been made available at http://www.bundesfinanzministerium.de/nr_83228/DE/Wirtschaft_und_Verwaltung/Europa/20100609-Schutzschirm-Euro-Anlage-1-eng.templateId=raw.property=publicationFile.pdf (visited on 8 September 2010).

⁷¹⁵ From a legal point of view, it would be interesting to see whether these bonds will become eligible collateral under the General Documentation and will be part of Eurosystem operations.

Member State does not pay back the loan under either of the arrangements or restructures it.⁷¹⁶

4.3.2.3 Prohibition to finance credit institutions other than in connection with central banking tasks

The monetary financing prohibition applies to national legislation conferring on central banks the task of financing third parties where such financing does not relate to any of the tasks and functions of the central bank, but is a responsibility of the State. Against this background, the ECB has publicly stated that *'[n]ational legislation foreseeing the financing by NCBs of credit institutions other than in connection with central banking tasks (such as monetary policy, payment system or temporary liquidity support operations), in particular to support insolvent credit and/or other financial institutions, is not compatible with the monetary financing prohibition.'*⁷¹⁷

This would mean that in order to abide by the prohibition, an NCB is prohibited from financing a third person carrying out a task that is a responsibility of the State and goes beyond the legitimate central banking tasks.⁷¹⁸

A separate issue in the context of monetary financing has arisen with regard to the provision of ELA collateralised by a State guarantee. The ECB has outlined several criteria that need to be taken into account in this regard: (1) the NCB shall take its decision fully independently; (2) the supported credit institution shall remain solvent; (3) it should be ensured that the credit provided by the NCB is as short-term as possible; (4) there must be systemic stability aspects at stake; granting ELA would be part of the NCB's statutory contribution to the stability of the financial system; (5) there must be no doubts as to the legal validity and enforceability of the State guarantee under national law; (6) there must be no doubts as to the

⁷¹⁶ Louis however is of the opinion that the 'no-bailout rule' has not been violated (Louis, Guest editorial: The No-Bailout Clause and Rescue Packages, 2010).

⁷¹⁷ ECB Convergence Report, May 2010 (p. 25). See also 4.2 of ECB Opinion CON/2008/58;

⁷¹⁸ One might say that prudential supervision is an exercise of sovereign powers that are attributable to the State. However, there are a number of reasons for not saying that financial supervision is an area in which the State is normally active and in which funds are normally provided from budgetary sources: (1) the supervision of credit institutions historically originates with central banks; (2) in many Member States the supervision of credit institutions is either fully conducted by central banks, or central banks make a substantial contribution to such supervision; (3) financial supervision is not predominantly financed from democratically controlled budgetary sources, but rather by central banks or, increasingly, by the collection of fees from supervised entities; (4) the Eurosystem is under a statutory duty to contribute to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system because of the close links between the Eurosystem's basic tasks to conduct monetary policy and oversee payment systems on the one hand, and the conduct of banking supervision and the pursuit of financial stability on the other hand.

economic adequacy of the State guarantee, which should cover both the principal and the interest on the loans, thus fully preserving the financial independence of the NCB.⁷¹⁹

Any financial contribution made by an NCB to a supervisory authority may only be justified to the extent that it forms an integral part of the NCB's overall contribution to the policy-making and policy implementation function.⁷²⁰ If an NCB is carrying out the functions of prudential supervision, the financing of its own supervisory activities by NCBs (including autonomous bodies forming part of legal personality of the NCB) cannot be regarded as monetary financing since, under Article 8(2) of Council Regulation No 3603/93⁷²¹ central banks do not form part of the public sector. This position was confirmed in ECB Opinion CON/2010/5, in which, assuming that an NCB is a competent authority for the supervision of credit and/or financial institutions under national law, the NCB's performance of this task cannot constitute prohibited monetary financing under Article 123 TFEU.⁷²²

In the absence of any influence on the prudential supervision or financial stability policy-making of the competent national authorities by the NCB, the latter NCB cannot provide funds to the independent supervisory authority; otherwise functional and financial independence of the ESCB would be seriously undermined and such an activity would breach the monetary financing prohibition.

⁷¹⁹ See paragraph 3.2 of ECB Opinion CON/2009/49 of 27 May 2009 on measures to mitigate financial turmoil, available at http://www.ecb.int/ecb/legal/pdf/en_con_2009_49_f_sign.pdf; paragraph 4.3 of ECB Opinion CON/2008/80 of 28 November 2008 at the request of the Polish Minister for Finance on a draft law on the provision of State Treasury support to financial institutions, available at http://www.ecb.int/ecb/legal/pdf/en_con_2008_80_f_sign.pdf; paragraph 4.3 of ECB Opinion CON/2008/58; paragraph 4.2 of ECB Opinion CON/2008/48 of 15 October 2008 at the request of the Irish Minister for Finance on a draft Credit Institutions (Financial Support) Scheme 2008, available at http://www.ecb.int/ecb/legal/pdf/en_con_2008_48_f_sign.pdf; paragraphs 3.3, 4.1 to 4.3 of ECB Opinion CON/2008/46; paragraph 3.2 of ECB Opinion CON/2008/44 of 3 October 2008 at the request of the Irish Minister for Finance on a draft Credit Institutions (Financial Support) Bill 2008, available at http://www.ecb.int/ecb/legal/pdf/en_con_2008_44.pdf; paragraph 4.11 of ECB Opinion CON/2008/42.

⁷²⁰ See paragraph 9 of ECB Opinion CON/2004/31 of 22 September 2004 at the request of Národná banka Slovenska on a draft law on supervision of the financial market and on amendments to certain laws, available at http://www.ecb.int/ecb/legal/pdf/en_con_2004_31_f_sign.pdf; paragraph 5 of ECB Opinion CON/2004/16.

⁷²¹ Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty, OJ L 332, 21.12.1993, p. 1.

⁷²² See Paragraph 7 of the ECB Opinion CON/2010/5 of 8 January 2010 on three proposals for regulations of the European Parliament and of the Council establishing a European Banking Authority, a European Insurance and Occupational Pensions Authority and a European Securities and Markets Authority, OJ C 13, 20.1.2010, p. 1. The ECB noted that '[I]nsofar as the financing of each ESA consists, in particular, of obligatory contributions from the national authorities competent for the supervision of credit and/or financial institutions, it is not contrary to the prohibition of monetary financing for an NCB to contribute to the revenues of the ESA which, in such circumstances, would only involve the financing by the NCB of the performance of its own supervisory tasks'. Rather surprisingly, the compatibility with the monetary financing prohibition was not addressed in ECB Opinion CON/2009/88 of 26 October 2009 on a proposal for a regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board and a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board, OJ C 270, 11.11.2009, p. 1.

4.4 Conclusions of Chapter 4

Chapter 4 addresses two main issues: “Financial stability as an ESCB-related task”, and “Limitations to the central banks’ role in contributing to financial stability”.

I have assessed financial stability as an ESCB-related task. A Eurosystem NCB could, pursuant to Article 127(5) TFEU [former Article 105(5) TEC] and Article 3.3 of the Statute, 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. A non-Eurosystem NCB carrying out the same task would have to rely on Article 14.4 of the Statute as a legal basis. The difference between the two is that a Eurosystem NCB would also enjoy full independence under Article 130 TFEU and Article 7 of the Statute while the non-Eurosystem NCB would have to rely on national arrangements for central bank independence.

The role of the Eurosystem in banking supervision is rather limited and constitutes information sharing and the development of risk assessments. However, the BSC, which is composed of high-level representatives of the national banking supervisory authorities, NCBs, and the ECB, is in most cases meeting in its extended, and not standard, composition thereby making it a true ESCB exercise. Eight Eurosystem NCBs and four non-Eurosystem NCBs are themselves the competent national authority in their respective Member States as far as the prudential supervision of credit institutions is concerned. The BSC has three objectives: first, it is to contribute to the monitoring and assessing developments from a financial stability perspective; second, it is to contribute to the design of financial regulation and supervisory tools; third, it is to promote cooperation between central banks and banking supervisors. The BSC has no regulatory powers.

In the context of the new European financial supervisory architecture the ESRB will be established as an independent body without legal personality. The ESRB will be composed of the Governors of the NCBs, the President and the vice-President of the ECB, a member of the European Commission, and the chairpersons of the three ESAs as the voting members with high-level representatives of competent national supervisory authorities and the President of the EFC as the non-voting members. The ESRB has also three objectives: first, it is to develop a framework for macro-prudential supervision at the EU level; second, it is to enhance the effectiveness of early warning systems; third, it is to transform the risk assessments into action by the relevant authorities. The ESRB has no regulatory powers.

One may wonder whether the proposal to establish the ESRB was indeed any different from the existing BSC and its activities that it conducted as an ESCB committee. In substance, the BSC has been institutionally re-labelled without changing its legal status or powers and the ECB has been given the obligation allegedly derived from Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute to provide analytical, statistical, logistical and administrative support, namely all those functions that it was carrying out as a matter falling under Article 127(5) TFEU [former Article 105(5) TEC] and Article 3.3 of the Statute and without any Council legal instrument in this regard.

Reference to Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute would have been justified if, for example, the European Banking Authority (EBA) had been allocated within the ECB. In so doing, the micro-prudential role would have remained with the competent national authorities and the macro-prudential role would have been granted to the ECB. Indeed, it might have been worth considering conferring the supervisory powers on the ECB.

From the legal point of view, the ECB could have supervisory powers if Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute were to be executed, as the two legal provisions being applicable throughout the EU. The only problem with this arrangement would be that the ECB's supervisory powers would be limited to the euro area since the ECB's Regulations do not apply outside the euro area. However, even this option seems far better than the creation of the ESRB with no regulatory powers at all.

However, in order to exercise the ECB's supervisory competence, Article 127(6) TFEU [former Article 105(6) TEC] and Article 25.2 of the Statute need to be activated, and in the Council's legal instrument to be used for the activation, several very important issues need to be addressed. First of all, the scope of the ECB's supervisory task needs to be clarified, with a list of the institutions and bodies that fall within its supervisory powers. Second, licensing, the practical arrangements of supervision, sanctioning as well as crisis management need to be regulated. This arrangement would advocate placing the EBA within the ECB instead of creating the ESRB. Alternatively, the ECB could be trusted with the same powers as those attributed to the ESRB.

Of course, there are limitations regarding the central bank's role in contributing to financial stability. The provision of ELA, which is usually attributed to the central banks, is regulated neither in the Treaties nor in the Statute. However, the ECB has defined ELA and nine NCB

Statutes out of 27 regulate its terms and conditions. The common criteria that can be drawn are: (1) independence of the ELA-providing central bank; (2) requirement for collateral; (3) short-term or temporary nature of ELA; (4) solvency of the recipient; and (5) exceptional or out-of-normal circumstances. While the legal literature has also suggested applying a higher (or penalty) interest rate, none of the NCB Statutes contains this provision. The other problem is that the above criteria are difficult to implement in real time.

The provision of ELA affects the liquidity in the money market, which in turn means that with regard to the euro, this task should be regarded as a Eurosystem task and not a national task. For the non-Eurosystem NCBs, the provision of ELA continues to be a national task since they have retained their powers of monetary policy.

Any provision of ELA should comply with the disclosure requirements arising from the MAD, the Prospectus Directive, the Transparency Directive or other EU legal instruments. Under these rules, the recipient would have to disclose receipt of ELA but it could also be pro-active if the providing central bank were to make public statements in order to calm the markets. As has been noted by some writers, the problems appear to be widely known by the time ELA is granted and in most cases secrecy over the issue would therefore be counterproductive. Although some discretion may be warranted, the general public needs public assurances from the authorities to prevent bank runs.

It would therefore be better to regulate the provision of ELA by the central banks and have this facility open to all participants in the payment system. The downside of this proposal would be that the discretionary nature of ELA will disappear. On the positive side, it would enable ELA to be a provision of liquidity and not capital.

5 Eesti Pank Statute

5.1 Introduction

This Chapter is organised as follows. I will begin by briefly describing the history of Eesti Pank from 1919, when it was established, until the end of 2010, since Estonia will adopt the euro on 1 January 2011 and this represents a major change for Eesti Pank and its legal framework (Section 5.2). As this event is imminent, I will analyse the Estonian NCB Statute as a Eurosystem member and, on the basis of discussions in Chapters 2, 3 and 4, propose changes to the version of the law that will be in force on 1 January 2011 (see Table 5-1).

More specifically, I will follow the structure of this thesis and assess the functional, institutional and fiscal independence of Eesti Pank together with the requirements for accountability and transparency. Furthermore, in the framework of prudential supervision and the stability of the financial system, the possibility of establishing legal provision for emergency liquidity assistance and the relationship with the Estonian Finantsinspektsioon will also be discussed.

5.2 1919-2010

Eesti Pank was established as the central bank of the Republic of Estonia on 24 February 1919, a year after the country's declaration of independence. The statutory tasks at the time were to arrange for currency circulation and the transfer of payments within Estonia and abroad as well as strategic investments in the local economy. The shares of the central bank were owned by the State, and the bank's decision-making procedures were fully subordinate to government control. Apart from central banking functions, the Bank of Estonia conducted commercial banking operations and soon turned out to be the largest commercial bank in Estonia.

According to the Statutes of Eesti Pank, the Estonian currency should have been on a par with the gold franc (1 Estonian mark = 0.29032 grams of gold). However, as the central bank did not have any real reserves backing the money issued, the banknotes in circulation did not have the gold backing. The issue was worsened by the failure of the economic policy orientation towards Soviet Russia, which resulted in an economic crisis, which in turn led to continuous devaluations of the Estonian mark.

The continuous devaluations were stopped by the reform of both the central bank and the monetary system. The League of Nations was approached for assistance and, in 1927, the reform was implemented. A new version of the Statutes of Eesti Pank was approved by the Parliament and, under the new rules, Eesti Pank became an independent banknote-issuing central bank.

The main tasks of Eesti Pank were to secure the value of the currency. The Eesti Pank's Full Assembly (Shareholders' Meeting – at the time, the Government was not the only shareholder) and its Board of 10 members were established as the governing bodies of Eesti Pank in order to guarantee the autonomy of the central bank from the Government. The Governor of Eesti Pank headed the Board and, with the Executive Board, bore full responsibility for daily management of the bank.

The League of Nations assisted the Republic of Estonia with obtaining a foreign loan of GBP 1.35 million, of which Eesti Pank received GBP 1 million. The gold and foreign currency reserves of the State Treasury were also transferred to the central bank. Owing to the United Kingdom's decision to renounce the gold standard and the fall in the exchange rate of the British pound, Eesti Pank sustained severe losses and in 1934, the new currency issued in 1927 – the Estonian *kroon* – had to be devalued by 35%.

In June 1940, following the annexation of Estonia by the USSR, Eesti Pank was nationalised and all its assets were supposed to have been transferred to the USSR. However, most of the foreign reserves were retained by foreign governments, which played an important role in the design of the Estonia's breakaway from the rouble zone.

On 15 December 1989 the Supreme Soviet of the Soviet Socialist Republic of Estonia passed a resolution re-establishing Eesti Pank and declared its succession to the central bank established in 1919. Since Estonia was still using roubles issued by the USSR State Bank, Eesti Pank initially lacked any practical authority. The re-established central bank started to operate on 1 January 1990 and co-existed with the Estonian Republic Office of the USSR State Bank until the latter's merger with Eesti Pank on 1 January 1992, after Estonia had regained its independence on 20 August 1991.⁷²³

Prior to the enactment of the first version of the Estonian NCB Statute, Eesti Pank operated under provisions provided by a legal instrument regulating commercial banking activities.

⁷²³ For further information, see Drēviņa, Laurinavičius, & Tupits, 2007.

The drafting of the Estonian NCB Statute started in early 1992. Two working groups⁷²⁴ were involved in drafting the Act, in which specialists of financial law, banking, credit and monetary affairs participated.

The Estonian Parliament adopted the Estonian NCB Statute on 18 May 1993.⁷²⁵ The Estonian NCB Statute is a constitutional law, i.e. it is expressly mentioned in Article 104 of the Estonian Constitution as a law which may be passed and amended only by an absolute majority of the members of Parliament. In the hierarchy of Estonian laws, constitutional laws rank after the Constitution.

In order to secure a line of succession with the central bank that operated between 1919 and 1940, certain articles were inserted into the Estonian NCB Statute that may seem unusual. For example, Article 1(1) of the Estonian NCB Statute stipulates, *inter alia*, that Eesti Pank is the legal successor of Eesti Pank established as the central bank of the Republic of Estonia in 1919. Another similar paragraph can be found in Article 26(3), which sets forth that immovable and movable property that was in the ownership of Eesti Pank established as the central bank of the Republic of Estonia in 1919 and that was unlawfully expropriated in 1940 also belongs to Eesti Pank.⁷²⁶ The establishment of a clear line of succession was necessary in order to justify the claims for foreign reserve assets from foreign governments.⁷²⁷

The Estonian NCB Statute has been amended several times following its entry into force in 1993. The most significant amendments relate to the separation of supervisory powers since January 2002 and 2003 adjustments made necessary by Estonia's entry into the EU. The Estonian NCB Statute was further significantly amended following the critical remarks in the ECB Convergence Report of 2004. Further changes to the Estonian NCB Statute were introduced in April 2010 with the Law on the introduction of the euro.⁷²⁸

Article 140(2) TFEU lays down the procedures for the abrogation of the derogation of the Member States concerned. At least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB shall report to the Council in accordance

⁷²⁴ It is unclear, and not explained in historical documents, why there had to be two working groups. Probably it was due to rivalry between the newly established central bank and the Government.

⁷²⁵ Eesti Panga seadus, RT I 1993, 28, 498. [RT = Riigi Teataja = State Gazette]

⁷²⁶ A similar provision can be found in the Tartu University Act (Tartu Ülikooli seadus). Otherwise, declarations on property expropriated as of 1940 are rare in Estonian legislation. Tartu University was founded in 1632 by the Swedish king Gustav Adolf II and is the oldest university in Estonia.

⁷²⁷ See Drėviņa, Laurinavičius, & Tupits, 2007, p. 13.

⁷²⁸ RT I 2010, 22, 108. See also ECB Opinion CON/2010/20 of 5 March 2010 on amendments to the Law on and Statute of Eesti Pank, available at http://www.ecb.europa.eu/ecb/legal/pdf/en_con_ecb_2010_20_f_sign.pdf.

with the procedure laid down in Article 140(1) TFEU. The latest Commission and ECB regular Convergence Reports were adopted in May 2010.⁷²⁹

Article 1 of Council Decision 2010/416/EU⁷³⁰ concluded that Estonia fulfils the necessary conditions for the adoption of the euro. The derogation in favour of Estonia referred to in Article 4 of the 2003 Act of Accession is abrogated with effect from 1 January 2011. Subsequently, the conversion rate between the euro and the Estonian kroon was set at 15,6466 kroon for 1 euro, which corresponds to the current central rate of the kroon in the exchange rate mechanism (ERM II).⁷³¹

Estonia's changeover plan specifies that euro banknotes and coins should become legal tender in that Member State on the day on which the euro is introduced as its currency. Consequently, the euro adoption date and the cash changeover date are to be 1 January 2011 and no "phasing-out" period will apply.⁷³²

5.3 Assessment of the Estonian NCB Statute as of 1 January 2011

5.3.1 Functional independence

5.3.1.1 Primary objective of Eesti Pank under the Constitution

Description of Estonian Constitutional Acts

The Constitution of the Republic of Estonia (hereinafter the First Act) was passed by a referendum on 28 June 1992. As well as the constitution itself, the Constitution of the Republic of Estonia Implementation Act (hereinafter the Second Act) was also passed in the referendum. The First Act has been amended only once, on 25 February 2003, when the term of office of local governments was extended from three years to four.⁷³³ This Act amending the constitution did not lead to an additional Act similar to the Second Act, but rather amended Article 156 (1) of the First Act.

⁷²⁹ See European Commission, 2010; and European Central Bank, 2010.

⁷³⁰ Council Decision 2010/416/EU of 13 July 2010 in accordance with Article 140(2) of the Treaty on the adoption by Estonia of the euro on 1 January 2011, OJ L 196, 28.7.2010, p. 24.

⁷³¹ Council Regulation (EU) No 671/2010 of 13 July 2010 amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Estonia OJ L 196, 28.7.2010, p. 4. See also ECB Opinion CON/2010/52 of 5 July 2010 on a proposal for a Council regulation amending Regulation (EC) No 974/98 as regards the introduction of the euro in Estonia and on a proposal for a Council regulation amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Estonia, OJ C 190, 14.7.2010, p. 1.

⁷³² Council Regulation (EU) No 670/2010 of 13 July 2010 amending Regulation (EC) No 974/98 as regards the introduction of the euro in Estonia OJ L 196, 28.7.2010, p. 1.

⁷³³ RT I 2003, 29, 174.

The Constitution of the Republic of Estonia Amendment Act (hereinafter the Third Act)⁷³⁴ was passed by a referendum on 14 September 2003. The Third Act is remarkable in two respects: first, it is at the same level in the legislative hierarchy as the First Act; and second, no provisions of any previous Acts were amended with the passage of the Third Act. Instead, Article 2 of the Third Act sets forth that: “As of Estonia’s accession to the European Union, the Constitution of the Republic of Estonia (i.e. the First Act) applies taking account of the rights and obligations arising from the Accession Treaty.”

Before and after its passage, the Third Act has been a subject of fierce debate in Estonian legal circles, both in terms of its interpretation and also in terms of the legality of its very existence. Further spice was added to the debate by the issue of the Treaty establishing a Constitution for Europe. The Estonian Chancellor of Justice is of the opinion that the Third Act is legally unclear and that its implementation has not met the expectations prevailing at the time it was drafted.⁷³⁵ This view is shared by other recognised legal practitioners.⁷³⁶ On the other hand, the opinion has also been voiced that it is unnecessary to make specific reference to membership of the European Union and the procedures arising from it in the First Act as the possible interpretations of the Third Act include all the constitutional questions which could surface upon accession to the European Union.⁷³⁷

As is clear from the above, opinions regarding the Third Act are diametrically opposed. People on both sides of the debate have largely used the same arguments to reach their differing viewpoints. As a result, the problems that have come to light in connection with the introduction of the single currency, the euro, need further examination. Among the obligations placed on the Republic of Estonia by the Act of Accession to the European Union is the obligation to participate, as of accession, in Economic and Monetary Union as a Member State with a derogation.⁷³⁸

⁷³⁴ RT I 2003, 74, 429.

⁷³⁵ Vt. Jõks, 2005.

⁷³⁶ Vt. Lõhmus (2005); Maruste & Albi (2003); Albi, Gallagher, Koolmeister, Mälksoo, & Roosma (2002); Albi, Põhiseaduse muutmine Euroopa Liitu astumiseks, 2001; Albi, Euroliit ja kaasaegne suveräänsus, 2000.

⁷³⁷ Vt. Reinsalu (2005); Laffranque, Eesti põhiseaduse ja Euroopa õiguse kooselu, 2003; Laffranque, Madise, Merusk, Pöld, & Rask, 2002.

⁷³⁸ Article 4 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

Eesti Pank's tasks under the Estonian Constitution

Article 111 of the First Act sets forth that Eesti Pank has the sole right to issue Estonian currency and that Eesti Pank shall regulate currency circulation and uphold the stability of the national currency. However, in the light of Article 2 of the Third Act, it is possible to suggest so many potential interpretations that the principle of legal certainty begins to be undermined. Some examples of possible interpretations are:

- 1) the single currency, the euro, is the Estonian currency;
- 2) 'Estonian currency' means only the Estonian kroon;
- 3) with the entry into force of the Third Act, Article 111 of the First Act has been rendered invalid.

These interpretations are examined in more detail below.⁷³⁹

The euro as the Estonian currency in the meaning of Article 111 of the First Act

However, this interpretation neither takes account of the provisions of Union law in this field nor clarifies the concept of "Estonian currency" and thus only the fact that the Currency Act⁷⁴⁰ prescribes that the only legal tender in Estonia is the Estonian kroon makes it possible to claim that 'Estonian currency' means the Estonian kroon.

The abrogation of the Estonian derogation would mean that European Union regulations granting euro banknotes and coins the status of sole legal tender would enter into force in Estonia. Whether that provides the basis for claiming that, from that moment on, the Estonian currency is the euro is doubtful.

Article 111 of the First Act prescribes that the right to issue Estonian currency is the exclusive competence of Eesti Pank. However, this contradicts Article 128 TFEU [former Article 106 TEC) and Article 16 of the Statute. The euro banknotes are identical in terms of design and it makes no difference to the general public whether the notes in their hands have been issued by Suomen Pankki, Eesti Pank or any other member of the ESCB. The phrase 'Eesti Pank has the sole right to issue Estonian currency' is essentially wrong because it does not take account of the functioning of the Eurosystem. Similarly, the statement that 'Eesti Pank shall regulate currency circulation and shall uphold the stability of the national

⁷³⁹ The discussion here is based on an earlier article produced by the author in the Estonian language (Tupits, Ühisraha euro kasutuseelvõtu riigiõiguslikud aspektid, 2005).

⁷⁴⁰ RT 1992, 21, 299; I 2002, 63, 387.

currency' is incorrect, as Articles 2 and 3 of the Statute of the ESCB set out duties for Eesti Pank which are worded quite differently.

Once the euro has been adopted, Eesti Pank will no longer conduct an independent monetary policy, but rather it will participate in the conduct and implementation of monetary policy in the Eurosystem. The Governor of Eesti Pank will become a member of the highest decision-making body of the European Central Bank – the Governing Council. Eesti Pank will continue to manage currency circulation in Estonia but its sole right to issue currency will disappear. Eesti Pank will issue euro banknotes with the permission of the ECB and together with the other members of the Eurosystem. Eesti Pank will retain the sole right to issue euro coins in the Republic of Estonia but the volume of coins issued will have to be approved in advance by the ECB. The foreign exchange reserves for the Estonian kroon will become the foreign exchange reserves for the euro and the latter should be maintained and managed on the basis of the rules established by the ECB. Eesti Pank's accounts will also be subject to ECB rules and auditing will take place pursuant to paragraph 1 of Article 27.1 of the Statute of the ESCB.

The term 'Estonian currency' can only mean the Estonian kroon

This interpretation is also based on the claim that Article 111 of the First Act does not define the term 'Estonian currency'. However, contrary to the previous case this interpretation leads to two possible claims.

Any reference to the Estonian currency cannot in any way be a reference to the euro, as euro banknotes and coins are issued by the members of the Eurosystem and the euro is a common currency, of which the Estonian coins would make up just a tiny fraction. The Estonian aspect would be visible primarily by the existence of euro coins with an Estonian national side.

Any reference to the Estonian currency is, in fact, a reference to the Estonian kroon, but as the right to issue the Estonian kroon has been rescinded (following Council Decision 2010/416/EU, Council Regulation (EU) No 671/2010 and Council Regulation (EU) No 670/2010 and assuming that the Currency Act has been repealed), this is an 'empty' right which may, after a certain time, be reasserted – for example if the use of the euro is renounced.

In the light of Union law, this interpretation is even more radical as it is, in effect, both a breach of the obligation of loyalty set out in Article 4(3) TEU [former Article 10 TEC] and a

public declaration of that breach. As already mentioned, the Republic of Estonia is under obligation to adopt the euro, pursuant to Article 4 of the Act of Accession. National legislation in the Member States including the statutes of the national central banks is to be adapted as necessary with a view to ensuring compatibility with Articles 130 and 131 TFEU and the Statute. As a Member State with a derogation, Estonia must meet all the conformity requirements and is under the obligation to prepare national legislation for the adoption of the euro. If at the same time some provisions concerning the right to issue another currency were to be retained ‘just in case’, that would be in clear contradiction with Union law. Moreover, that contradiction would not be eliminated by the fact that, irrespective of national legislation that prescribes otherwise, a Member State is to act in accordance with Union law. After all, it is well established in the case law of the Court of Justice that Union law is supreme over the national law of the Member States, including the fundamental norms of their national constitutions.⁷⁴¹ Furthermore, the ECB is of the opinion that neither the supremacy of the Treaties and the Statute over national legislation, nor the nature of the incompatibility, affects the need to comply with this obligation.⁷⁴² The decisions in cases C-167/73 and C-185/96 clearly stress the importance of the principle of legal certainty and the obligation of the Member States to bring their national legislation into conformity with Union law.

The remaining wording of Article 111 of the First Act is again a problem as far as this interpretation is concerned. The claim that ‘Eesti Pank shall regulate currency circulation and shall uphold the stability of the national currency’ is entirely inappropriate here, as it does not take into account the primary objective of the ESCB under Article 127(1) TFEU [former Article 105(1) TEC] as well as Article 282(2) TFEU and Article 2 of the Statute, which shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB 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 TEU.

Article 111 of the First Act became invalid with the passage of the Third Act

This is an interpretation where the material approach prevails: proceeding from Article 2 of the Third Act, the Republic of Estonia has no legal grounds for declining to adopt the euro, as

⁷⁴¹ Case 11/70, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125, at paragraph 1134.

⁷⁴² The primacy of Union law does not affect the obligation to adapt national legislation. This general requirement derives not only from Article 109 of the Treaty but also from the case law of the Court of Justice of the European Communities, such as Case 167/73 *Commission of the European Communities v French Republic* [1974] ECR 359. This approach has been further affirmed in the Case C-185/96 *Commission of the European Communities v the Hellenic Republic*. – ECR [1998] I-6601, paragraphs 30 and 32.

a result of which it is no longer possible to apply Article 111 of the First Act. In this interpretation, the only parts of the constitution which are valid are those which conform to or are not governed by Union law. Therefore, Article 111 of the First Act was rendered invalid when the Third Act was passed.

In order for the euro to be adopted in this case, amendments would need to be made to the Estonian NCB Statute, the Currency Act and other Acts containing references to the kroon as the legal tender of Estonia. However, the question of legal certainty remains a problem – as the text of Article 111 of the First Act is still there, the possibility exists that any attempts to bring the constitutional Acts (such as the Estonian NCB Statute) or other Acts into conformity with the Treaties or the Statute of the ESCB could be blocked as unconstitutional.

Even if the necessary package of Acts for the euro to be adopted is passed, the formal contradiction between the text of Article 111 of the First Act and the Treaties and the Statute will remain.

Interpretation given by the Estonian Supreme Court

In order to obtain legal clarity, as was suggested in the Convergence Reports of 2004 by the ECB and the Commission,⁷⁴³ the Estonian Parliament, in the context of preparing amendments to the Estonian NCB Statute, requested a constitutional review by the Supreme Court⁷⁴⁴ of the draft Amending Law.

On 11 May 2006 the Estonian Supreme Court declared Article 111 of the Constitution to be inapplicable⁷⁴⁵ and thus provided legal clarity in the matter. The Supreme Court found that the Draft Act Amending the Estonian NCB Statute, which made preparatory arrangements for the eventual adoption of the euro, was compatible with the Constitution. In addition, the Supreme Court directly addressed the position of the Third Act in the context of supremacy of Union law: it stated that the text of the First Act should be read together with the Third Act and that those parts of the Constitution that are incompatible with Union law shall not be applied. As a matter of fact, the Supreme Court appears to have granted unconditional

⁷⁴³ According to the Commission, Article 111 of the Constitution is in conflict with EU law; the opinion does not mention the Third Act (European Commission, 2004, p. 12). The ECB, however, refers in its assessment to both the Constitution and the Third Act, but urged that Article 111 should be amended with regard to legal certainty (European Central Bank, 2004, p. 221).

⁷⁴⁴ The Supreme Court is the highest court in Estonia. It functions as the cassation stage in civil, criminal and administrative matters and is also the court of constitutional review.

⁷⁴⁵ Opinion 3-4-1-3-06, 11 May 2006, RT III 2006, 19, 176.

supremacy to Union law.⁷⁴⁶ This interpretation has been used in commentaries on the Constitution of the Republic of Estonia, for example.⁷⁴⁷

A possible way forward

Viewed formally, Article 111 of the First Act contravenes Union law because it does not set out the competence of the European Central Bank and the Council to issue the common currency. Viewed materially, Article 111 of the First Act has lost its original meaning as, proceeding from Article 2 of the Third Act, the Republic of Estonia has no legal grounds for declining to adopt the euro. Therefore, Article 111 of the First Act has lost its meaning both formally and materially, as was in fact acknowledged by the Estonian Supreme Court in its decision of 11 May 2006.

The text of such a provision is legally void and the search for interpretations in the context of Union law leads to the conclusion that, as a result of Article 2 of the Third Act, it is no longer possible to apply Article 111 of the First Act. Leaving Article 111 of the First Act in the text of the constitution would contradict both Union law and the practice of the Court of Justice. Therefore, proceeding from the principle of legal certainty, it would be correct with regard to the rule of law to omit the text of Article 111 from the First Act, by amending the Estonian Constitution, for example.⁷⁴⁸

5.3.1.2 Primary objective of Eesti Pank under its Statute

Following the recent amendments in April 2010, Article 2(1) of the Estonian NCB Statute sets forth that the primary objective of Eesti Pank is to maintain price stability. Eesti Pank also supports the achievement of other economic policy objectives in accordance with the Treaty on the Functioning of the European Union.

For the achievement of these objectives, the following tasks have been foreseen:

- 1) to help to define the monetary policy of the European Union and to implement the monetary policy determined by the Governing Council of the European Central Bank;
- 2) to hold and manage the official foreign exchange reserves;

⁷⁴⁶ See Albi, 'Supremacy of EC Law in the New Member States: Bringing Parliaments into the Equation of 'Co-operative Constitutionalism'', 2007, p. 45.

⁷⁴⁷ Vt. Truuväli, et al., 2008, lk 563.

⁷⁴⁸ In cases such as this it is usually claimed that any such change to the constitution would contradict the Constitution Amendment Act and open the door for precisely all those legal problems that the passage of the Constitution Amendment Act was meant to prevent, and that it is unnecessary and dangerous to amend the constitution because of the euro (Madise, 2005).

- 3) to promote the smooth operation of the payment systems and the stability of the financial system;
- 4) to participate in the development of the payment systems and the financial system;
- 5) to regulate currency circulation, contribute to the issuance of euro banknotes and the issue of euro coins;
- 6) to compile the balance of payments of Estonia;
- 7) to collect and publish statistics necessary for the performance of its functions;
- 8) any other activity that complies with the above.

References to the currency board arrangement and the stability of the national currency have been repealed. In this new capacity, it might be worth considering whether or not to introduce a provision, within the limits set by Article 14.4 of the Statute, on the ELA (see Table 5-1). Assuming that the ELA in the euro area will remain a national task as was discussed in Section 4.3.1, one would need a clear legal basis for that kind of activity. Against this background, the issue whether Eesti Pank could provide ELA against State guarantee would have to be left open. However, as was noted in Section 4.3.1, it is arguable whether the provision of ELA in the euro area is a national task, which would suggest that such a provision should not be introduced in the law. However, for the sake of completeness a drafting proposal has been made in Table 5-1.

5.3.2 Institutional independence

Under Estonian law, Eesti Pank is qualified as a public legal person, as it operates under its own law. Pursuant to Article 112 of the First Act, Eesti Pank shall operate under its own law and report to the Estonian Parliament. Article 1(6) of the Estonian NCB Statute further stipulates that Eesti Pank shall be registered in the state register of state and local government agencies. Under Article 3(1) of the Estonian NCB Statute, Eesti Pank operates independently of other state agencies. Eesti Pank shall report on its activities to the Estonian Parliament and it is not subordinated to the Government of the Republic, to any other executive state agency or to any third person.

Furthermore, Eesti Pank is subject to the guidelines and instructions of the ECB pursuant to Article 3(1¹) of the Estonian NCB Statute.⁷⁴⁹ This function is to be understood as primarily falling within Article 14.3 of the Statute, although other aspects are covered elsewhere, as in

⁷⁴⁹ Article 3(1¹) of the Estonian NCB Statute sets forth that as part of the European System of Central Banks, Eesti Pank and members of its directing bodies may apply for and receive instructions to be carried out only from the European Central Bank.

the last paragraph of Article 12.1 of the Statute referring to the fact that the ECB shall have recourse to the NCBs to carry out operations which form part of the tasks of the ESCB.

Even though the Supervisory Board is not in charge of the daily management of Eesti Pank, under Article 9(5) of the Estonian NCB Statute the Minister of Finance can participate in the meetings, with account being taken of Article 130 TFEU (which also embraces Article 7 of the Statute). The above provisions aim to address the list of prohibitions discussed in Section 3.2.2.

5.3.3 Personal independence

5.3.3.1 Overview

The Estonian NCB Statute provides three types of decision-making bodies for Eesti Pank: the Supervisory Board, the Executive Board and the Governor.

The Supervisory Board consists of a Chairman and seven members who are appointed by the Estonian Parliament. The Supervisory Board of the Estonian NCB is entitled to supervise all activities of the NCB.

The daily management of the NCB is vested in the Governor and the Executive Board. The Executive Board is composed of the Governor and the Deputy Governors; none of them can be a member of the Supervisory Board.

The Executive Board is in charge of planning and organising the Estonian NCB's activities. However, certain competences, such as ESCB-related tasks, are allocated to the Governor exclusively.

5.3.3.2 Supervisory Board

The Supervisory Board was originally designed to be the decision-making organ adopting, *inter alia*, monetary policy decisions. Between 1993 and 2006, the Governor of Eesti Pank was an *ex officio* member of the Supervisory Board, albeit not as the Chairman of the Supervisory Board but as an ordinary member. This composition created a legal problem as the Supervisory Board was authorised to supervise the Governor, i.e. the Governor was a member of a supervisory organ that was supervising the Governor.⁷⁵⁰ The Supervisory Board

⁷⁵⁰ The historical background to this legal anomaly has been a matter for discussion (Aare, 2002). Aare describes, *inter alia*, the conflicts and opposition between the newly established central bank and the government that attempted to subordinate it.

was released from competence in monetary policy matters as of 1 May 2004 when Estonia acceded to the European Union.

With the amendments of 6 June 2006 the Governor of Eesti Pank ceased to be a member of the Supervisory Board. As a result, the legislator eliminated the dual function of the Governor of Eesti Pank as a supervisor and as one being supervised; left the supervisory functions solely to the Supervisory Board; and enabled the Governor of Eesti Pank to focus on carrying out the executive functions together with the Executive Board.

The following issues are within the exclusive competence of the Supervisory Board of Eesti Pank:

- 1) making a proposal to the President of the Republic for appointment of the Governor of Eesti Pank;
- 2) appointment to office and release of Deputy Governors of Eesti Pank, the heads of the independent divisions and representative offices of Eesti Pank, and the head of the internal audit department of Eesti Pank and the appointment and removal of members of the Supervisory Board of the Financial Supervision Authority on the proposal of the Governor of Eesti Pank;
- 3) approval of the statute of Eesti Pank, the statutes of the independent divisions and representative offices of Eesti Pank and the statutes of the internal audit department;
- 4) supervision of the implementation of the budget of Eesti Pank;
- 5) appointment of internal auditors of Eesti Pank and approval of the work schedule for internal audits;
- 6) appointment of the independent auditors of Eesti Pank;
- 7) approval of Eesti Pank's annual report on the proposal of the Governor;
- 8) decision on the design of the national side of Estonian euro coins⁷⁵¹ and on the nominal value and design of collector coins;
- 9) deciding, on the proposal of the Governor of Eesti Pank, on the establishment, reorganisation and liquidation of independent divisions of Eesti Pank;

⁷⁵¹ However, the first version of the design of the national side of Estonian euro coins was decided by the Estonian public. A competition was announced in June 2004 and 134 designs were submitted by the deadline of 19 October 2004. A jury of experts convened by Eesti Pank selected the 10 best designs, which were then given a total of 45,453 votes during a one-week telephone voting procedure. The jury, which had made the decision on the ten designs in the national round in early November 2004, approved the results of the telephone voting procedure. The winning design features the outline of Estonia and the word "Eesti". The winner of the design competition of the national side of the Estonian euro coin was Mr Lembit Lõhmus. Further information in English is available at http://euro.eesti.ee/EU/Euroveeb_edit/Main_Page/index.jsp (visited on 5 September 2010).

10) review and approval of written proposals and other documents submitted to the Riigikogu in the name of Eesti Pank.

Pursuant to Articles 9(2¹) and 11(4) of the Estonian NCB Statute, the Governor of Eesti Pank shall report regularly on his or her activities to the Supervisory Board of Eesti Pank, concerning Estonia's economy and monetary policy, the situation in the financial sector and the implementation of Eesti Pank's budget.

The requirements for the position as the Chairman of the Supervisory Board are that he or she must have Estonian citizenship and a university degree as provided in Article 7(2) of the Estonian NCB Statute. The education requirements for the Chairman have been harmonised with the ordinary members of the Supervisory Board under Article 8(2) of the Estonian NCB Statute who are required to have a university degree in addition to Estonian citizenship.⁷⁵² In addition, the Supervisory Board members have to pass the security vetting required under Article 11² of the Estonian NCB Statute before they can be formally appointed.

Pursuant to Subsections 7 and 9 of Article 65 of the First Act, the Estonian Parliament shall appoint the Chairman of the Supervisory Board as well as its members. Subsections 11 and 12 of Article 78 of the First Act specify that the proposal to appoint the Chairman of the Supervisory Board and the appointment of the Governor of Eesti Pank shall fall within the powers of the President of the Republic.

Further provisions on the Supervisory Board can be found in the Estonian NCB Statute. The Chairman of the Supervisory Board shall be appointed for a term of five years by the Estonian Parliament upon proposal by the President of the Republic as set forth in Article 7(1) of the Estonian NCB Statute. The ordinary members of the Supervisory Board shall be appointed by the Estonian Parliament upon proposal by the Chairman of the Supervisory Board pursuant to Article 8 of the Estonian NCB Statute. The term of office is established as five years under Article 8(5) of the Estonian NCB Statute. A shorter term of office is possible

⁷⁵² The education requirements were relaxed for the Chairman of the Supervisory Board in the first half of 2008. As of 8 July 2008, the educational requirement which previously required a university degree in economics or law was reduced to a 'university degree'.

under Articles 8(7) and 8(8) of the Estonian NCB Statute,⁷⁵³ but this can be justified by the fact that the Supervisory Board is not involved in ESCB-related decisions.

The Estonian NCB Statute also lists the grounds for termination of membership of the Supervisory Board. Article 8(6) sets forth that these grounds shall be: (1) the expiry of his or her term of office, (2) upon his or her own resignation or, (3) upon the entry into force of a judgment of conviction, (4) dismissal; or (5) in the event of his or her death. It should be noted that the grounds for dismissal differ from those listed in Article 14.2 of the Statute as the Supervisory Board is not involved in Eurosystem-related decisions. The resignation procedure of the Chairman of the Supervisory Board foresees an obligation to give four months notification to the President of the Republic under Article 7(1¹) of the Estonian NCB Statute. A similar obligation is imposed on the ordinary members of the Supervisory Board pursuant to Article 8(6¹).⁷⁵⁴ Pursuant to Article 12(1) of the Estonian NCB Statute, the Chairman and members of the Supervisory Board may be dismissed on the entry into force of a judgement of conviction.

The membership of the Supervisory Board is incompatible with any other position at Eesti Pank⁷⁵⁵ or a position in the Government pursuant to Articles 7(2) and 8(3) of the Estonian NCB Statute; Article 8(4) further stipulates that a member of the Supervisory Board of Eesti Pank shall not be an employee of any management institution, investment fund, investment company, credit institution, insurance company or other subject of financial supervision, nor be a member of the decision-making body of any such institution.

The Chairman of the Supervisory Board of Eesti Pank shall organise the activities of the Supervisory Board under Article 7(3) of the Estonian NCB Statute, chair the meetings of the Supervisory Board, monitor the implementation of the Supervisory Board's decisions, represent the Supervisory Board of Eesti Pank and respond to interpellations concerning the activities of the Supervisory Board of Eesti Pank submitted to him or her in the Estonian Parliament.

⁷⁵³ Article 8(7) of the Estonian NCB Statute sets forth that when a member of the Supervisory Board of Eesti Pank is appointed as a member of the Government of the Republic or commences work at Eesti Pank, the Riigikogu shall, on the proposal of the Chairman of the Supervisory Board of Eesti Pank, appoint an alternate member of the Supervisory Board whose authority terminates when the member of the Supervisory Board of Eesti Pank leaves the office which precludes his or her membership of the Supervisory Board of Eesti Pank or when he or she ceases to be employed at Eesti Pank. Article 8(8) of the Estonian NCB Statute provides that the authority of members appointed to the Supervisory Board of Eesti Pank at a later time terminates at the same time as the authority of the given composition of the Supervisory Board of Eesti Pank.

⁷⁵⁴ Other persons under an obligation to give four months notification of their resignation include, for example, the Governor of Eesti Pank, the Legal Chancellor and the State Auditor.

⁷⁵⁵ For example, because of his appointment to the office of Governor of Eesti Pank on 7 June 2005, Mr Andres Lipstok's membership of the Supervisory Board of Eesti Pank was discontinued.

The meetings of the Supervisory Board are, as a rule, closed to the public. Article 9(5) of the Estonian NCB Statute lists the Governor of Eesti Pank and the Deputy Governors as those who can attend the meetings with a right to speak.⁷⁵⁶ Supervisory Board meetings have a quorum requirement, which under Article 9(7) of the Estonian NCB Statute is five members; in the absence of the Chairman, a member of the Supervisory Board elected from among those present is to chair the meeting. A majority vote of the members of the Supervisory Board pursuant to Article 9(8) of the Estonian NCB Statute is required for decisions on:

- 1) making a proposal to the President of the Republic for appointment of the Governor of Eesti Pank
- 2) approving the statute of Eesti Pank, the statutes of the independent divisions and representative offices of Eesti Pank and the statutes of the internal audit department;
- 3) supervising of the implementation of the budget of Eesti Pank; and
- 4) approving Eesti Pank's annual report on the proposal of the Governor.

In the case of a tie, the Chairman's vote shall be decisive.

5.3.3.3 Governor

Article 9(6) of the Estonian NCB Statute sets forth that the Governor of Eesti Pank shall be responsible for the implementation of decisions of the Supervisory Board. The monetary policy competence has been assigned solely to the Governor of Eesti Pank since 1 May 2003. Article 11(1) of the Estonian NCB Statute addresses the issues that are within the exclusive competence of the Governor of Eesti Pank:

- 1) designing of banking policies, general management of Eesti Pank's activities and organisation of the performance of the tasks of the European System of Central Banks;
- 2) organisation of the implementation of decisions of the Supervisory Board of Eesti Pank and the application of measures (including sanctions) necessary to ensure their implementation;
- 3) representation of Eesti Pank without special authorisation in all matters and instances both in Estonia and abroad;
- 4) grant of authorisation to represent Eesti Pank in certain cases or in certain matters;
- 5) making proposals to the Supervisory Board of Eesti Pank for the appointment to office and release of the Deputy Governors and the head of the internal audit

⁷⁵⁶ This right also concerns the Minister of Finance; see Section 5.3.2.

department of Eesti Pank and the heads of the independent divisions of Eesti Pank, and for the appointment and removal of members of the Supervisory Board of the Financial Supervision Authority;

6) approval of Eesti Pank's budget.

The Governor shall report to the Supervisory Board and the Estonian Parliament (Riigikogu) pursuant to Articles 11(2) and 11(4) of the Estonian NCB Statute.

In order to execute his tasks, the Governor is entitled to issue regulations and decrees under Article 11(5) of the Estonian NCB Statute; Eesti Pank Governor's Regulations are subject to publication in Riigi Teataja (State Gazette) pursuant to Article 11(6) of the Estonian NCB Statute.⁷⁵⁷

The Governor of Eesti Pank is appointed for a non-renewable term of seven years by the President of the Republic upon proposal by the Supervisory Board as set forth in Article 10(1) of the Estonian NCB Statute. The eligibility criteria for the Governor are that he or she must be an Estonian citizen and have a university degree.⁷⁵⁸ In addition, he or she must pass the security vetting required under Article 11² of the Estonian NCB Statute before he or she can be formally appointed. In order to reflect the findings in Section 3.2.3, several suggestions have been made in Table 5-1.

With regard to the Governor's dismissal, Article 12(2) of the Estonian NCB Statute provides that the Governor and a Deputy Governor of Eesti Pank may be dismissed only on the basis specified in Article 14.2 of the Statute. In this case, the conditions that the Governor and Deputy Governors have to meet would need to be clarified (see Table 5-1).

Reflecting what occurred in the period May-June 2000, when a newly appointed Governor Vello Vensel refused to take office and the term of office of the former Governor Vahur Kraft had expired, Articles 10(4) and 11³ of the Estonian NCB Statute now foresee a complex substitution mechanism in case of the Governor's absence. First, Article 10(4) of the Estonian NCB Statute provides that:

(1) in the absence of the Governor, he or she shall be replaced by a Deputy Governor and the Governor shall transfer the authority to a Deputy Governor by a Regulation;

⁷⁵⁷ Eesti Pank Governor's Regulations are published in the section set aside for ministerial decrees, administrative agreements or accounting guidelines. Eesti Pank Governor's Regulations will enter into force on the third day after their publication in Riigi Teataja.

⁷⁵⁸ As of 8 July 2008, the educational requirement which previously required a university degree in economics or law was reduced to a 'university degree'.

(2) if it is not possible to transfer the authority to a Deputy Governor, the Supervisory Board shall designate the person to replace the Governor from among the Deputy Governors;⁷⁵⁹

(3) if the Supervisory Board has not designated a person to replace the Governor, the Deputy Governor who is senior in age shall replace the Governor.⁷⁶⁰

Article 11³ of the Estonian NCB Statute further specifies that if a new Governor of Eesti Pank or a new Chairman or member of the Supervisory Board has not been appointed by the due date of termination of their office, their authority shall be extended until the entry into force of a corresponding decision on appointment to office.

Personal independence is established in Article 10(3) of the Estonian NCB Statute, which stipulates that the Governor and Deputy Governors shall be independent in the performance of their functions; they shall not hold any other office, be in service or be party to any activities which, by their nature, restrict or may restrict the autonomy of Eesti Pank or adversely affect or may adversely affect Eesti Pank in the achievement of its objectives or the performance of its functions. This obligation also constitutes the duty of loyalty and the duty of non-competition.

5.3.3.4 Executive Board

As a formal body, the Executive Board is a relatively new establishment, although a committee assisting the Governor in daily activities has apparently been in existence since the re-establishment of Eesti Pank.⁷⁶¹

The Chairman of the Executive Board is the Governor of Eesti Pank by virtue of office as stipulated in Article 13(1) of the Estonian NCB Statute. The Statute is very brief regarding the powers of the Executive Board. Article 13(1¹) of the Estonian NCB Statute provides that

⁷⁵⁹ This provision reflects the temporary appointment by the Supervisory Board of Mr Peter Lõhmus as Acting Governor for the period of 28 April – 9 July 2000. At that time, such appointment was arguable from the legal point of view and the Estonian NCB Statute was subsequently amended accordingly. Interestingly, in ECB Opinion CON/2005/59 of 30 December 2005, the ECB requested clarification as to whether the Supervisory Board may designate a substitute for the Governor only from among the Deputy Governors, implying that there may be a danger of a third person being appointed. See Paragraph 8 of ECB Opinion CON/2005/59 of 30 December 2005 at the request of the Estonian Parliament on a draft law amending the Eesti Pank Act, available at https://www.ecb.eu/ecb/legal/pdf/en_con_2005_59_f_sign.pdf.

⁷⁶⁰ Unfortunately, it was not recorded at the time why seniority in age was the preferred option. The alternative was to use the length of the term of office, but it was not favoured as all Deputy Governors were appointed at the same time for the same period and there was therefore no seniority with regard to the term of office.

⁷⁶¹ Former legal counsel of Eesti Pank, Mr Urmas Kaju, recalls that two vice-governors, the legal counsel, heads of the Central Banking Policy Department as well as the Personnel Department, the Chief Accountant and the Counsel on Banking Supervision formed a more or less stable advisory group for the Governor (Kaju, 2003, lk 7).

the Executive Board shall be responsible for planning and organising Eesti Pank's activities; the Governor of Eesti Pank may assign additional functions to the Executive Board.

In practice, the tasks of the Executive Board are divided between two Deputy Governors, who are accountable to the Governor of Eesti Pank. Apart from the Internal Audit Department, which reports both to the Supervisory Board and the Governor of Eesti Pank, all other departments report to the Deputy Governors, each of them being assigned management powers with regard to different departments.

The eligibility criteria for the Deputy Governors are that the persons have to be Estonian citizens and have a university degree. There is no security vetting requirement foreseen in the Estonian NCB Statute, although the members of the Executive Board are treated on an equal basis with the Governor with regard to personal independence and have to replace the Governor if the latter is absent.

Apart from the Governor, all other members of the Executive Board are appointed by the Supervisory Board for five years⁷⁶² upon proposal by the Governor of Eesti Pank as set forth in Article 10(2¹) of the Estonian NCB Statute. The position was originally an ordinary employment relationship with no security of tenure⁷⁶³ but was changed with the amendments that entered into force on 8 July 2006. The Deputy Governors who were in office at that time benefited from a grandfathering clause, which started their five-year term of office from the date of entry into force of the amending law.

Similarly, the members of the Executive Board must be independent in the performance of their functions; they are not to hold any other office, be in service or be party to any activities which, by their nature, restrict or may restrict the autonomy of Eesti Pank or adversely affect or may adversely affect Eesti Pank in the achievement of its objectives or the performance of its functions. However, in order to enhance the scope of the Deputy Governors, a set of suggestions have been made in Table 5-1, subjecting the Executive Board members to the same conditions as applicable to the Governor (except for the tenure of office).

⁷⁶² The Deputy Governor's five-year term was launched at the entry into force of the amendments of the Estonian NCB Statute on 8 July 2006. This was originally criticised by the ECB, noting that the regime whereby all Deputy Governors are appointed at the same time would raise some concerns with regard to the stability of the governance system, as their terms of office also expire at the same time; the ECB noted that under Article 50 of the Statute, the members of the ECB Executive Board were initially appointed for less than a full term as a transitional measure and suggested the Estonian legislator to draw some inspiration from that. See Paragraph 9 of the ECB Opinion CON/2005/59. However, none of this criticism was repeated in the ECB Convergence Report of December 2006.

⁷⁶³ See ECB Convergence Report, December 2006 (p. 213).

5.3.4 Financial independence

5.3.4.1 Determination of budget

While the supervision of the implementation of the budget of Eesti Pank falls within the competence of the Supervisory Board under Article 9(2)(6) of the Estonian NCB Statute, it is the Governor of Eesti Pank who approves the budget as set forth in Article 11(1)(7) of the Estonian NCB Statute.

5.3.4.2 Accounting rules

Pursuant to Article 28 of the Estonian NCB Statute, Eesti Pank's financial year begins on 1 January and ends on 31 December. Since Article 31(2) provides that Eesti Pank's annual report shall be prepared pursuant to the rules established on the basis of Article 26.4 of the Statute, one can assume that the ECB legal instruments referred to in Section 3.2.4.2 apply. Under Articles 17(3), 42 and 59 of the Accounting Act, the Governor of Eesti Pank is entitled to adopt internal Eesti Pank rules on accounting in conformity with the respective ECB legal instruments; Eesti Pank is therefore entitled to deviate from the usual accounting rules.

5.3.4.3 Capital

The legal provisions on Eesti Pank's capital reflect the fact that the central bank's capital was built up over the years and Article 25(3) of the Estonian NCB Statute foresaw a procedure for building up the capital.

The cornerstone of Eesti Pank's financial independence is, however, not the provision on the central bank's capital but Article 26(2) of the Estonian NCB Statute, which provides that Eesti Pank shall possess, use and dispose of its assets independently. Historically, this provision was an exception clause to now repealed Article 26(1), which established that the assets of Eesti Pank belonged to the State. From the legal perspective, however, it would make no sense if the assets of one legal person could belong to another, a legal construction that was perfectly acceptable under the Soviet legal system, which had an administrative law approach. This understanding would be understandable within a company in which different departments also use the company's assets without being owners themselves. Article 26(1) was subsequently repealed and, as a result, the Estonian NCB Statute now contains a declaration of the central bank's financial independence.

Eesti Pank's own capital consists of statutory capital, reserve capital and other funds as set forth in Article 25(1) of the Estonian NCB Statute. The size of the statutory capital is set at 100,000,000 Estonian kroons (EUR 6,391,164.85). With the amendments of April 2010, the size of the statutory capital was raised to EUR 100,000,000 (an increase of approximately 15.6 times the original amount) and Article 25(2) of the Estonian NCB Statute was subsequently amended.

With regard to reserve capital, foundation capital and funds for specific purposes, Article 27(1) of the Estonian NCB Statute provides that these shall be established from the profits of Eesti Pank and from other revenue intended for specific purposes and prescribed by Eesti Pank's internal order.⁷⁶⁴ The Estonian NCB Statute limits the size of other funds to the size of the statutory capital; Article 27(2) provides that when reserve capital becomes equal to statutory capital, the Riigikogu shall decide whether the size of reserve capital shall be increased further or not.⁷⁶⁵ The issue as to whether any losses should be covered from the statutory capital and whether it should be replenished afterwards will be discussed in Section 5.3.4.5.

5.3.4.4 Auditing

The appointment of independent auditors for Eesti Pank is one of the exclusive competences of the Supervisory Board under Article 9(2)(7¹) of the Estonian NCB Statute. Correspondingly, the approval of the Eesti Pank annual report is also one of the exclusive competences of the Supervisory Board as stipulated in Article 9(2)(8) of the Estonian NCB Statute.

Article 31(1) of the Estonian NCB Statute, which regulates the appointment procedure of external auditors, actually consists of two different parts. The first part follows the example of Article 27.1 of the Statute and provides that for each financial year, the Supervisory Board of Eesti Pank shall appoint independent auditors recommended by the Governing Council of the European Central Bank and approved by the Council of the European Union to monitor Eesti Pank's activities during the financial year and to attest to the accuracy of the annual

⁷⁶⁴ The same document also prescribes the procedure for the establishment and use of reserve capital, foundation capital and funds for specific purposes pursuant to Article 27(3) of the Estonian NCB Statute.

⁷⁶⁵ No such decision has been adopted by Riigikogu.

report prepared by Eesti Pank.⁷⁶⁶ This provision entered into force on 8 July 2006 and not on the day of the adoption of the euro – apparently as a result of an administrative error by the legislator;⁷⁶⁷ however, in practice the provision has been interpreted as providing guidance on the kind of auditors that should be deemed suitable in the selection of independent external auditors. The second part of Article 31(1) of the Estonian NCB Statute sets forth that Eesti Pank’s activities may be examined further if the Riigikogu passes a corresponding resolution. Although at the first glance it may seem that the provision enables the Riigikogu to request a second audit from the independent external auditor, there has been no such second or additional audit mission by the independent external auditor. Instead, this provision was used once by the Riigikogu, on 5 March 1996, to invite the National Audit Office to examine Eesti Pank’s activities between 1993 and 1995.⁷⁶⁸ An attempt to request an audit for financial years 1998 to 2000 was made on 25 January 2001⁷⁶⁹ but was dropped due to lack of political support.

No similar attempt has been made since the adoption of the new National Audit Office Act on 29 January 2002, which granted the National Audit Office independence in exercising economic control over public sector institutions and bodies. Pursuant to Article 37(1) of the National Audit Office Act, the National Audit Office shall independently decide on the conduct of audits and the time and nature thereof. Article 37(2) of the National Audit Office Act expressly provides that mandatory audit duties shall not be assigned to the National Audit Office. Furthermore, Article 37(3) of the National Audit Office Act stipulates that the work of the National Audit Office shall be based on the annual work schedule approved by the Auditor General.

Pursuant to Article 7(1) of the National Audit Office Act, Eesti Pank is one of the public sector institutions and bodies over which the National Audit Office can exercise its economic audit functions. As stipulated in Article 14, the National Audit Office shall not assess political goals.

⁷⁶⁶ With the amendments in 2008, Article 31(1) of the Estonian NCB Statute was amended in order to enable a multi-year mandate for the independent external auditor instead of yearly mandates. The ECB welcomed the amendment to the procedure for appointing independent auditors in line with the ESCB good practices. See Paragraph 2.4 of ECB Opinion CON/2008/14 of 25 March 2008 at the request of Riigikogu on a draft law amending the Law on Eesti Pank, available at https://www.ecb.eu/ecb/legal/pdf/en_con_2008_14.pdf.

⁷⁶⁷ The provision on independent auditors was missing from the original consultation presented to the ECB in 2005 and this fact was criticised in Paragraph 15 of ECB Opinion CON/2005/59.

⁷⁶⁸ The summary of the audit was published in the annex to the State Gazette, RTL 1997,99,591.

⁷⁶⁹ Draft Riigikogu decision No 666 OE, available at <http://web.riigikogu.ee/ems/saros-bin/mgetdoc?login=proov&password=&op=ems&system=ems&server=ragne11&itemid=010250011> (visited on 15 January 2009).

Article 31(2) of the Estonian NCB Statute provides that Eesti Pank's annual report shall be prepared pursuant to the rules established on the basis of Article 26.4 of the Statute. Further, Article 31(3) of the Estonian NCB Statute stipulates that the annual report shall be approved and submitted together with the auditor's report to the Riigikogu by the Supervisory Board of Eesti Pank;⁷⁷⁰ the Riigikogu shall hear a presentation by the Governor of Eesti Pank concerning Eesti Pank's annual report. Finally, the annual report shall be published in the *Riigi Teataja* and in Eesti Pank's Yearbook as set forth in Article 31(4) of the Estonian NCB Statute.

5.3.4.5 Distribution of profits

The Estonian NCB Statute foresees very clear and precise rules on profit distribution. First, Article 30(1) of the Estonian NCB Statute defines profit or loss as a difference between the NCB's revenue and expenditure.

There is a pre-determined scheme for profit distribution. Pursuant to Article 30(2) of the Estonian NCB Statute, at least 25 per cent of the annual profits shall be used to increase statutory capital up to the amount determined by the Riigikogu. Then, under Article 30(3), at least 25 per cent of the annual profits shall be used to increase reserve capital pursuant to a decision of the Supervisory Board of Eesti Pank. After these allocations have been made, Article 30(4) enables the Supervisory Board to decide whether there should be allocations to any other reserves at Eesti Pank. Finally, once all these allocations have been made, any remaining profit is transferred to the State as set forth in Article 30(5) of the Estonian NCB Statute.

With regard to losses, Article 30(6) of the Estonian NCB Statute establishes that any loss incurred by Eesti Pank shall be covered from the reserve capital; if the reserve capital is insufficient, losses may be covered from the statutory capital with the permission of the Riigikogu. In this regard, it would need to be clarified whether the Riigikogu should subsequently also decide on the method of replenishing the statutory capital, for example by means of Article 30(2) of the Estonian NCB Statute or by an instalment from the State Budget (adoption of which is also a prerogative of the Riigikogu under Estonian law).

The profits of Eesti Pank are not subject to any taxes. Article 30(7) of the Estonian NCB Statute provides that Eesti Pank, being the central bank of the state, does not pay income tax

⁷⁷⁰ The annual report of the Financial Supervision Authority approved by the Supervisory Board of the Financial Supervision Authority shall be submitted to the Riigikogu at the same time as Eesti Pank's annual report.

or any other taxes related to its economic activity into the state budget or local budgets, except taxes related to natural persons. Furthermore, the Government of the Republic has the right, under Article 30(7) to release Eesti Pank from the payment of other state taxes in exceptional circumstances. In practice, the import of technical equipment necessary for the performance of the Eesti Pank's tasks has been exempted from value added tax.

5.3.4.6 Autonomy in staff matters

The Estonian NCB Statute is generally silent on staff-related issues. The NCB staff members are only mentioned with regard to the Eesti Pank's right to grant loans to its employees in Article 33 of the Estonian NCB Statute.

5.3.5 Accountability and transparency

5.3.5.1 Relations with the Government

Article 4(2) of the Estonian NCB Statute provides that Eesti Pank shall advise the Government of the Republic in matters relating to economic policy; the Government of the Republic shall not take any important economic policy decisions without hearing the opinion of Eesti Pank. Historically, Article 4(4) of the earlier Estonian NCB Statute also provided that Eesti Pank shall, within the limits of its authority, support the economic policy of the Government of the Republic provided that this policy is not in conflict with the objectives and functions of Eesti Pank provided by Article 2 of this Act and does not prevent Eesti Pank from performing them. However, this particular provision was repealed with the amendments of April 2010 and replaced by a reference to the objectives set forth in the Treaties and the Statute.

5.3.5.2 Reporting

Pursuant to Article 112 of the First Act, Eesti Pank shall operate under its own law and report to the Estonian Parliament.

The extent of reporting varies depends on whether the reporting is done by the Chairman of the Supervisory Board or by the Governor of Eesti Pank. Pursuant to Article 8 of the Estonian NCB Statute, the Chairman of the Supervisory Board shall reply to the questions posed by the Estonian Parliament with regard to the activities of the Supervisory Board. However, the Governor of Eesti Pank shall report to the Estonian Parliament about the activities of Eesti

Pank and respond to the questions posed by the Members of the Estonian Parliament as set forth in Article 11(2) of the Estonian NCB Statute.

The Governor of Eesti Pank has been given special interpellation rights under Article 11(3) of the Estonian NCB Statute: when the Governor of Eesti Pank does not agree with a decision of the Supervisory Board of Eesti Pank, he or she shall report to the President of the Riigikogu not later than within three working days and make a proposal to submit an interpellation in the matter to the Chairman of the Supervisory Board of Eesti Pank.

5.3.6 Confidentiality and transparency

Article 21(1) of the Estonian NCB Statute sets forth that Eesti Pank shall ensure the confidentiality of information which contains banking secrets. Under Article 21(1¹) of the Estonian NCB Statute, Eesti Pank has the right to restrict access to information if it concerns risk to price or financial stability and if the information is subject to restrictions on access as specified by the ESCB.⁷⁷¹

Pursuant to Article 35(1) of the Estonian NCB Statute, members of the Supervisory Board of Eesti Pank and persons employed by Eesti Pank are required to maintain the confidentiality of information pertaining to Eesti Pank, all credit institutions and other legal persons if the disclosure of such information could result in damage to the Estonian economy or to the economic interests of credit institutions or their clients. This duty shall apply even after the persons have left the employment of Eesti Pank as set forth in Article 35(2) of the Estonian NCB Statute and Article 37.1 of the Statute.

Article 35(3) of the Estonian NCB Statute is one of the few NCB Statutes under Table 3-19 that foresees punishment under disciplinary or criminal procedure pursuant to law.

The Estonian NCB Statute lacks provisions regulating the exchange of confidential information and a suggestion has therefore been made in Table 5-1.

Under Article 21(5) of the Estonian NCB Statute, Eesti Pank shall periodically publish information concerning its activities and the economy of Estonia and the European Union.

5.3.7 Contribution to financial stability

As noted earlier, pursuant to Article 127(5) TFEU [former Article 105(5) TEC] and Article 3.3 of the Statute, an Eurosystem NCB could contribute to the smooth conduct of policies pursued by

⁷⁷¹ See Paragraph 2.3 of ECB Opinion CON/2008/14.

the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. Finantsinspektsioon, the Estonian FSA,⁷⁷² is an agency with autonomous competence and a separate budget, which operates at Eesti Pank.⁷⁷³ In the conduct of financial supervision, the FSA shall be independent as set forth in Article 4 (3) of the Estonian FSA Act. From a legal point of view, there is clear separation of the tasks and accountability of the FSA from the tasks and accountability of Eesti Pank and its governing bodies. Unfortunately, with the amendments to the Estonian NCB Statute in April 2010, the cooperation and information exchange clauses were largely repealed from the Estonian NCB Statute, leaving only the right of the Estonian FSA to obtain information from Eesti Pank under Article 4¹ of the Estonian NCB Statute.

However, there are elements suggesting that, in this case, Eesti Pank – and in particular the Governor of Eesti Pank as the central bank’s decision-maker for ESCB-related matters – has a sufficiently meaningful degree of control over the activities of the FSA. Of the six members of the Estonian FSA supervisory board, the Governor is an ex officio member and two of the remaining five members are appointed and removed by the Executive Board of the Eesti Pank on the proposal of the Governor. It is of particular significance that a resolution of the supervisory board can only be adopted if at least four members of the supervisory board vote in its favour. This means that no resolution may be adopted by the supervisory board over the objections of the Governor and the two Eesti Pank appointees.

The organisational structure of the Estonian FSA was designed for a separate legal entity but left unchanged when the FSA was attached to Eesti Pank. There are two governing bodies for the Estonian FSA: the Supervisory Board and the Management Board. The governing bodies are different from those of Eesti Pank.

From an institutional point of view, the FSA Supervisory Board appoints the members of the FSA Management Board, elects the chairman of the FSA Management Board from among the members and removes members of the Management Board from office. The Supervisory Board also approves the annual report of the Estonian FSA submitted by the FSA Management Board. Also, the supervisory board decides on the terms and conditions (including remuneration) of the service contracts with the chairman and members of the Management Board.

⁷⁷² The Estonian FSA hosts a website at www.fi.ee (visited on 7 February 2010).

⁷⁷³ Originally designed to become a separate legal entity, it was attached to Eesti Pank as a political compromise. Therefore, the Estonian FSA forms part of the legal personality of Eesti Pank.

From a financial point of view, the Supervisory Board approves, on the proposal of the Management Board, the budget, supplementary budget and operating strategy of the FSA and approves, on the proposal of the Management Board, the bases for developing the structure of the FSA and for the payment of remuneration. In addition, insofar as the FSA is financed by the financial institutions subject to its supervision,⁷⁷⁴ the Estonian FSA makes proposals to the Estonian Minister of Finance concerning the rate of the share of the supervision fee calculated on the basis of assets for the following budgetary year.

While Eesti Pank thus has significant control over the FSA, the FSA, together with its Management Board, is accountable for supervisory failures. While Eesti Pank has a potential exposure to liabilities resulting from supervisory decisions taken by the FSA's management board, the above institutional, financial and financial stability legal safeguards could, taken together, be regarded as sufficiently protecting the independence of Eesti Pank and, in particular, the independence of the Governor of Eesti Pank in the discharge of his ESCB-related tasks. Article 35 (1) of the Estonian FSA Act stipulates that the expenses of the FSA shall be covered from the compulsory payments made by the subjects of financial supervision pursuant to the provisions of that Act and, in the case provided for in Article 45 (supplementary budget), from the funds prescribed in the budget of Eesti Pank and appropriations prescribed in the State budget. If the budgetary funds are not sufficient to cover the extraordinary expenses incurred by the FSA during a budgetary year, a supplementary budget shall be drawn up as set forth in Article 45 of the Estonian FSA Act. The peculiarity of the supplementary budget is that although the budget is to be drawn up by the Management Board and approved by the Supervisory Board, Eesti Pank and the Government of the Republic of Estonia are required to make the contributions to the supplementary budget (see Article 35 (1) above).

The financial relationship between the FSA and Eesti Pank/the Ministry of Finance has to be interpreted in the light of the fact that Eesti Pank currently operates under a currency board system. The currency board arrangement is based on the Act on the Security of the Estonian Kroon, which will, of course, be repealed on adoption of the euro as the currency of Estonia. Under the currency board arrangement, Eesti Pank is able to provide only a fraction of its assets for financial assistance because Eesti Pank has the capacity to provide liquidity only within the limitation of its excess foreign exchange reserves. This implies that any further

⁷⁷⁴ The supervision fee consists of the capital share and the share calculated on the basis of assets. The supervision fee is paid into the account of the FSA at Eesti Pank.

financial assistance would have to be paid from the State budget until Estonia adopts the euro.

However, following the adoption of the euro, the issue is whether there would be any violation of the monetary financing prohibition. As has been noted earlier in Section 4.3.2.3, any financial contribution made by an NCB to a supervisory authority may be justified only to the extent that it forms an integral part of the NCB's overall contribution to the policy-making and policy implementation function. If an NCB carries out the functions of prudential supervision, the financing of its own supervisory activities by NCBs (including autonomous bodies forming part of legal personality of the NCB) cannot be regarded as monetary financing since under Article 8(2) of Council Regulation No 3603/93 central banks do not form part of the public sector. In the absence of any influence on prudential supervisory or financial stability policy-making of the competent national authorities by the NCB, this NCB cannot provide funds to the independent supervisory authority; otherwise, the functional and financial independence of the ESCB would be seriously undermined, and such an activity would breach the monetary financing prohibition. Following the above, one would need to consider how to strengthen the role of Eesti Pank with regard to the Estonian FSA. At this stage, there are no drafting suggestions made in Table 5-1.

The Estonian FSA Act is silent on how the supervisory board would obtain funds from the Eesti Pank budget or the State budget, which might become a more relevant issue when Eesti Pank no longer operates under a currency board system. As the Estonian FSA has no means to impose an obligation to Eesti Pank and/or the Government of the Republic, Eesti Pank and the Government would have to come to a conclusion on how the contributions to the supplementary budget shall be made. If the State declined to contribute, then it is likely that Eesti Pank would be under a legal obligation to make whatever financial contributions are necessary to ensure that an agency within Eesti Pank (i.e. the FSA) is in a position to meet its financial obligations. Article 4(2) of the Estonian FSA Act sets forth that the FSA conducts financial supervision in the name of the State; accordingly, it follows from Article 58(1) of the Estonian FSA Act that the liability of the FSA for rights violated or damage caused in the

conduct of financial supervision, the bases and procedure for the restoration of violated rights and the payment of compensation for damage shall be provided by law.⁷⁷⁵

If the damage is not related to the conduct of financial supervision, then provisions of private law apply and, as set forth in Article 58(2) of the Estonian FSA Act, the FSA shall be liable within the limits of the funds prescribed in its budget. If the funds prescribed in the budget of the FSA are not sufficient, Eesti Pank shall compensate for the damage. This is because the FSA does not have legal personality and all its assets therefore belong to Eesti Pank.

5.4 Conclusions of Chapter 5

On the basis of the discussions in Chapters 2, 3 and 4 and subsequent conclusions, a legal framework for the Eurosystem NCB can be drawn. Leaving out the provisions in the Treaties and the Statute that would apply directly, most of the issues that need to be regulated concern procedural matters that are necessary in a situation where monetary policy is delegated to the supranational level. As has been shown throughout the discussions, although there is some harmonisation, the NCB Statutes are not standardised in this regard and they tend to address issues in accordance with their respective national legal system.

Against this background, the Estonian NCB Statute appears to be rather accommodative after all the changes that have been made since its adoption in 1993. It needs to be borne in mind that the Estonian NCB Statute is a constitutional law and cannot therefore be changed so easily.

Apart from Article 111 of the First Act, which remains problematic from the functional independence point of view, the Estonian NCB Statute adequately addresses the functional, institutional and fiscal independence of Eesti Pank together with the requirements on accountability and transparency. Furthermore, within the framework of prudential supervision and the stability of the financial system, Eesti Pank appears to be sufficiently established to carry out its tasks, but would still need some strengthening in order to avoid any monetary financing in this regard. As this would require further analysis, no drafting suggestions have been put forward.

⁷⁷⁵ The law in question is *Riigivastutuse seadus* (State Liability Act), which covers the entire public sector, including the FSA as far as financial supervision is concerned. Article 12 (1) of the State Liability Act stipulates that the public authority whose activities caused damage is required to compensate the injured person for damage. If the FSA budget is insufficient, the procedures of Articles 35 and 45 of Estonian FSA Act apply. This would imply that if the State declined to contribute, then it is likely that Eesti Pank would be under a legal obligation to make whatever financial contributions are necessary to ensure that an agency within Eesti Pank (i.e. the FSA) is in a position to meet its financial obligations.

Therefore, the changes that have been proposed in Table 5-1 represent either those parts of legislation that require further clarification or issues for which a clear legal basis needs to be established.

Annex: Postscript

In this postscript, I will address the period between 1 September 2010 (when I substantially completed the manuscript) and the end of the year in order to supplement my thesis with the most recent developments.

I will first address the general issues, among others the financial crisis and the sovereign debt market turmoil. Second, I will provide an update on the developments regarding the central bank independence. Third, I will address the European Union's new supervisory structure as of 1 January 2011. A conclusion will summarise the postscript.

General issues

The year 2010 will be remembered by the financial crisis and the turmoil in sovereign debt markets. This has highlighted challenges to the supervisory arrangements at the supranational level as well as the need to address the European Union's (and the euro area's in particular) economic governance.

The EFSM, which was established by Council Regulation (EU) No 407/2010 of 11 May 2010⁷⁷⁶ constitutes according to the Commission 'an important pillar of the European framework for addressing the current exceptional circumstances'.⁷⁷⁷ However, the creation of the EFSM has also been met with the opposition, arguing that the financing provided under Council Regulation (EU) No 407/2010 would infringe the prohibition under Article 125 of the Treaty on the Functioning of the European Union (TFEU) and that it is not covered by the enabling provision of Article 122 TFEU.⁷⁷⁸

On 20 September 2010, Moody's Investors Service Inc., Standard & Poor's Corp., and Fitch Ratings informed that they will all assign the highest available credit rating to debt issued by the EFSF, a Luxembourg-based private-law vehicle that will issue guaranteed debt to raise money for euro-zone member countries that can't borrow on the markets.⁷⁷⁹ A few days later,

⁷⁷⁶ Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12.5.2010, p. 1. See also Decision ECB/2010/17 of 14 October 2010 concerning the administration of the borrowing and lending operations concluded by the Union under the European financial stabilisation mechanism, OJ L 275, 20.10.2010, p. 10.

⁷⁷⁷ Communication from the Commission to the Council and the Economic and Financial Committee on the European Financial Stabilisation Mechanism, 30.11.2010, COM(2010) 713 final, p. 2. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0713:FIN:EN:PDF> (visited on 7 December 2010).

⁷⁷⁸ For example, Case T-259/10: Action brought on 8 June 2010 – Ax v Council.

⁷⁷⁹ See Brown, 2010.

an idea of making the EFSF a permanent EU body was floated.⁷⁸⁰ Euro-area finance ministers agreed on 28 November 2010 the future European Stability Mechanism (ESM) to replace the current EFSF as of mid-2013, if the anticipated Treaty amendments will enter into force.⁷⁸¹

This agreement coincided with the crisis in Ireland. Further to the Greek sovereign debt crisis in spring, on 1 September 2010 the revelation of colossal losses by the Anglo Irish Bank⁷⁸² started a process which culminated with the Irish Government submitting a request for financial assistance on 22 November 2010⁷⁸³ and lead to financial markets doubts on the budgetary sustainability of Spain and Portugal.

On 29 September 2010 the Commission introduced its response to the challenges in the European Union's economic governance, by introducing six legislative initiatives:

- 1) COM (2010) 522 Proposal for a Council Regulation amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure;
- 2) COM (2010) 523 Proposal for a Council directive on requirements for budgetary frameworks of the Member States;
- 3) COM (2010) 524 Proposal for a Regulation of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area;
- 4) COM (2010) 525 Proposal for a Regulation of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area;
- 5) COM (2010) 526 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies;

⁷⁸⁰ See Bofinger, Enderlein, Padoa-Schioppa, & Sapir, 2010.

⁷⁸¹ See Statement by the Eurogroup, 28 November 2010, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/118050.pdf (visited on 9 December 2010).

⁷⁸² See Noonan, 2010.

⁷⁸³ Council approves aid to Ireland, sets out conditions, Press release, Brussels, 7 December 2010, available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/118260.pdf (visited on 7 December 2010). See also Commission Staff Working Paper 'Ireland financial assistance programme documents', 3 December 2010, SEC(2010) 1516 final, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1516:FIN:EN:PDF> (visited on 7 December 2010). See also statement by the Eurogroup on 28 November 2010, available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/118050.pdf (visited on 7 December 2010), statement by the Eurogroup and ECOFIN Ministers on 28 November 2010, available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/118051.pdf (visited on 7 December 2010).

6) COM (2010) 527 Proposal for a Regulation of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances.

However, the Commission did not produce any legal drafting regarding the conditionality of the Cohesion Fund or Structural Funds⁷⁸⁴ nor the legal statistical framework.

The proposals are based on Article 121(6) TFEU' [see COM (2010) 526, COM (2010) 527], the second subparagraph of Article 126(14) TFEU [see COM (2010) 522], the third subparagraph of Article 126(14) TFEU [see COM (2010) 523], and Article 136 in combination with Article 126(6) TFEU [see COM (2010) 524, COM (2010) 525].

Procedurally, Article 121(6) TFEU foresees that the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure may adopt detailed rules for the multilateral surveillance. The second subparagraph of Article 126(14) foresees an adoption of 'appropriate legal provisions' by the Council after consulting the European Parliament and the ECB; the third subparagraph of Article 126(14) TFEU foresees adoption of detailed rules and definitions by the Council after consulting the European Parliament. Article 136(1) TFEU provides that the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126 TFEU, with the exception of the procedure set out in Article 126(14) TFEU, adopt measures specific to those Member States whose currency is the euro: (a) to strengthen the coordination and surveillance of their budgetary discipline; (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole Union and are kept under surveillance. Legal implications concerning the choice of legal basis have been addressed in the enclosed annex.

The Commission introduced a 'reversed qualified majority voting' procedure in COM (2010) 524 and COM (2010) 525, making at the same time no change in the decision-making process in COM (2010) 522 (excessive deficit procedure), COM (2010) 526 (multilateral

⁷⁸⁴ Under Article 175 TFEU Structural Funds are referred to as including (1) European Agricultural Guidance and Guarantee Fund, Guidance Section; (2) European Social Fund; (3) European Regional Development Fund). The Cohesion Fund is referred to in Article 177 TFEU. A short summary of the funds is available at http://europa.eu/scadplus/glossary/structural_cohesion_fund_en.htm (visited on 7 September 2010).

surveillance). Against this background, the ‘reversed qualified majority voting’ procedure is regulated neither in Article 121 nor 126 TFEU.⁷⁸⁵

For the euro area Member States, a new set of sanctions had been introduced. In the preventive part of the Stability and Growth Pact, an interest-bearing-deposit is required in COM (2010) 524. In the corrective part of the Stability and Growth Pact, a non-interest bearing deposit and a fine have been introduced in COM (2010) 524 in order to grant effective enforcement of budgetary surveillance in the euro area. A yearly fine of 0.1% of GDP may be imposed in COM (2010) 525 for not complying with the successive deadlines set in COM (2010) 527. There is another fine up to 0.5% of a Member State’s GDP under COM (2010) 522 for the excessive deficits.

With the exception of the excessive deficit procedure, the sanctioning regime however is softened by the options to reduce or terminate the non-interest bearing deposits or fines on the grounds of exceptional economic circumstances or following a reasoned request by a Member State.

On 21 October 2010, the Task Force to the European Council, also known as the Van Rompuy Task Force that was established by the European Council of 25-26 March 2010 finalised its proposals regarding the strengthening of the economic governance in the EU.⁷⁸⁶

State aid to the financial sector continued to be an issue. On 4 October 2010, EU Commissioner Joaquín Almunia indicated to the press that that EU governments will be allowed to continue providing support to banks and businesses for another year.⁷⁸⁷ The Commission maintains a constantly updated overview of national measures adopted as a response to the financial/economic crisis on its website.⁷⁸⁸

⁷⁸⁵ This procedure however bears some similarities with the procedure described in Articles 9(4), 13(3) and 14(4) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (Codified version), OJ L 343, 22.12.2009, p. 51, as well as Articles 15(1), 23(4) and 24(4) of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community, OJ L 188, 18.7.2009, p. 93, whereby the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee, would adopt the proposal unless the it decides by a simple majority to reject it, within a period of one month after its submission by the Commission.

⁷⁸⁶ European Council. Strengthening economic governance in the EU – Final Report of the Task Force to the European Council, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/117236.pdf (visited on 6 December 2010).

⁷⁸⁷ See Tait, EU nations win a year's reprieve on state aid, 2010.

⁷⁸⁸ Available at http://ec.europa.eu/competition/state_aid/register/ii/ (visited on 10 December 2010).

Central Bank Independence

In the field of central bank independence, three events need to be addressed. First, contrary what was expected in the thesis, Article 14.2 of the Statute and the grounds of removal did not materialise in September. Second, national measures cutting salaries of central bankers reached a new level by the European Commission initiating infringement proceedings under Article 258 TFEU. Third, the central bank for Ireland was significantly reformed.

A Bundesbank Executive Board member Mr. Thilo Sarrazin who caused outrage with remarks about Muslim immigrants and Jews submitted his resignation on 9 September 2010.⁷⁸⁹ As a side effect, his resignation did not make it possible to test the scope of application of Article 14.2 of the Statute, especially the grounds of removal (*[..] relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct*).

In June 2010, the Hungarian authorities announced an austerity plan, part of which also affecting the salaries of the Hungarian NCB. In response to the ECB Opinion CON/2010/56, where the ECB rather clearly stated that the Hungarian authorities have an obligation under Article 130 TFEU to ensure that any amendment to the legislative provisions on the remuneration of the Hungarian NCB's staff is decided in cooperation with the NCB, taking due account of the Hungarian NCB's views,⁷⁹⁰ the respective authorities decided not to do so. In July 2010, the law was passed capping the salary of public employees at 2m forints, requiring Andras Simor, the Governor of the Hungarian NCB, to accept a 75% pay cut.⁷⁹¹ By 8 September 2010, the EU authorities, this time the European Commission, warned Hungary that it must amend a law clapping the pay of NCB employees to avoid infringing the independence of the NCB, indicating its willingness to launch an infringement procedure.⁷⁹²

Salary cuts of central bankers have remained an issue also elsewhere, and austerity measures adopted by the Member States tend also to address NCBs.⁷⁹³

The Irish Central Bank Reform Act of 2010 created a new single unitary body – the Central Bank of Ireland - responsible for both central banking and financial regulation. The new

⁷⁸⁹ See Ternieden, 2010; Breidhart, 2010.

⁷⁹⁰ See paragraph 3.4 of ECB Opinion CON/2010/56 of 12 July 2010 on amendments to the Law on the Magyar Nemzeti Bank introducing salary reductions, available at http://www.ecb.int/ecb/legal/pdf/en_con_2010_56_f_sign.pdf.

⁷⁹¹ See Bryant, 2010.

⁷⁹² See Simon, 2010.

⁷⁹³ See, for example, ECB Opinion CON/2010/80 of 12 November 2010 on Banco de Portugal's staff remuneration and the budget, available at http://www.ecb.int/ecb/legal/pdf/en_con_2010_80_f.pdf.

structure replaces the previous related entities, the Central Bank and the Financial Services Authority of Ireland and the Financial Regulator. The Act commenced on 1 October 2010.⁷⁹⁴

Financial Stability

With regard to financial stability, there are also several developments that merit further attention. First, there will be the reform of financial supervision, establishing four new authorities. Second, state aid to financial sector continues to be an issue. Third, in addition to the credit and financial institutions in trouble, sovereign debt crisis emerged which lead to the establishment of new bodies to tackle the issues.

On 1 September 2010, the public learned about a long-awaited agreement on reform of financial supervision, paving the way for the establishment of three pan-EU watchdogs to oversee controls on banks and insurers in the region from next year.⁷⁹⁵ The Council adopted legal texts establishing the ESRB, the EBA, the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA) on 17 November 2010.⁷⁹⁶ EBA, EIPA and ESMA are also commonly referred to as ESAs. All four new bodies will constitute the ESFS.

The ESRB's role will be macro-prudential oversight. Within this task, it is assigned to monitor and assess potential threats to the stability of the financial system. Where necessary, it will issue warnings and recommendations for remedial action and will monitor their implementation.

The ESRB will be chaired by the President of the ECB for an initial term of five years. For subsequent terms, the ESRB's president will be designated in accordance with modalities to be determined following a review.

A Steering Committee will set the ESRB's work agenda and prepare decisions. It will comprise the board's chairperson and first vice-chairperson, the vice-president of the ECB, four other members of the general board who are also members of the ECB's General Council, the chairpersons of the three ESAs, a member of the Commission, the chairpersons of two advisory committees and the president of the EFC. The Steering Committee will be

⁷⁹⁴ See also ECB Opinion CON/2010/48 of 17 June 2010 on a draft law relating to the restructuring of the Central Bank and Financial Services Authority of Ireland, available at http://www.ecb.int/ecb/legal/pdf/en_con_2010_48_fsign.pdf.

⁷⁹⁵ See Tait, Deal paves way for pan-EU financial watchdogs, 2010.

⁷⁹⁶ Council of the European Union, Brussels, 17 November 2010, 16452/10 (Presse 303), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/117747.pdf (visited on 10 December 2010). The ESRB and the EIOPA will be sited in Frankfurt, the EBA in London and the ESMA in Paris.

supported by the Advisory Scientific Committee, composed of the Chair and 15 independent experts, the Advisory Technical Committee, and the ESRB Secretariat.

The General Board will comprise the president and vice-president of the ECB, the governors of the central banks of the Member States, the chairpersons of the three ESAs, a member of the Commission, chairpersons and vice-chairpersons of two advisory committees and (as non-voting members) the president of the EFC and representatives of each of the national supervisory authorities.

ESAs will replace three existing committees of supervisors at EU level, namely the CEBS, the CEIOPS and the CESR and will have legal personality under EU law.

The ESAs will comprise high-level representatives of all of the Member States' supervisory authorities under permanent chairmanships. National authorities will remain responsible for the day-to-day supervision of individual firms, and a joint committee will be set up to ensure cooperation and to coordinate the sharing of information between the ESAs and the ESRB.

The ESAs will be responsible for ensuring that a single set of harmonised rules and consistent supervisory practices are applied by supervisory authorities of the Member States.

According to the texts adopted by the Council, the ESAs will have the authority in three main areas:

1. to investigate alleged breaches of EU law and, if necessary take an individual decision addressed to a financial institution;
2. in emergency situations adopt individual decisions requiring the competent authorities to take the necessary measures;⁷⁹⁷
3. in the event of disagreements between competent authorities of different Member States, and where mediation by the ESA has failed, to take binding decisions requiring them to take specific action in order to settle the matter, in order to ensure compliance with EU law.

Preliminary assessment of the texts adopted by the Council, however relieves, that the fiscal responsibilities of Member States for financial supervision cannot be affected by decisions taken by the ESAs, and that mainly their activities are concentrating on standard-setting, coordination and information-sharing. The legal nature of guidelines and recommendations issued by ESAs is at the moment unclear and could be subject to a further review.⁷⁹⁸

⁷⁹⁷ However, it would be for the Council, in consultation with the Commission and the ESRB (and where appropriate the ESAs), to determine the existence of an emergency situation.

⁷⁹⁸ The case of the ECB issuing guidelines could set an example here, see footnote 54.

With regard to the supervision of credit rating agencies, the Belgian Presidency introduced on 3 December 2010 a compromise,⁷⁹⁹ with the idea that ESMA should be responsible for the registration and on-going supervision of credit rating agencies; however it should not be responsible for the oversight of the users of credit ratings.

In terms of governance, each of the ESAs shall have the Board of Supervisors, the Management Board, the Chairperson as well as the Executive Director and the Board of Appeal. Further, there will be a Joint Committee of European Supervisory Authorities.

Conclusions

The legal framework for Eurosystem NCB is constantly changing and affecting the functioning of the EMU. In 2010, the need to reform the Euro area governance was made clear to everybody. It remains to be seen whether the legislative initiatives reforming the Stability and Growth Pact will have the desired effect. De facto governance reform for the Euro area was carried out during 2010 by Union secondary legislation and the Member States establishing additional mechanisms outside the Treaties. While these developments were applauded by many, there have also been criticisms towards the steps made and the legality of the measures as such.

The austerity measures carried out by the EU Member States have also affected the NCBs, undermining their financial independence. The year 2010 was also significant for the concept of ‘personal independence’, although the grounds of removal under Article 14.2 of the Statute have not been formally exercised.

On the positive side, the year 2010 will probably be remembered by the reform process of the European supervisory architecture, the creation of four supervisory bodies at the EU level.

Andres Tupits

10.12.2010

⁷⁹⁹ Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1060/2009 on credit rating agencies - Presidency compromise, 2010/0160 (COD) 3 December 2010, available at <http://register.consilium.europa.eu/pdf/en/10/st17/st17374.en10.pdf> (visited on 7 December 2010).

Annex: List of Tables

Table 2-1 NCB decision-making bodies

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
Austria	16	The General Meeting shall be entitled: 1. to receive the report of the General Council on the conduct of business during the previous financial year; 2. to approve the annual accounts and discharge the General Council and the Governing Board from liability for the financial period after hearing the report of the Auditors;	No		
	20(1)	The General Council shall be charged with the supervision of all business not falling within the remit of the ESCB	No		
	20(2)	The General Council shall advise the Governing Board in the conduct of the Bank's business and in matters of monetary policy. These joint meetings of the General Council and the Governing Board shall take place at least once every quarter			
	21(1)	The approval of the General Council shall be required to: 1. start and discontinue lines of business, with the exception of those set out in Chapter X; 2. establish and close down branch offices; 3. acquire and sell participating interests; 4. purchase, sell and mortgage real property; 5. appoint members of supervisory boards and executive bodies of companies in which the Oesterreichische Nationalbank is a shareholder; 6. appoint officers of the second executive tier of the Oesterreichische Nationalbank itself.			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	21(2)	<p>The General Council shall have exclusive right of decision on the following matters:</p> <ol style="list-style-type: none"> 1. drawing up nonbinding tripartite proposals to the Federal Government for appointments to the Governing Board by the Federal President; 2. passing resolutions with regard to the conditions of employment applicable to the members of the Governing Board and the other employees of the Oesterreichische Nationalbank as well as with regard to the provisions governing remuneration and pensions of the foregoing, and concluding employment contracts with the members of the Governing Board; 3. defining general operational principles in matters relating to Article 4; 4. authorizing items of expenditure not provided for in the cost estimates for the year in question; 5. approving the annual accounts for submission to the General Meeting and approving the cost estimates for the next financial year; 6. laying down rules of procedure for the General Council and the Governing Board. 			
	21(5)	The power of the General Council to take and approve decisions on matters set out in paragraphs 1 and 2 shall be restricted to the extent that decisions it takes shall not interfere with the performance of the tasks of the ESCB			
	32(1)	The Governing Board shall be responsible for the overall running of the Bank and shall conduct the business of the Oesterreichische Nationalbank. In pursuing the objectives and tasks of the ESCB the Governing Board shall act in accordance with the guidelines and instructions of the ECB. In matters other than those covered by the remit of the ESCB	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		the Governing Board shall take decisions independently, insofar as these do not relate to matters on which the General Council has exclusive right of decision, or to matters which require the approval of the General Council.			
	32(4)	The Governing Board shall represent the Bank both in courts of law and extra judicially.			
	33(1)	The Governing Board shall comprise the Governor, the Vice Governor and two further members.			
	34(1)	The Governor shall be a member of the Governing Council of the ECB (Article 109a paragraph 1 of the Treaty, Article 10 of the ESCB/ECB Statute) and of the General Council of the ECB (Article 45 of the ESCB/ECB Statute). The Governor and his deputy shall not be bound, in performing these functions, either by the decisions of the Governing Board or by those of the General Council, nor shall they be subject to any other instructions.	Yes	Yes	Yes
	36(1)	The Governing Board shall be convened by the Governor whenever necessary and shall meet under his chairmanship. The President and the Vice President of the General Council shall have the right to attend these meetings in an advisory capacity.			
	36(3)	Each of the Executive Directors or, in the absence of an Executive Director, his deputy (Article 35 paragraph 3) shall have one vote each where votes are to be taken. Decisions shall be taken by simple majority vote. In case of a tie, the chair shall have the casting vote. Apart from his own vote, an Executive Director may have one additional vote as deputy.			
Belgium	17 27 Articles of Association	The organs of the Bank shall be the Governor, the Board of Directors, the Council of Regency and the Board of Censors.			
	18(1)	The Governor shall direct the Bank and preside over the	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Board of Directors and the Council of Regency.			
	19(1)	In addition to the Governor, who presides, the Board of Directors shall be composed of at least five but not more than seven directors, one of whom shall bear the title of Vice-Governor, conferred on him by the King. The Board of Directors shall include an equal number of French and Dutch speakers, with, possibly, the exception of the Governor.			
	20(1) 30(1) Articles of Association	The Council of Regency shall be composed of the Governor, the directors and ten regents. It shall include an equal number of French- and Dutch-speaking regents.			
	28(1) Articles of Association	The Governor shall direct the Bank; he shall preside over the Board of Directors and the Council of Regency. He shall have their decisions implemented. He shall be required to reside in Brussels.			
	29(2); (3); (4); (5) Articles of Association	The Board shall be responsible for the administration and management of the Bank and shall decide on the direction of its policy. It shall appoint and dismiss members of staff, fix their salaries and the allocation of the profit share assigned to the staff or to institutions in its favour. It shall have the right to make settlements and compromises. It shall exercise regulatory power in the cases laid down by law. It shall decide on the investment of the capital, reserves and depreciation accounts after consultation with the Council of Regency and without prejudice to the rules adopted by the ECB. It shall pronounce upon all matters which are not expressly reserved for another organ by law, the Statutes or the internal regulations.	Yes		
	30(2)-(9) Articles of Association	The Council shall exchange views on general questions concerning the Bank, monetary policy and the economic situation of the country and the European Community. It	N/A		

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		shall take cognisance every month of the situation of the institution. On a proposal from the Board of Directors it shall lay down the internal regulations, containing the basic rules for the operation of the Bank's organs and the organisation of its departments, services and outside offices. It shall make proposals for the appointment of agents of the State Cashier and shall set the amount of their sureties. It shall approve the report to be presented annually by the Governor to the General Meeting on the company's operations. It may specially delegate some of the above-mentioned powers to the Board of Directors. The Council shall fix the individual salaries and pensions of the members of the Board of Directors. These salaries and pensions may not include a share in the profits, and no remuneration whatsoever may be added thereto by the Bank, either directly or indirectly. The Bank shall, however, meet the governor's housing and furniture expenses. The Council shall approve the expenditure budget and the annual accounts submitted by the Board of Directors. It shall finally determine the distribution of profits proposed by the Board. The regents shall receive attendance fees and, if appropriate, a travel allowance. The amount of such remunerations shall be fixed by the Council of Regency.			
	32(1) Articles of Association	The Board of Censors shall be composed of ten members. It shall include an equal number of French and Dutch speakers. The members of the Board of Censors must be Belgian. The Board shall choose its chairman and its secretary from among its members.			
	32(2) Articles of Association	The Board of Censors' task shall be to supervise the preparation and implementation of the budget. The censors shall receive an allowance, the amount of which shall be set	No		

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		by the Council of Regency.			
	57(1) Articles of Association	The General Meeting shall represent the totality of the shareholders. It shall be presided over by the Governor.			
	65 Articles of Association	The General Meeting shall deliberate : 1° concerning the matters mentioned in the convening notices and concerning those submitted to it either by the Council of Regency or by the Board of Censors; 2° concerning proposals, signed by five members, which have been brought to the attention of the Council of Regency at least ten days before the meeting for inclusion in the agenda. If the meeting acknowledges the urgency of other proposals made by the Council of Regency, these shall be included in the deliberations.	No		
	71(1) Articles of Association	The Governor shall sign agreements, settlements and documents of all kinds without being required to furnish proof of any power whatsoever vis-à-vis third parties. He may delegate this authority.			
Bulgaria	10	The management of the Bulgarian National Bank shall be carried out by the Governing Council, the Governor and the three Deputy Governors elected to directly manage the basic departments referred to in Article 19.			
	11(1)	The Governing Council shall consist of seven members: the Governor of the Bank, the three Deputy Governors, and three other members.			
	16	The Governing Council shall: 1. consider and adopt major guidelines for its activity; 2. adopt legislative acts concerning the Bank's activity; 3. fix interest rates for this Bank's operations;	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>4. fix the percentage of the minimum reserves to be held by banks and approve the conditions and requirements for their fulfilment;</p> <p>5. set rules and requirements regulating bank activities;</p> <p>6. adopt rules of procedure for this Bank's activities;</p> <p>7. pass upon the introduction and discontinuance of particular activities of the Bank;</p> <p>8. open and close down branches and representative offices of the Bank;</p> <p>9. take decisions for issuing new banknotes and coins, and set the time limits after which the banknotes and coins cease to be legal tender and within which banknotes and coins called in have to be exchanged;</p> <p>10. regularly consider reports on the activities of the Bank's basic departments;</p> <p>11. define the way and competences for the charge-off of uncollectable receivables of the Bulgarian National Bank as a loss;</p> <p>12. adopt decisions for participation of the Bulgarian National Bank in international organizations and in initiatives and activities undertaken by such organizations;</p> <p>13. approve the annual budget, the annual balance sheet and the report under Article 51 as presented by the Governor;</p> <p>14. be responsible for establishing and maintaining an efficient internal control system at the Bulgarian National Bank and its subsidiaries adequate to the inherent risks to its activities;</p> <p>15. consider and resolve any other issues concerning the Bank's activity.</p>			
	17(1)	The Governing Council may hold a session if more than one half of its members are present.			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	17(2)	Decisions of the Governing Council shall be adopted by a majority of the members present but shall require the affirmative vote of no less than four votes.			
	17(3)	Abstention from voting shall not be permitted except in the cases under paragraph 4.			
	17(4)	Members of the Governing Council shall not participate in the deliberation and shall abstain from decision-making on issues in which they or members of their families may have interest. They must notify the Governing Council in advance of any such interests.			
	18(1)	The Governor of the Bulgarian National Bank shall organize, direct and supervise the activities of the Bank, other than those mandated by this or another law exclusively to the Deputy Governors, and shall represent the Bank at home and abroad. He may delegate some of his competences to other officials.	Yes		
	18(2)	The Governor may establish consultative councils in support of his functions.			
Cyprus	8	The organs of the Bank shall be the Board of Directors, the Governor and the Deputy Governor			
	12	The Board of Directors of the Bank (hereinafter referred to as "the Board") shall consist of the Governor, the Deputy Governor and five directors			
	15(1)	The Board shall have the following main tasks: (a) to supervise the administration of the Bank; (b) to define and implement the policy of the Bank, in accordance with sections 5 and 6, on all matters which concern the Bank, save for the matters which fall within the fields of competence of the European System of Central Banks.	No		
	15(2)	For the achievement of the main tasks provided in subsection			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		(1), the Board may perform all other tasks incidental thereto.			
	17(4)	When exercising the duties and tasks in pursuance of the objectives laid down in section 5, the members of the Board shall take due account of the Governor's capacity as a member of the Governing Council and General Council of the European Central Bank.		Yes	Yes
	20(1)	Subject to Article 119 of the Constitution, the Governor as the chief executive officer of the Bank, shall have the following tasks: (a) to carry out the policy of the Bank; (b) to manage and control the business of the Bank; (c) to act in connection with the conduct of the business of the Bank, in all matters which are not reserved for the Board; (d) to appoint, suspend or dismiss any employees of the Bank.	Yes		
	20(3)	(a) The Governor shall seat, ex officio, as an independent personality, in the General Council and the Governing Council of the European Central Bank and shall have the exclusive competence to (i) carry out the tasks and exercise the powers conferred upon the Bank by or in accordance with the provisions of the Treaty or the Statute; and to (ii) oversee the of payment and/or clearing and settlement systems. (b) Without prejudice to the powers of the European System of Central Banks and of the European Central Bank and subject to the provisions of the Treaty and of the Statute, the Governor may issue directives for the achievement of the tasks referred to in paragraph (a).	Yes		
	20(4)	The Governor, as the chief representative of the Bank, shall have the following tasks: (a) to represent the Bank in all its relations with other persons, including the Government; (b) to represent the Bank, either personally or through counsel, in all legal proceedings to which the Bank is a party; (c) to	Yes		

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		sign contracts, concluded by the Bank, and the annual reports, financial statements, correspondence and other documents of the Bank; (d) to delegate the exercise of any of his powers provided for in paragraphs (a), (b) and (c) to other employees of the Bank upon his own responsibility.			
	20(5)	Without prejudice to the provisions of subsection (2) and subject to the provisions of the Treaty and of the Statute, the Governor shall keep the Board informed on all current matters which require its attention and shall, as far as practicable, provide it with such data and information as will facilitate it in the formulation of its decisions and policies. Provided that the Governor shall, furthermore, submit to the Board, for adoption, draft measures or resolutions which in his view are necessary to make the objectives and policies of the Board effective.	Yes		
The Czech Republic	5(1)	The supreme governing body of the Czech National Bank shall be the Bank Board of the Czech National Bank (hereinafter referred to as the “Bank Board”). The Bank Board shall set monetary policy and the instruments for implementing this policy, and shall decide upon the fundamental monetary policy measures of the Czech National Bank.			
	5(2)	Furthermore, the Bank Board shall, in particular: a) set forth the principles for the activities and transactions of the Czech National Bank; b) approve the budget of the Czech National Bank, c) set forth the organisational structure and fields of competence of the organisational units of the Czech National Bank; d) define the types, amounts and uses of the funds of the Czech National Bank;	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		e) execute the rights and duties arising from labour-law relations in respect of the staff of the Czech National Bank. The Bank Board may delegate these activities to other members of staff; f) grant its consent to the entrepreneurial activities of the staff of the CNB. g) fix the salary and other emoluments of the Governor; the salaries and other emoluments of Vice-Governors and other members of the Bank Board shall be fixed by the Governor.			
	6(1)	The Bank Board shall consist of seven members, comprising the Governor of the Czech National Bank, two Vice-Governors of the Czech National Bank and four other members of the Bank Board of the Czech National Bank.			
	7(1)	The Governor, or, in his absence, a Vice-Governor nominated by him, shall chair the meetings of the Bank Board. The Bank Board shall act by a simple majority of the votes cast. The Bank Board shall have a quorum if the Governor, or his nominee, and at least three other members of the Bank Board are present. In the event of a tie, the chairperson shall have the casting vote.			
	8	The Governor shall represent the Czech National Bank externally. In his absence, a Vice-Governor nominated by him shall act on his behalf.	Yes		
Denmark	3(1)	The management of the Bank shall be committed to a Board of Directors, a Committee of Directors and a Board of Governors.			
	4 By-laws	All matters of special importance which may be considered to be outside the domain of daily management shall to the greatest extent possible be submitted to the Board of Directors. However, if the case be so urgent, that in the	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>opinion of the Board of Governors the decision cannot prudently be postponed until such submission, the Board of Governors shall act, if possible after preceding deliberation with the Committee of Directors, and shall see to it that the case as soon as possible be submitted to the Board of Directors.</p> <p>The Board of Directors shall supervise that the rules governing the functions of the Bank as laid down in the National Bank of Denmark Act and in these present By-laws be observed, thereunder that notes are not issued in violation of the rules prescribed.</p> <p>After the expiration of every three months the Board of Governors shall submit to the Board of Directors balance sheets from the ledgers of the Bank, and a statement on the funding of the note circulation. Moreover, at the quarterly meeting the Board of Governors shall report on the more important business done in the Bank since the latest quarterly meeting.</p> <p>It shall be the duty of the Board of Directors:</p> <ol style="list-style-type: none"> 1) To elect on the recommendation of the Committee of Directors 2 of the 3 Governors of the Bank. A majority of all the Directors shall be required to validate the election of a Governor. 2) To draw up the By-laws governing the functions of the Bank under § 26 of the National Bank of Denmark Act, and submit the said By-laws to the Royal Bank-Commissioner for confirmation. 3) To decide on the establishment and closing of branches. 4) To make regulations for the salaries and old age pensions of all the officials of the Bank inclusive of the Governors. 			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>5) To elect every three months 2 directors, who together with a member of the Committee of Directors are to examine the holdings and engagements of the Bank from samples of these drawn at random. The said directors shall in each single case be free to determine what departments of the Bank they wish to examine.</p> <p>6) On the basis of the report of the Board of Governors and the Committee of Directors to go through the annual accounts of the Bank, to decide upon writings-off and allocations etc., to determine the application of the annual profit and to submit the annual accounts to the Royal Bank-Commissioner for approbation.</p> <p>7) To make decisions pursuant to § 13 of the National Bank of Denmark Act concerning permission to deviate from the funding rules laid down in the said Act.</p>			
	7 By-laws	<p>The Committee of Directors shall keep itself informed as regards the more important sides of the functions of the Bank.</p> <p>It may at any time demand from the Board of Governors such information as it might consider necessary in order to comply with the duties laid upon it.</p> <p>The Committee of Directors and the Board of Governors should mutually enter into negotiation and deliberation on cases and matters which are of a more general importance for the functions of the Bank, thereunder the rules governing the granting of advances, even though a submission to the Board of Directors be not required.</p> <p>All matters placed before the Board of Directors shall first be submitted to the Committee of Directors. The Committee reports to the Board of Directors on the matter; the report may be accompanied by the recommendations of the Board</p>	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>of Governors. Cases which due to their urgent character cannot be postponed until the submission to the Board of Directors has taken place, shall as far as possible be submitted to the Committee of Directors.</p> <p>At least once every year the Committee of Directors shall examine the more important liabilities of the Bank and have all the assets of the Bank checked in order to ascertain their existence. A report concerning these examinations shall be sent to the Board of Directors.</p> <p>It shall rest with the Committee of Directors to see to it, that the annual accounts under careful consideration of existing assets and liabilities, and with the undertaking of necessary writings-off and allocations have been rendered as proper and cautious business practice dictates. Before the Committee of Directors reports to the Board of Directors, it shall negotiate with the Royal Bank-Commissioner concerning the application of the profit of the year on the basis of the recommendation of the Board of Governors.</p> <p>The Committee of Directors shall see that the daily audit provided for in § 36 is properly organized.</p> <p>Furthermore the Committee of Directors appoints and dismisses on the recommendation of the Board of Governors the officials of the Bank with a higher charge than that of senior clerk, confer § 14, while the other officials are appointed by the Board of Governors.</p>			
	10 By-laws	<p>The Board of Governors shall meet as often as it is deemed necessary. Decisions shall be passed by a majority of votes. In the case of an equality of votes the Governor nominated by the King shall have the casting vote.</p> <p>The Governors shall divide the duties laid upon them by mutual agreement and determine what may be left to a single</p>			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Governor for decision.			
	12 By-laws	The daily management of the Bank shall be vested in the Board of Governors. It shall particularly be the duty of the Board of Governors: 1) To see that all the transactions of the Bank be properly entered into the accounts, and that the staff of the Bank on the whole discharge the duties laid upon them, 2) To watch the safe-keeping of all the assets of the Bank and the valuables entrusted to the Bank, 3) To supervise the printing of the bank-notes and the safekeeping and destruction of cancelled notes, 4) To see that the management of the business of the branches be properly supervised, 5) To report every month to the Royal Bank-Commissioner, the Chairman of the Board of Directors and to the Committee of Directors on the funding of the notes in circulation.	Yes		
Estonia	6	The highest body of Eesti Pank is the Supervisory Board of Eesti Pank, which consists of a Chairman and seven members	No		
	7(1)	The Chairman of the Supervisory Board of Eesti Pank is appointed to office for a term of five years by the <i>Riigikogu</i> on the proposal of the President of the Republic			
	8(1)	The members of the Supervisory Board of Eesti Pank are appointed by the Riigikogu on the proposal of the Chairman of the Supervisory Board of Eesti Pank.			
	8(3)	Members of the Government of the Republic and employees of Eesti Pank shall not be members of the Supervisory Board of Eesti Pank			
	9(1)	The Supervisory Board of Eesti Pank shall exercise supervision over all the activities of Eesti Pank.			
	9(2)	The following issues are within the exclusive competence of			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>the Supervisory Board of Eesti Pank:</p> <ol style="list-style-type: none"> 1) (Repealed) 2) making a proposal to the President of the Republic for appointment of the Governor of Eesti Pank; 3) (Repealed) 4) appointment to office and release of Deputy Governors of Eesti Pank, the heads of the independent divisions and representative offices of Eesti Pank, and the head of the internal audit department of Eesti Pank and for the appointment and removal of members of the Supervisory Board of the Financial Supervision Authority on the proposal of the Governor of Eesti Pank; 5) approval of the statute of Eesti Pank, the statutes of the independent divisions and representative offices of Eesti Pank and the statutes of the internal audit department; 6) supervision of the implementation of the budget of Eesti Pank; 7) appointment of internal auditors of Eesti Pank and approval of the work schedule for internal audits. 7¹) appointment of the independent auditors of Eesti Pank pursuant to the procedure provided in subsection 31 (1) of this Act; 8) approval of Eesti Pank's annual report on the proposal of the Governor; 9) making of decisions concerning the denomination and design of new banknotes and coins; 10) deciding, on the proposal of the Governor of Eesti Pank, on the establishment, reorganisation and liquidation of independent divisions of Eesti Pank; 11) review and approval of written proposals and other documents submitted to the Riigikogu in the name of Eesti Pank. 			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	9(6)	The Supervisory Board of Eesti Pank shall pass decisions and issue statements. The Governor of Eesti Pank shall be responsible for the implementation of decisions of the Supervisory Board of Eesti Pank			
	11(1)	The following issues are within the exclusive competence of the Governor of Eesti Pank: 1) designing of banking policies, general management of Eesti Pank's activities and organisation of the performance of the tasks of the European System of Central Banks; 2) organisation of the implementation of decisions of the Supervisory Board of Eesti Pank and the application of measures (including sanctions) necessary to ensure their implementation; 3) (Repealed) 4) representation of Eesti Pank without special authorisation in all matters and instances both in Estonia and abroad; 5) grant of authorisation to represent Eesti Pank in certain cases or in certain matters; 6) making proposals to the Supervisory Board of Eesti Pank for the appointment to office and release of the Deputy Governors and the head of the internal audit department of Eesti Pank and the heads of the independent divisions of Eesti Pank, and for the appointment and removal of members of the Supervisory Board of the Financial Supervision Authority; 7) approval of Eesti Pank's budget;	Yes		
	13(1)	Eesti Pank's activities are managed by the Executive Board of Eesti Pank, the Chairman of which by virtue of office shall be the Governor of Eesti Pank. The Executive Board of Eesti Pank is composed of the Governor of Eesti Pank and the Deputy Governors.	Yes		

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	13(1 ¹)	The Executive Board shall be responsible for planning and organising Eesti Pank's activities. The Governor of Eesti Pank may assign additional functions to the Executive Board. The Executive Board passes decisions for performance of the functions thereof.			
	13(2)	The division of tasks and bases for the organisation of work of the Executive Board of Eesti Pank shall be provided for in the statute of Eesti Pank			
Finland	9	The Bank of Finland's governing bodies are the Parliamentary Supervisory Council and the Board.			
	10(1)	The Parliamentary Supervisory Council, which shall consist of nine members elected by Parliament, shall elect a chairman and a deputy chairman from among its members.	No		
	10(2)	A member of the Parliamentary Supervisory Council is obliged to resign if he is appointed as a member of the Council of State or a member of the Board, or if he has undertaken an occupation that, according to a unanimous decision of the Parliamentary Supervisory Council, is incompatible with membership on the Parliamentary Supervisory Council.			
	11(1)	As a body supervising the administration and activities of the Bank of Finland, the Parliamentary Supervisory Council shall perform the following tasks: 1) confirm, upon proposal of the Board, the basic principles applied in drawing up the annual accounts of the Bank of Finland; 2) decide, on the basis of the auditors' report, on the confirmation of the Bank's balance sheet and profit and loss account; 3) decide, upon proposal of the Board, on measures concerning the Bank's profit or loss for the financial year;			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>4) report annually to Parliament on the Bank's activities and administration and on the main issues dealt with by the Parliamentary Supervisory Council; and</p> <p>5) as necessary, submit to Parliament reports on the execution of monetary policy and the other activities of the Bank of Finland.</p>			
	11(2)	<p>In respect of the Bank's administration, the Parliamentary Supervisory Council shall:</p> <p>1) make proposals to the Council of State on the filling of positions as members of the Board;</p> <p>2) decide on the principles for determining salaries, leaves of absence and annual leaves of members of the Board as well as on the execution of their duties during leaves of absence exceeding one week;</p> <p>3) decide on the issuance of warnings to members of the Board and settle other issues related to their service;</p> <p>4) appoint, upon proposal of the Board, directors of the Bank of Finland;</p> <p>5) appoint the Deputy Chairman of the Board;</p> <p>6) confirm the Bank of Finland's Pension and Survivors' Pension Regulations and issue regulations concerning the management of the Bank's pension liability, upon proposal of the Board, and</p> <p>7) issue, upon proposal of the Board, regulations concerning the language skills required of officials of the Bank of Finland.</p>			
	11(3)	<p>In addition, the Parliamentary Supervisory Council shall:</p> <p>1) decide on motions to be put before Parliament;</p> <p>2) decide on proposals to be submitted to the Council of State in highly important matters of principle;</p>			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		3) confirm the bases for fees and remunerations to be paid to auditors elected by Parliament and their secretary; 4) confirm, upon proposal of the Board, the Bank of Finland's rules referred to in paragraph 3 of section 15; and 5) order payment of compensation for appointment of an employee of the Bank for a fixed term without statutory grounds.			
	11(4)	The Parliamentary Supervisory Council shall have the right to obtain any information necessary for carrying out its tasks laid down in this section.			
	14(1)	The Board shall be responsible for the administration of the Bank of Finland and for ensuring that all tasks assigned to the Bank are duly executed, except for statutory tasks of the Parliamentary Supervisory Council and matters that are otherwise provided for in the Act on the Financial Supervision Authority (503/1993).	Yes		
	14(4)	The Governor and the other members of the Board shall be obliged to provide the Parliamentary Supervisory Council with information on a regular basis concerning the execution of monetary policy and other activities of the Bank of Finland.	Yes		
France	L. 142-2	The Monetary Policy Council shall examine monetary trends and analyse the implications of the monetary policy formulated within the framework of the European System of Central Banks. In accordance with the guidelines and instructions of the European Central Bank, the Monetary Policy Council shall specify the terms and conditions for buying or selling, outright or under repurchase or resale agreements, lending or borrowing, discounting or taking as collateral claims, and issuing interest-bearing bills, as well as	No		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		the nature and scope of the collateral to be attached to the loans granted by the <i>Banque de France</i> . It may delegate temporary powers to the Governor.			
	L. 142-3(1)	The Monetary Policy Council shall comprise the Governor, the two Deputy Governors of the <i>Banque de France</i> and four other members.			
	L 142-6	The General Council shall administer the <i>Banque de France</i> . The Council shall decide on issues related to the conduct of the <i>Banque de France</i> 's activities other than those deriving from the tasks of the European System of Central Banks. It shall decide on questions relating to the terms of employment of <i>Banque de France</i> staff. These terms shall be submitted by the Governor of the <i>Banque de France</i> for the approval of the relevant ministers. The General Council shall also decide on the allocation of the Bank's own funds. It shall draw up the Bank's expenditure estimates and amendments thereto, make up the Bank's balance sheet and accounts, and propose the appropriation of net profit and the dividend to be paid to the State. The General Council shall appoint two statutory auditors to review the accounts of the <i>Banque de France</i> . They shall be invited to attend the meeting of the General Council that approves the accounts for the year just ended.	No		
	L. 142-7(1)	The General Council shall comprise the members of the Monetary Policy Council and a representative of the <i>Banque de France</i> staff elected for a six-year term.			
	L. 142-8(1); (2); (3)	The <i>Banque de France</i> shall be managed by the Governor of the <i>Banque de France</i> . The Governor shall preside over the Monetary Policy Council and the General Council of the <i>Banque de France</i> . He shall prepare and implement the decisions taken by these Councils.	Yes		
Germany	7(1)	The governing body of the Deutsche Bundesbank shall be the	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Executive Board (Vorstand). It shall govern and manage the Bank. It shall adopt an organisational statute which establishes the responsibilities of the members of the Executive Board and the tasks which may be delegated to the Regional Offices (Hauptverwaltungen). The Executive Board may allocate responsibility for dealing with specific matters to one of its members.			
	7(2)	The Executive Board shall comprise the President, the Vice-President and six other members. Members of the Executive Board must have relevant professional qualifications.			
	11(1) first sentence	The Deutsche Bundesbank shall be represented in and out of court by the Executive Board.			
	41(4)	The President of the Deutsche Bundesbank shall be the supreme institutional authority for the persons to whom the provisions of subsections (1) and (2) above apply. In this capacity he shall represent the Bank in and out of court. He shall be entitled to delegate his tasks and powers pursuant to the first and second sentences to a member of the Executive Board. In the cases under subsection (1) above, he shall take the place of the Federal Ministry of Finance insofar as the participation of that Ministry is prescribed in the Act specified therein and in the provisions of the legislation relating to civil servants applicable under that Act.			
Greece	11	The General Meeting of Shareholders, as constituted by the provisions of this Statute, is the supreme organ of the Bank and represents the whole body of shareholders. Its decisions are binding upon all shareholders, including those absent or disqualified from attending a meeting or disagreeing with the decisions taken thereat.	No		
	19	The Annual General Meeting of Shareholders shall be the only competent organ to deal with the following matters: (a)			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		approval of the annual report; (b) approval of the Balance Sheet following the report of the Auditors; (c) appropriations to reserve and other special funds; the fixing of dividends, and any other disposal of net profits; (d) election or removal of members of the General Council and of the Auditors and the fixing of their fees and travelling expenses; (e) discharge from all personal responsibility of members of the General Council and of the Auditors. The voting on this issue shall be conducted by show ballot and by roll-call; (f) proposals to amend this Statute, except the increase of capital (Article 9); such proposals to be submitted to the Parliament through the Government; (g) proposals on any other matter submitted to the Meeting by the General Council. Subject to the provisions of this Statute, the General Meeting with reference to its works will decide upon the method of procedure.			
	20	The general management of the affairs of the Bank shall be entrusted to the General Council, responsible to the General Meeting of Shareholders. The General Council, within the limits of the Statute, shall be entitled to take all decisions and exercise all powers which are not specifically reserved to the General Meeting of Shareholders or to the Monetary Policy Council or, as provided for in Article 31, last paragraph, and Article 55A hereof, to the Governor of the Bank.	No		
	21(1)	The General Council shall consist of the Governor, the two Deputy Governors and the other members of the Monetary Policy Council as well as of six Councillors. Three, at least, of the General Council members shall be elected amongst those specifically engaged in the fields of industry, commerce and agriculture.			
	22(2)	Upon the establishment of the European System of Central Banks (ESCB) the Governor shall participate, ex officio, as an	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		independent personality in the Board of Directors and the Governing Council of the European Central Bank (ECB), in accordance with the Statute of the ESCB			
	27	The General Council shall decide on the following matters: (b) general conditions and the extent of business conducted by the Bank outside the scope of ESCB related tasks; (c) eligibility of applicants for accommodation by way of discount or advances and the sanctioning of the credit limits proposed by the Governor for such accommodation, unless these matters fall within the field of competence of the Monetary Policy Council; (d) the sanctioning of renewal bills, the renewal of advances for fixed periods, and the periodical review (not less than once every six months) of all credits, discount, and advances, unless these matters fall within the field of competence of the Monetary Policy Council; (f) the appointment or dismissal of Directors, on the proposal of the Governor, and the general internal organisation of the Bank; (i) matters connected with the acquisition of immovable property required for the business of the Bank and the temporary acquisition and sale of similar property under Article 58; (j) the depreciation of the Bank's assets; (k) without prejudice to the provisions of Articles 30 and 31 of the Statute of the European System of Central Banks, the appointment of foreign correspondents and the fixing of the maximum amounts of the funds which may be held with them for account of the Bank, as well as the limit of credit facilities by way of discounts or loans to be granted to them; (l) questions concerning the design, text, material, denominations, and supply of banknotes denominated in drachmae, their withdrawal and cancellation, and the terms on which mutilated banknotes denominated in drachmae may	No		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		be paid; the design, text, and denominations shall, however, be fixed in agreement with the Minister of Finance; (m) questions regarding the liquidation of bankrupt enterprises and of debts due to the Bank; (n) the opening or closing of Branches and Agencies of the Bank; (o) the agenda for General Meetings;(p) the signatures binding upon the Bank; (q) the approval of the annual report and balance sheet to be submitted to the Annual General Meeting.			
	31(1);(2);	The Governor shall, on behalf of the General Council, be in permanent control of the management of the Bank's assets and general business, taking decisions in all cases not specifically reserved to the General Council or the Monetary Policy Council or governed by regulations which the said Councils have issued. Except for matters assigned to the Monetary Policy Council, the Governor shall decide on all other matters falling within the duties of the ESCB	Yes		
	35A(1); (2);	The Monetary Policy Council shall be responsible for decisions pertaining to monetary policy definition and implementation and to the conduct of exchange rate policy, the operation of payment systems and the issue of banknotes. These tasks shall be exercised by virtue of Acts of the said Council. As from the adoption of the euro as the currency of Greece, the responsibilities of the Council directly related to monetary policy shall be restricted as follows: The Monetary Policy Council shall examine economic and monetary developments and discuss the implications of the monetary policy formulated within the framework of the ESCB without prejudice to the Governor's independence from instructions as provided for in Article 22 hereof. In the execution of the ESCB related tasks, the Council shall act in accordance with the guidelines and instructions issued by the	No		

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		ECB.			
	35A(6) first sentence	The Governor and Deputy Governors are members of the Monetary Policy Council as long as they retain their position.			
	36(1)	A Management Council shall be established to ensure the singleness of policy and procedure throughout the various Departments of the Bank. The Management Council shall consist of the Governor, the Deputy Governors and the Directors.			
	37	The Management Council shall submit to the General Council a detailed report every month regarding the business and the position of the Bank, in particular those issues relevant to the discounts and advances, and shall deliver its opinion on all matters referred to it by the General Council.			
Hungary	47	The organs of the MNB shall be the General Meeting, the Monetary Council, the Board of Directors and the Supervisory Board.			
	48	The tasks of the General Meeting shall be: (a) to establish and amend the Statutes; (c) to establish the balance sheet and profit and loss statement of the MNB; d) to elect and dismiss the auditor; and (e) to establish the remuneration of the auditor.	No		
	49(1)	In respect of the tasks described in Article 4, Article 11, paragraph (2) and Article 14, the supreme decision making organ of the MNB shall be the Monetary Council.			
	49(4)	The members of the Monetary Council shall be: (a) the President of the MNB, as the Chairperson of the Monetary Council; (b) one Vice-President appointed by the President of the MNB; and (c) other members, who shall be appointed by the President of the Republic for a term of six years.	Yes		
	50(1)	The head of the MNB shall be the President.			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	52(1)	The Board of Directors shall be responsible for the implementation of the decisions of the Monetary Council and the operations of the MNB.	Yes		
	52(2)	The Board of Directors shall consist of at least four and at most six members, who shall be (a) the President of the MNB as the Chairperson of the Board of Directors; (b) the Vice-Presidents of the MNB.			
	52(4)	The scope of responsibility of the Board of Directors shall be: (a) to guide the implementation of the tasks described in Article 4; (b) to prepare the proposal to be submitted to the General Meeting in respect of the balance sheet and profit and loss statement of the MNB and the allocation of profits, furthermore, to approve the draft report submitted to the General Meeting in respect of the business management, the financial situation of the MNB and the business policy; (c) to approve issues related to the organisation and internal management of the MNB; (d) to approve professional plans and programmes related to the operations of the MNB or the performance of its tasks, including development and operational budgets; (e) in matters outside the Supervisory Board's competence, to manage the MNB's internal audit system and to discuss the results of internal auditing and plans related to internal auditing; (f) to approve any major amendments to the collective bargaining agreement; and (g) to attend to any other issues proposed with the approval of the Chairperson.	Yes		
	52A(1)	The Supervisory Board is the body responsible for the continuous supervision of the MNB on behalf of the owner.	No		
	52A(3)	The competence of the Supervisory Board shall not extend to the tasks described in Article 4 (1)-(7), and the impact of such on the profit and loss of the MNB. The Supervisory			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Board shall prepare the report, specified in paragraph (3) of Article 32 of the Act on Business Associations, in accordance with these restrictions.			
	52A(4)	The members of the Supervisory Board shall be: (a) the Chairman, elected by Parliament, (b) three other members, elected by Parliament, (c) a representative of the Minister of Finance, (d) a consultant commissioned by the Minister of Finance.			
Ireland	6A(3)	The Minister may, from time to time, request the Governor, the Board or the Regulatory Authority to consult with the Minister, in relation to their respective functions, as regards the performance by the Bank of any function of the Bank (other than one imposed on it by the Rome Treaty or the ESCB Statute)			
	18B	(1) The Board of Directors of the Bank comprises the following persons: (a) the Governor; (b) the Director General of the Bank; (c) the Secretary General of the Department of Finance; (d) the Chairperson of the Regulatory Authority; (e) the Chief Executive of that Authority; (f) 7 other Directors appointed by the Minister. (2) Of the other Directors, 4 are to be members of the Regulatory Authority.			
	19A(2)	The Governor has sole responsibility for the performance of the functions imposed, and the exercise of powers conferred, on the Bank by or under the Rome Treaty or the ESCB Statute	Yes		
Italy	5	The central decision-making bodies of the Bank are: (a) the			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		shareholders' meeting; (b) the Board of Directors; (c) the Board of Auditors; (d) the Directorate; (e) the Governor; (f) the Director General and the Deputy Directors General.			
	6(1)	Shareholders' meetings shall be ordinary or extraordinary. Extraordinary shareholders' meetings shall decide on amendments to this statute; ordinary shareholders' meetings shall decide on all the matters specified by the statute.	No		
	15(1)	The Board of Directors shall consist of the Governor and thirteen directors elected by shareholders' meetings held at the main branches of the Bank.			
	18(1)	The Board of Directors shall be charged with the general administration, management supervision and internal control of the Bank.			
	18(2)	In conformity with legislative and regulatory provisions and, in the case of resolutions referred to in points 9) and 10), in compliance with the statute of the ESCB and the provisions adopted by the European Central Bank (ECB), the Board shall: 1) examine and approve, acting on a proposal from the Directorate, the draft annual accounts and resolve to submit them to the Board of Auditors and the shareholders' meeting for final approval. After consulting the Board of Auditors, it shall decide on the dividend to be paid to shareholders; 2) approve the annual expenditure budget; 3) authorize contracts involving the disposal of real estate for a consideration exceeding €1 million and settlements, compositions with creditors and assignments in respect of claims exceeding €200,000, and express its opinion on all other contracts and legal actions which, because of their importance, the Governor considers should be submitted to it for approval;	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		4) approve the Bank's internal regulations; 5) determine the staffing levels, recruit and dismiss employees; 6) approve agreements negotiated with trade unions; 7) adopt resolutions regarding the geographical configuration and general organizational structure of the Bank; 8) appoint and remove from office regents at the main branches and councillors at the local branches and determine their number and which of them are to act as examiners; 9) appoint the Bank's foreign correspondents; 10) determine the rules and terms and conditions for the Bank's operations; 11) set the annual limit on donations to charity and contributions to initiatives of public interest; 12) decide upon all other matters concerning the general administration of the Bank not specifically entrusted to the shareholders' meeting which the Governor considers should be submitted to it.			
	19(1)	The Board of Auditors shall consist of five auditors, including the chairman; there shall be two alternates. The members of the Board of Auditors shall remain in office for three years and may be re-elected not more than three times.	No		
	19(2)	The Board of Auditors shall perform, directly at the Head Office and either directly or through examiners at the main branches and the local branches, checks on the administration of the Bank with regard to observance of the law, this statute and the Bank's general regulations. It shall carry out accounting checks, without prejudice to the activity of the external auditors referred to in Article 38, examine the annual accounts and express its opinion on the distribution of the annual dividend.			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	21(1)	The Directorate shall consist of the Governor, the Director General and three Deputy Directors General.			
	21(2)	The Directorate shall have authority to adopt measures of external significance regarding the exercise of the public functions entrusted by law to the Bank or to the Governor in pursuit of the Bank's institutional aims, other than decisions falling under the authority of the ESCB	N/A		
	24(1)	The Governor shall represent the Bank of Italy vis-à-vis third parties in all acts and contracts and in legal actions.			
	24(2)	He shall have the duties and powers reserved to the position by the Treaty, the statute of the ESCB and the related Community and Italian implementing provisions.	Yes		
	24(5)	All matters not expressly reserved to the Board of Directors or the Directorate by law or this statute shall be entrusted to the Governor.			
	25(3)	The Director General shall assist the Governor in the performance of his duties and shall stand in for the Governor in the event of the latter's absence or inability to act; the signature of the Director General shall be full proof thereof vis-à-vis third parties.			
	26(1)	The Deputy Directors General shall assist the Director General in the performance of his duties and shall stand in for him in the event of his absence or inability to act. Each of them may stand in for the Governor and the Director General in the event of their simultaneous absence or inability to act.			
Latvia	21(1)	The Bank of Latvia shall be administered by a Council of the Bank of Latvia and a Board of the Bank of Latvia. The Council of the Bank of Latvia shall consist of eight persons: the Governor, the Deputy Governor and six members of the Council			
	21(2)	The Council of the Bank of Latvia shall be chaired by the			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Governor or Deputy Governor.			
	23(1)	To execute the practical work and ensure the efficient management of the Bank of Latvia, the Council of the Bank of Latvia shall establish a permanent Board of the Bank of Latvia consisting of six persons			
	26(1)	The Council of the Bank of Latvia shall make decisions on behalf of the Bank of Latvia. The Council shall determine the general monetary policy, set interest rates for Bank of Latvia asset and liability operations, and make all decisions that are necessary to ensure the implementation of monetary policy in accordance with this Law	Yes		
	26(2)	The Council of the Bank of Latvia shall review and approve the annual budget of the Bank, determining that all expenses of the Bank shall be financed from the Bank's revenue	Yes		
	27(1)	The Board of the Bank of Latvia shall manage the Bank's work implementing the resolutions of the Council of the Bank of Latvia concerning monetary policy and other areas of the Bank's activity	Yes		
	28(3)	The Governor of the Bank shall represent the Bank of Latvia in relations with other banks, with State and local government institutions of Latvia, as well as with international financial and credit organisations			
	29(1) first sentence	The Chairperson of the Board of the Bank of Latvia shall organise and direct the Bank of Latvia's practical work by implementing decisions adopted by the Council of the Bank of Latvia and the Board of the Bank.	Yes		
Lithuania	10(1)	The Bank of Lithuania shall be governed by the Board of the Bank of Lithuania. The Board shall be comprised of a Chairperson, two Deputy Chairpersons, and two Members of the Board			
	10(3)	The Chairperson, Deputy Chairpersons and Members of the			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Board of the Bank of Lithuania may participate in the management of international financial institutions of which the Republic of Lithuania or the Bank of Lithuania is a member.			
	11(1)	<p>The Board of the Bank of Lithuania shall:</p> <ol style="list-style-type: none"> 1) develop the monetary policy programme of the Bank of Lithuania; 2) establish procedures for rediscount, loans, deposits, open market operations carried out at the Bank of Lithuania, and the procedures for the formation and holding of required reserves of credit institutions with the Bank of Lithuania, as well as for the application of other monetary policy instruments; 3) establish the Litas exchange rate regulation system and the procedure for the calculation of the official Litas exchange rate; 4) establish the procedures and principles for the management, use and disposal of foreign reserves of the Bank of Lithuania; 5) establish procedures for the issue of and trading in debt securities issued by the Bank of Lithuania; 6) establish prudential requirements for credit institutions, as well as their ratios and methods for calculation; 7) adopt resolutions; 8) decide on issues concerning the participation of the Bank of Lithuania in international banks and other international financial institutions, provided this is related to the functions of the Bank of Lithuania; 9) decide on matters of issue and withdrawal from circulation of the currency and other issues related thereto, laid down in Article 6 of this Law; 	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>10) establish branches, representative offices, enterprises and institutions of the Bank of Lithuania for carrying out its functions and decide on the acquisition of shares of (stakes in) enterprises and institutions related to the functions of the Bank of Lithuania;</p> <p>11) approve the structure of the Bank of Lithuania;</p> <p>12) establish the principles of service (work) and the status of the staff of the Bank of Lithuania; approve the rules of procedure of the Board;</p> <p>13) apply enforcement measures established by laws to credit institutions;</p> <p>14) decide on issues regarding initiation of bankruptcy proceedings against credit institutions;</p> <p>15) approve the Bank of Lithuania budget;</p> <p>16) establish the financial accounting policy, approve annual financial statements and the allocation of profit for the financial year;</p> <p>17) establish procedures for the management, use, and disposal of the assets of the Bank of Lithuania, as well as procurement procedure;</p> <p>18) resolve issues pertaining to the issuance and revocation of licenses, permits, consents to credit institutions; and</p> <p>19) perform other activities related to the implementation of the primary objective of the Bank of Lithuania.</p>			
	11(2)	The Board may authorise the Chairperson of the Board of the Bank of Lithuania to carry out a part of its functions, except the functions provided for by items 1, 2, 3, 4, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18 and 19 of Paragraph 1 of this Article			
	11(1)	<p>The Board of the Bank of Lithuania shall:</p> <p>1) (Repealed);</p> <p>2) (Repealed);</p>	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>3) (Repealed);</p> <p>4) establish the principles and procedures for the management, use and disposal of foreign reserves that in accordance with the legal acts of the European Union have not been transferred to the European Central Bank, in compliance with the requirements of the European Central Bank applicable to foreign reserves of the national central banks;</p> <p>6) establish prudential requirements for credit institutions, as well as their ratios and methods for calculation;</p> <p>7) adopt resolutions;</p> <p>8) upon the consent of the European Central Bank, decide on issues concerning the participation of the Bank of Lithuania in international monetary institutions;</p> <p>9) decide on matters of issue and withdrawal of the banknotes and coins and other issues related thereto in compliance with the requirements of the Treaty establishing the European Community;</p> <p>10) establish branches, representative offices, enterprises and institutions of the Bank of Lithuania for carrying out its functions and decide on the acquisition of shares of (stakes in) enterprises and institutions related to the functions of the Bank of Lithuania;</p> <p>11) approve the structure of the Bank of Lithuania;</p> <p>12) establish the principles of service (work) and the status of the staff of the Bank of Lithuania; approve the rules of procedure of the Board;</p> <p>13) apply enforcement measures established by laws to credit institutions;</p> <p>14) decide on issues regarding initiation of bankruptcy proceedings against credit institutions;</p> <p>15) approve the Bank of Lithuania budget;</p>			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>16) in compliance with the requirements of the legal acts of the European Central Bank, establish the financial accounting policy of the Bank of Lithuania, approve annual financial statements and the allocation of profit for the financial year, as established in Paragraph 3 of Article 23 of this Law;</p> <p>17) establish procedures for the management, use and disposal of the assets of the Bank of Lithuania, following the main principle of achieving the objectives and carrying out the tasks of the European System of Central Banks using the most economical, effective and productive means, and establish the procurement procedures;</p> <p>18) resolve issues pertaining to the issuance and revocation of licenses, permits, consents to credit institutions; and</p> <p>19) perform other activities related to the implementation of the primary objective of the Bank of Lithuania.</p>			
	New 11(2)	The Board of the Bank of Lithuania may authorise the Chairperson of the Board to carry out a part of its functions, except the functions provided for by Items 4, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18 and 19 of Paragraph 1 of this Article			
	17(1)	<p>The Chairperson of the Board of the Bank of Lithuania shall:</p> <p>1) organise the work of the Bank of Lithuania;</p> <p>2) represent the Bank of Lithuania in the Republic of Lithuania and abroad without any special power of attorney;</p> <p>3) conclude employment contracts with staff members and heads of the branches, representative offices, institutions and enterprises of the Bank of Lithuania, provide incentives for distinguished employees and impose disciplinary penalties;</p> <p>4) approve the distribution of duties between the Chairperson, Deputy Chairpersons and members of the Board;</p> <p>5) issue powers of attorney;</p>	Yes		

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		6) approve regulations of the structural divisions of the Bank of Lithuania; and 7) perform other functions delegated by the Board of the Bank of Lithuania.			
Luxembourg	5(1)	The bodies of the Central Bank shall be the Council and the Board of Directors			
	6	The remit of the Central Bank Council shall be: (a) To discuss the implications of monetary policy, without prejudice to its President's independence of all instructions in his capacity as member of the Governing Council of the ECB and without prejudice to the provisions relating to professional secrecy applicable to the ESCB (b) To determine the business policy of the Central Bank and draft guidelines relating to the financial situation of the Central Bank. (c) Each year, to approve the budget, the financial accounts and the report of the Board of Directors. (d) To give its consent prior to the use of the Central Bank's reserve fund. (e) To assist in the drafting of the Central Bank's business reports as referred to in Article 11. (f) To propose to the Government the appointment of the Central Bank's auditor. (g) To approve the internal rules of procedure of the Board of Directors. (h) To deliver its opinion prior to any decision to dismiss a Director. (i) To deliver an opinion on any Grand-Ducal regulation adopted pursuant to Article 14 of the present law concerning the agents of the Central Bank. (j) To give its assent prior to the application of any	No		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		disciplinary action against an agent of the Central Bank, when the preliminary opinion of the civil service disciplinary board has been requested.			
	7(1)	In addition to the Directors, who are its members <i>ex officio</i> , the Council shall comprise six members appointed by the Government in Cabinet			
	8(1)	The Council shall be presided by the Director-General of the Central Bank or, in his absence, by the oldest member of Board of Directors present.			
	11(1)	The Board of Directors is the superior executive authority of the Central Bank.			
	11(2)	It shall draw up the measures and take the decisions required for the fulfilment of the tasks of the Central Bank. The Central Bank shall report annually to the Government and to the Chamber of Deputies on its activities and on the monetary policy of the previous year and current year			
	12(1)	The Board of Directors shall comprise a Director-General and two Directors.			
	13(1)	Without prejudice to the independence of its president with regard to all instructions in his capacity as member of the Governing Council of the ECB and without prejudice to provisions relating to professional secrecy applicable to the ESCB the decisions of the Board of Directors shall be taken collectively	Yes		
Malta	7(1)	There shall be a Board of Directors which shall be responsible for the policy and general administration of the affairs and business of the Bank, except in relation to the functions imposed, and the exercise of powers conferred, on the Bank by or under the Treaty or the Statute			
	7(2)	The members of the Board shall be the Governor, the Deputy Governor and the three other directors appointed under			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		article 9			
	8(2)a	The Governor has the sole responsibility for the performance of the functions imposed, and the exercise of powers conferred, on the Bank by or under the Treaty and the Statute	Yes		
	8(2)b	Without prejudice to sub-article (2)(a), the Governor shall be in charge of the day-to-day management and operations of the Bank in accordance with the policy of the Board and shall be answerable to the Board for his acts and decisions in this respect. The representation of the Bank in judicial proceedings shall be vested in the Governor			
	8(3)	The Deputy Governor shall perform such duties as the Governor may direct and, in the event of the absence of, or a vacancy in the office of, the Governor, the Deputy Governor shall perform the duties of the Governor and shall have and may exercise the powers and perform the functions of the Governor			
	9(1)	For the purposes of this article, the term director shall exclude the Governor and the Deputy Governor			
	12(3)	The Governor shall preside as chairman at the meetings of the Board and, in his absence from any meeting, the Deputy Governor shall preside; and no decision shall be valid which is taken at a meeting of the Board at which neither the Governor nor the Deputy Governor is present			
The Netherlands	12(1)	The Bank's Governing Board shall be responsible for managing the Bank. The Governing Board shall consist of a President and at least three and at most five Executive Directors.	Yes		
	12(4)	With regard to the tasks and activities performed in order to achieve the objective referred to in section 2(1), the Governing Board shall acknowledge the President's capacity as member of both the Governing Council and the General			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Council.			
	13(1); 11(1) Articles of Association	The Supervisory Board shall consist of at least nine and at most twelve members.	No		
	13(4)	The Supervisory Board shall supervise the management of the Bank's affairs and adopt the annual accounts. The annual accounts thus adopted shall require the approval of the shareholders.			
	15(1); 17(1) Articles of Association	There shall be a Bank Council, consisting of at least eleven and at most thirteen members, namely: a. the member of the Supervisory Board referred to in section 13(2); b. member appointed by the Supervisory Board from among its own members; c. at least nine and at most eleven members each of whom is appointed for a term of four years by the Bank Council.	No		
	15(5); 17(5) Articles of Association	The President of the Bank shall report to the Bank Council on the general economic and financial situation and shall discuss the policy conducted by the Bank with the Bank Council. Other matters raised by one or more of the members in connection with the Bank's objectives, tasks and activities may also be discussed.	Yes		
	6(1) Articles of Association	The Bank's Governing Board shall be responsible for managing the Bank.			
	6(2) Articles of Association	The Governing Board shall consist of a President and at least three and at most five Executive Directors.			
	6(4) Articles of	The President is a member of the Governing Council of the European Central Bank. With due observance of Article 10.2	Yes	Yes	

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	Association	of the Statute of the European System of Central Banks, he may appoint an alternate as a member of the Governing Council of the European Central Bank.			
	7(1) Articles of Association	The Governing Board represents the Bank. This power is also vested in the President and in each of the Executive Directors individually.			
	11(4) Articles of Association	The Supervisory Board shall supervise the management of the Bank's affairs. Without prejudice to the provisions of the Treaty and the Statute of the European System of Central Banks, the Supervisory Board shall also supervise the general affairs of the company and its business. It shall advise the Governing Board. In the performance of their task, the members of the Supervisory Board shall be guided by the interests of the company and its business			
	16(1) Articles of Association	The general meetings of shareholders shall be held in Amsterdam.			
	16(3) Articles of Association	The agenda for the meeting referred to in paragraph (2) shall include the following topics: a. annual report; b. approval of the annual accounts as adopted.			
Poland	6	The directing bodies of the NBP shall be: 1) the President of the NBP, 2) the Monetary Policy Council, 3) the NBP Management Board			
	11(2)	The President of the NBP shall chair the Monetary Policy Council, the NBP Management Board and the Commission for Banking Supervision, and shall represent the NBP in its external contacts	Yes		
	11(3)	The President of the NBP shall represent the interests of the Republic of Poland within international banking institutions,			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		and, unless the Council of Ministers decides otherwise, within international financial institutions			
	12(1)	The Monetary Policy Council, hereinafter referred to as "Council", shall determine the annual monetary policy guidelines and submit these to the Sejm, for the information thereof, together with the submission by the Council of Ministers of the draft Budget. The Council shall present a report to the Sejm on the performance of monetary policy guidelines within five months of the end of the budget year	Yes		
	12(2)	In consideration of monetary policy guidelines, the Council shall, in particular: 1) set NBP interest rates, 2) determine the required reserve ratio for banks and set the remuneration of required reserve holdings, 3) set ceilings on the liabilities arising from loans and advances drawn by the NBP from foreign banking and financial institutions, 4) approve the NBP financial plan and the report on the activity of the NBP, 5) accept the annual accounts of the NBP, 6) determine the principles applicable to open market operations.	Yes		
	13(1)	The Council shall be composed of: 1) the President of the NBP as the Chairperson of the Council, 2) nine members appointed in equal numbers by the President of the Republic of Poland, the Sejm and the Senate, from among the specialists in the field of finance.			
	17(1)	The activity of the NBP shall be directed by its Management Board			
	17(2)	The NBP Management Board shall be composed of: the			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		President of the NBP - as Chairperson, and six to eight Board members, including two Vice-Presidents of the NBP			
	17(3)	The NBP Management Board shall: 1) implement the resolutions of the Council, 2) adopt resolutions on matters not reserved by the present Act for the exclusive competence of other bodies of the NBP	Yes		
	17(4)	The scope of activities of the NBP Management Board shall include, in particular: 1) [repealed], 2) performing tasks concerning the exchange rate policies, 3) performing periodic assessments of the circulation of currency, monetary clearing and foreign exchange operations, 4) supervising open market operations, 5) assessing the operation of the banking system, 6) adopting the NBP plan of activity and financial plan, 7) determining the commissions and banking fees to be charged by the NBP and specifying their amounts, 8) specifying the principles applicable in NBP funds management, 9) determining the organisational structure and division of responsibilities within the NBP, 10) determining NBP personnel and staff compensation policies, 11) adopting the annual report on the activity of the NBP, 12) drawing up the annual financial report of the NBP, 13) drawing up accounts of the national balance of payments, 14) preparing and examining draft resolutions and other materials to be submitted to the Council			
Portugal	26	The organs of the Bank shall be the Governor, the Board of			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Directors, the Board of Auditors, and the Advisory Board.			
	28(1)	It shall be incumbent upon the Governor: <i>a)</i> To carry out the tasks of member of the Governing Council and of the General Council of the ECB, pursuant to the provisions laid down in the Treaty establishing the European Community and in the ESCB/ECB Statute; <i>b)</i> To represent the Bank; <i>c)</i> To act on behalf of the Bank with foreign or international institutions; <i>d)</i> To supervise the co-ordination and dynamization of the activity of the Board of Directors and to call the meetings thereof; <i>e)</i> To preside any meeting of committees set up by the Board of Directors; <i>f)</i> To initial the general books, for which purpose a facsimile of his signature may be used; <i>g)</i> To exercise all other powers legally entrusted to him.	Yes		
	33(1)	The Board of Directors shall consist of the Governor, who shall be the Chairman, of one or two Vice-governors, and of three to five Directors.			
	34(1)	The Board of Directors shall be responsible for all the acts required to achieve the purposes assigned to the Bank which do not fall within the exclusive competence of other bodies.	Yes		
	41(1)	The Board of Auditors shall consist of four members, three of them appointed by the Finance Minister and one by the staff of the Bank.			
	43(1)	The Board of Auditors shall be responsible for: <i>a)</i> Monitoring the business of the Bank and the observance of the laws and regulations applicable thereto; <i>b)</i> Examining the periodic statements submitted by the Board of Directors during its term of office;	No		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p><i>c)</i> Issuing its opinion on the budget, the balance sheet, and the annual accounts;</p> <p><i>d)</i> Examining the books, vaults, and safes of the Bank whenever it deems convenient, subject to the appropriate security measures;</p> <p><i>e)</i> Drawing the attention of the Governor or of the Board of Directors to any matter which it deems should be considered, and giving its opinion on any subject submitted to it by those bodies.</p>			
	47(1)	<p>The Advisory Board shall consist of the Governor of the Bank, who shall be the Chairman, and the following members:</p> <p><i>a)</i> The Vice-governors;</p> <p><i>b)</i> The former Governors;</p> <p><i>c)</i> Four personalities of a recognised competence in economic, financial and business matters;</p> <p><i>d)</i> The Chairman of the Portuguese Association of Banks;</p> <p><i>e)</i> The Chairman of the Public Credit Management Institute;</p> <p><i>f)</i> A representative of each of the Autonomous Regions of the Azores and Madeira, to be appointed by the competent self-government bodies;</p> <p><i>g)</i> The Chairman of the Advisory Board of the Bank.</p>	No		
	48	<p>It shall be incumbent on the Advisory Board to issue its non-binding opinion on:</p> <p><i>a)</i> The annual report of the Bank, before its release;</p> <p><i>b)</i> The measures taken by Bank within the scope of its functions;</p> <p><i>c)</i> The matters referred thereto by the Governor or by the Board of Directors.</p>			
Romania	32(1)	The National Bank of Romania is managed by a Board.			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	32(2)	The executive management of the National Bank of Romania, within the Monetary Policy Committee and the Supervision Committee, shall be performed by the Governor, the Senior Deputy Governor and two Deputy Governors, under the terms stipulated in the bylaw approved by the Board.			
	33(1)	By law, the National Bank of Romania's Board decides on: a) the monetary and exchange rate policies, monitoring their implementation; b) the measures for authorisation, regulation and prudential supervision of the credit institutions and oversight of the authorised payment systems; c) the guidelines for managing the operations and the responsibilities incumbent on the National Bank of Romania's staff; d) the internal organisational structure, indemnities, salaries and other pecuniary rights granted to the staff; e) the tasks and composition of the Monetary Policy Committee, the Supervision Committee, the Foreign Reserves Management Committee and the Audit Committee operating within the National Bank of Romania; f) temporary delegation of its powers to the executive management, when special situations require such a solution.	Yes		
	33(2)	The National Bank of Romania's Board is made up of nine members, as follows: a) the chairman – the Governor of the National Bank of Romania; b) the vice-chairman – the Senior Deputy Governor; c) seven members, of whom two are Deputy Governors and the other five are not the National Bank of Romania's employees.			

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	35(1)	The National Bank of Romania's Governor shall take measures to enforce legal provisions, the Board's decisions and other regulations concerning the National Bank of Romania. The Governor may delegate some of his powers to the Senior Deputy Governor and to the Deputy Governors, under the terms established by the Board.			
	35(3)	The Governor shall issue orders and decisions and shall represent the National Bank of Romania in its relations with third parties, and shall sign directly or by way of the persons mandated by her/him, all the treaties and conventions concluded.			
Slovakia	6(1)	The Bank Board of Národná banka Slovenska (hereinafter referred to as the "Bank Board") is the supreme governing body of Národná banka Slovenska. The Bank Board shall determine a) monetary policy and instruments for its implementation, and shall decide on monetary policy measures of Národná banka Slovenska. b) the principles for performing and organisation of the performance of financial market supervision and shall decide in the scope and manner laid down pursuant to a separate regulation.	Yes		
	6(2)	Furthermore, the Bank Board shall in particular: a) set guiding principles for the activities and operations of Národná banka Slovenska, b) approve the budget of Národná banka Slovenska (§ 38), approve Národná banka Slovenska's final accounts, annual reports on the result of managing Národná banka Slovenska and Národná banka Slovenska's annual reports, shall decide on the use of profit or covering of losses of Národná banka Slovenska and shall determine the types of funds of Národná	Yes		

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>banka Slovenska, their level and application, c) set up the organizational structure of Národná banka Slovenska, d) determine pursuant to a separate regulation the amount of annual contributions to be paid by financial market agents subject to supervision e) decide on the issue of banknotes and coins, f) set the salary and other emoluments of the Governor, Vice-Governors and other Bank Board members, g) decide on the performance of activities entrusted to Národná banka Slovenska under this Act and separate laws, h) approve the rules of procedure of the Bank Board, i) set up coordinating and other bodies of Národná banka Slovenska, and organizational units of Národná banka Slovenska, j) approve generally binding legal acts adopted by Národná banka Slovenska pursuant to this Act or separate regulation, k) approve draft agreements on mutual cooperation, collaboration and provision of information and documents between Národná banka Slovenska and foreign supervisory bodies in the area of the financial market or between Národná banka Slovenska and the public authorities in the Slovak Republic which perform supervision or oversight pursuant to separate regulations</p>			
	7(1)	<p>The Bank Board shall have 11 members. The members of the Bank Board shall be the Governor, two Vice-Governors and eight other members, of whom at least five shall be in an employment relationship with Národná banka Slovenska. For employment law purposes, performance of the office of a member of the Bank Board is the performance of a public office, in respect of which leave shall be granted</p>			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	9(1)	The Governor shall represent Národná banka Slovenska vis-à-vis third parties; when he is not present, he will be represented by a vice-governor delegated by him, or, if none of the vice-governors is present, by another member of the Bank Board delegated by the Governor. When the Governor's office has terminated and before a new Governor has been appointed, the competences of the Governor of Národná banka Slovenska shall transfer to the Vice-Governor on the basis of authority delegated by the Bank Board; if no Vice-Governors are appointed, these competences shall transfer to another member of the Bank Board on the basis of authority delegated by the Bank Board			
Slovenia	28	The decision making bodies of the Bank of Slovenia are the Governor of the Bank of Slovenia and the Governing Board of the Bank of Slovenia			
	29(1)	The Governor of the Bank of Slovenia shall conduct operations and organise activities and represent the Bank of Slovenia	Yes		
	29(2)	The Governor of the Bank of Slovenia shall implement the decisions of the Governing Board of the Bank of Slovenia and issue individual and general legal acts of the Bank of Slovenia that are not in the competence of the Governing Board of the Bank of Slovenia	Yes		
	29(3)	The Governor of the Bank of Slovenia may issue instructions for the implementation of decisions of the Governing Board of the Bank of Slovenia	Yes		
	30(1)	The Governing Board of the Bank of Slovenia is composed of nine members. The members of the Governing Board of the Bank of Slovenia are: the Governor, four vice-governors and four members			
	30(2)	The Governor of the Bank of Slovenia is the President of the			

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		Governing Board of the Bank of Slovenia			
	30(3)	The Governor of the Bank of Slovenia shall empower one of the vice-governors to act in the capacity of a deputy			
	31(1)	The Governing Board of the Bank of Slovenia shall decide on all issues that on the basis of this Act or other laws fall within the scope of responsibility of the Bank of Slovenia	Yes		
	32(1)	The Governing Board of the Bank of Slovenia shall take decisions also on other matters that fall within the scope of operations of the Bank of Slovenia, and shall: <ul style="list-style-type: none"> 1. propose the external auditor, 2. regulate rights and duties arising from employment for the members of the Governing Board of the Bank of Slovenia, 3. establish whether there is an incompatibility of office of the members of the Governing Board of the Bank of Slovenia, 4. decide on other issues in connection with the administrative issues of the Bank of Slovenia 			
Spain	17	The governing bodies of the Bank shall be: <ul style="list-style-type: none"> a. The Governor. b. The Deputy Governor. c. The Governing Council. d. The Executive Commission. 			
	18	The Governor of the Bank shall be empowered to: <ul style="list-style-type: none"> a. Manage the Bank and preside over the Governing Council and the Executive Commission. b. Act as legal representative of the Bank whenever necessary and especially in Courts of Justice, as well as authorising contracts and documents and carrying out all other activities necessary in the pursuit of the functions assigned to the Bank. 	Yes		

Member State	Article	Text	Responsibility for ESCB-related/ basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		c. Represent the Bank in the international institutions and organisations in which its participation may be envisaged. d. Sit on the Governing Council and the General Council of the European Central Bank.			
	19	The Deputy Governor shall substitute for the Governor when the post becomes vacant or in the event of absence or illness, in performing managing or representative functions for the Bank. In addition, the Deputy Governor shall have the powers assigned to him by internal Bank rules and delegated to him by the Governor.	Yes		
	20(1)	The Governing Council shall be composed of: a. The Governor. b. The Deputy Governor. c. Six elected Council members. d. The Director-General of the Treasury and Financial Policy. e. The Vice-president of the National Securities Market Commission.			
	21(1)	The Governing Council shall: a. Approve general guidelines for Bank action to fulfil its assigned functions. b. Observing the guidelines and instructions of the ECB, and the Governor's independence and obligation of secrecy as a member of the governing bodies of the ECB, it shall debate the issues relating to monetary policy and shall supervise the Bank's contribution to the implementation of the ESCB's monetary policy carried out by the Executive Commission. c. Approve, at the proposal of the Executive Commission, the annual report of the Bank and, as relevant, any other reports which the Bank must submit to Parliament, to the government or to the Economy and Finance Minister.	N/A		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>d. Approve the Bank's «Circulares monetarias» and «Circulares».</p> <p>e. Submit to the government the separation proposals referred to in letter d) of number 4 of Article 25. In these decisions, the member of the Council to which the proposal of separation refers will have no vote.</p> <p>f. Approve the internal rules of the Bank at the proposal of the Executive Commission.</p> <p>g. Approve proposed Bank budgets and formulate its annual accounts and the proposal for distribution of profits.</p> <p>h. Approve guidelines on personnel policy and ratify the appointment of Directors-General.</p> <p>i. Impose sanctions whose adoption is the responsibility of the Bank.</p> <p>j. Approve proposals for sanctions which the Bank must submit to the Minister of Economy and Finance.</p> <p>k. Settle appeals to or claims filed against Bank resolutions when the authority to do so corresponds to the latter.</p> <p>l. Adopt any other necessary agreements to carry out the functions entrusted to the Bank under this law which are not the exclusive responsibility of the Executive Commission, with the power of delegating to the Governor, the Deputy Governor, or the Executive Commission the responsibilities or tasks that it deems appropriate. It shall determine explicitly in which cases subdelegation is possible</p>			
	22(1)	<p>The Executive Commission shall be made up of:</p> <p>a. The Governor, who shall act as President.</p> <p>b. The Deputy Governor.</p> <p>c. Two elected Council members.</p>			
	23(1)	<p>The Executive Commission shall be responsible for the following, subject to the guidelines of the Governing</p>	Yes		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
		<p>Council:</p> <p>a. To contribute to the implementation of the monetary policy formulated by the ESCB in accordance with the terms of article 21.1 b).</p> <p>b. To decide upon the administrative authorisations to be granted by the Bank.</p> <p>c. To organise the Bank and appoint Directors-General and personnel, fixing their salaries in line with internal rules and the general guidelines approved by the Governing Council. The Council will in all cases ratify appointments of Directors-General.</p> <p>d. Submit to the Governing Council the proposals which the Council is responsible for resolving or approving.</p> <p>e. Carry out the tasks expressly delegated to it by the Governing Council.</p> <p>f. Formulate necessary recommendations and requirements for credit institutions and, with regard to the latter, their Board of Directors and management, agree to initiate sanctioning procedures and intervention measures, replace Directors, or take any other precautionary measures set out in legal regulations and entrusted to the Bank. Any precautionary measures taken by the Executive Commission in the fulfilment of its responsibilities will be immediately reported to the Governing Council.</p> <p>g. Administer the Bank in the area of private law and manage its assets.</p> <p>h. Agree on any other operations or transactions which the Bank must perform to carry out its responsibilities, delegating these to the commissions or individuals that it deems appropriate.</p>			
Sweden	Chapter 1,	Pursuant to Chapter 9, Article 13 of the Instrument of	No		

Member State	Article	Text	Responsibility for ESCB-related/basic central banking tasks	Membership in the Governing Council	Membership in the General Council
	Article 3	Government, the Riksbank has a General Council of eleven members, appointed by the Riksdag			
	Chapter 1, Article 4	Pursuant to Chapter 9, Article 13 of the Instrument of Government, the activities of the Riksbank are managed by an Executive Board, consisting of six members, who are appointed by the General Council for a period of six years. The General Council appoints the Chairman of the Executive Board, who at the same time shall be the Governor of the Riksbank, and at least one Vice-Chairman, who at the same time shall serve as Deputy Governor of the Riksbank. When required, in the absence or incapacity of the Governor, the General Council shall determine in which order the Deputy Governors shall serve in his place	Yes		
	Chapter 1, Article 5	Matters which are not to be decided by the General Council are determined by the Executive Board. The Executive Board may decide that matters may be determined by the Governor of the Riksbank or by another official at the Riksbank			
The United Kingdom	1(2)	The court shall consist of a Governor, 2 Deputy Governors and 16 directors of the Bank, all of whom shall be appointed by Her Majesty.			
	2(1)	The court of directors of the Bank shall manage the Bank's affairs, other than the formulation of monetary policy.			
	3(1)	The functions mentioned in subsection (2) shall stand delegated to a sub-committee of the court of directors of the Bank consisting of the directors of the Bank.			
	15(1)	There shall be a committee of the Bank, to be known as the Monetary Policy Committee of the Bank of England, which shall have responsibility within the Bank for formulating monetary policy.	Yes		
	16(1)	The court of directors of the Bank shall keep the procedures followed by the Monetary Policy Committee under review			

Table 3-1 Functional independence

Member State	Article	Text
Austria	2(2)	The Oesterreichische Nationalbank shall, in accordance with the provisions of the Treaty, the Protocol on the Statute of the European System of Central Banks and the European Central Bank, the directly applicable Community legislation adopted there under, and this federal act, be obliged to work towards the achievement of the objectives and fulfillment of the tasks of the ESCB. Within the framework of Community law, in particular Articles 2 and 105 of the Treaty, the Oesterreichische Nationalbank shall use all the means at its disposal to maintain the objective of price stability. To the extent that this does not interfere with the objective of price stability, the needs of the national economy with regard to economic growth and employment trends shall be taken into account and the general economic policies in the Community shall be supported.
Belgium	12 (Articles of Association)	The Bank shall participate in achieving the objectives of the ESCB which shall be : - primarily, to maintain price stability; - without prejudice to the objective of price stability to support the general economic policies in the European Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of the Treaty establishing the European Community. In order to achieve these objectives, the Bank shall act in accordance with the principles laid down in Article 3A of the Treaty establishing the European Community.
Bulgaria	2(1)	The primary objective of the Bulgarian National Bank shall be to maintain price stability through ensuring the stability of the national currency and implementing monetary policy as provided for by this Law.
	2(2)	The Bulgarian National Bank shall act in accordance with the principle of the open market economy with free competition, favouring an efficient allocation of resources. From the date of accession of the Republic of Bulgaria to the European Union and without prejudice to the primary objective of price stability, the Bulgarian National Bank shall support the general economic policies in the European Community with a view to contributing to the achievement of the objectives of the European Community as laid down in Article 2 of the Treaty establishing the European Community.
	2(3)	Without prejudice to the objectives under paras. 1 and 2, the Bulgarian National Bank shall support the policy of sustainable and non-inflationary growth.
Cyprus	5(1)	The primary objective of the Bank shall be to ensure price stability.
	5(2)	Without prejudice to this primary objective and subject to the fulfilment of its obligations under Article 105 paragraph (1) of the Treaty, the Bank shall support the general economic policy of the State.
	5A(1)	The Bank is an integral part of the European System of Central Banks and shall act, within the fields of competence of the System, in accordance with the guidelines and instructions of the European Central Bank.
	5A(2)	The Bank shall contribute, as an integral part of the European

		System of Central Banks, to the performance of the tasks and the exercise of the competences entrusted to or conferred upon the latter in accordance with the provisions of the Treaty or of the Statute.
The Czech Republic	2(1)	The primary objective of the Czech National Bank shall be to maintain price stability. Without prejudice to its primary objective, the Czech National Bank shall support the general economic policies of the Government leading to sustainable economic growth. The Czech National Bank shall act in accordance with the principle of an open market economy.
	Article 1, Section II of Act No. 442/2000 Coll.	a) the Czech National Bank shall, without prejudice to its primary objective, support the general economic policies in the European Community with a view to contributing to the achievement of the objectives of the European Community;
	Article 1, Section II of Act No. 442/2000 Coll.	(b) the Czech National Bank shall be a part of the European System of Central Banks in accordance with the Treaty establishing the European Community and in accordance with the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the "Statute") and shall observe the provisions of the Statute to the extent of the requirements for Member States of the European Union that have not yet introduced the euro as their national currency. In performing the tasks ensuing from this position, the Czech National Bank shall act in accordance with the legal acts of the European Central Bank;
Denmark	1	"Danmarks Nationalbank" (The National Bank of Denmark) which, at the coming into force of this Act, confer § 33, takes over the "Nationalbanken i Kjøbenhavn" (The National Bank in Copenhagen) shall as the Central Bank of this country have the object in conformity with this Act and the regulations given under this Act to maintain a safe and secure currency system in this country, and to facilitate and regulate the traffic in money and the extension of credit.
Estonia	2(1)	The primary objective of Eesti Pank is to ensure price stability. Eesti Pank shall regulate currency circulation both in Estonia and with other countries and seek to uphold the stability of the national currency
	New 2(1)	The primary objective of Eesti Pank is to maintain price stability. Eesti Pank also supports the achievement of other economic policy objectives in accordance with the Treaty establishing the European Community.
	4(4)	Eesti Pank shall, within the limits of its authority, support the economic policy of the Government of the Republic provided that this policy is not in conflict with the objectives and functions of Eesti Pank provided by § 2 of this Act and does not prevent Eesti Pank from performing them
Finland	2(1)	In accordance with the Treaty, the primary objective of the Bank of Finland shall be to maintain price stability.
	2(2)	Without prejudice to the objective laid down in paragraph 1, the Bank of Finland shall also support the achievement of other economic policy objectives in accordance with the Treaty.
France	L 141-1	The Banque de France shall be an integral part of the European System of Central Banks, instituted by Article 8 of the Treaty establishing the European Community, and shall participate in carrying out the tasks, and complying with the objectives, assigned to the European System of Central Banks by the Treaty. Within this framework, and without prejudice to the primary objective of price stability, the Banque de France shall support

		<p>the Government's general economic policy.</p> <p>In performing the tasks arising from its participation in the European System of Central Banks, the Banque de France, as represented by its Governor or its Deputy Governors, shall neither seek nor accept instructions from the Government or any other person or body</p>
Germany	3	The Deutsche Bundesbank, being the central bank of the Federal Republic of Germany, is an integral part of the European System of Central Banks (ESCB). It shall participate in the performance of the ESCB's tasks with the primary objective of maintaining price stability, shall hold and manage the foreign reserves of the Federal Republic of Germany, shall arrange for the execution of domestic and crossborder payments and shall contribute to the stability of payment and clearing systems. In addition, it shall fulfil the tasks assigned to it under this Act or other legislation.
	12	In exercising the powers conferred on it by this Act, the Deutsche Bundesbank shall be independent of and not subject to instructions from the Federal Government. As far as is possible without prejudice to its tasks as part of the European System of Central Banks, it shall support the general economic policy of the Federal Government.
Greece	4(1)	The primary objective of the Bank of Greece shall be to ensure price stability.
	4(2)	Without prejudice to this primary objective, the Bank shall support the general economic policy of the government.
	4(3)	As from the adoption of the single European currency (euro) as the national currency of Greece, the Bank of Greece, as an integral part of the ESCB and in accordance with the terms set out in Article 105 paragraph 1 of the Treaty establishing the European Community shall pursue the primary objective of maintaining price stability.
Hungary	3(1)	The primary objective of the MNB shall be to achieve and maintain price stability.
	3(2)	Without prejudice to its primary objective, the MNB shall support the economic policy of the Government, using the monetary policy instruments at its disposal.
Ireland	6A(1)	In discharging its functions and exercising its powers as part of the European System of Central Banks, the primary objective of the Bank is to maintain price stability.
Italy	1(3)	As the central bank of the Italian Republic, the Bank of Italy is an integral part of the European System of Central Banks (ESCB). It shall perform the tasks and functions entrusted to it in that capacity in compliance with the statute of the ESCB. It shall pursue the objectives assigned to the ESCB under Article 105(1) of the Treaty establishing the European Community (Treaty).
Latvia	3	The main objective of the Bank of Latvia shall be to maintain price stability in the country.
Lithuania	7(1)	The primary objective of the Bank of Lithuania shall be to maintain price stability.
	7(2)	The Bank of Lithuania shall, within the range of its competence, support the economic policy carried out by the Government of the Republic of Lithuania, without prejudice to the primary objective of the Bank of Lithuania.
	New 7(1)	In accordance with the Treaty establishing the European Community, the primary objective of the Bank of Lithuania shall be to maintain price stability.
	New 7(2)	Without prejudice to its primary objective, the Bank of

		Lithuania shall, within the range of its competence, support the general economic policies in the European Community with a view to contributing to the achievement of the objectives of the European Community established in the Treaty establishing the European Community, and support the economic policy carried out by the Government of the Republic of Lithuania, without prejudice to the primary objective of the Bank of Lithuania and to the extent this meets the objectives of the European Central Bank and of the European System of Central Banks.
Luxembourg	2(2)	The main task of the Central Bank shall be to participate in the execution of the tasks of the ESCB with a view to achieving its objectives.
	2(3)	Subject to their compatibility with its main task and in accordance with the Treaty establishing the European Community and with the Statute of the ESCB and of the ECB, the Central Bank shall perform such duties falling outside the functions of the ESCB as are assigned to it by this law or by other legislative, regulatory or conventional texts.
Malta	4	In accordance with the Treaty and the Statute, the primary objective of the Bank shall be to maintain price stability. Without prejudice to its primary objective, the Bank shall support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of the Treaty and shall act in accordance with the principles set out in Article 4 of the Treaty.
The Netherlands	2(1)	In implementation of the Treaty, the Bank's objective shall be to maintain price stability.
	2(2)	In implementation of the Treaty, the Bank shall, without prejudice to the objective of price stability, support the general economic policies in the European Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of the Treaty.
Poland	3(1)	The basic objective of the activity of the NBP shall be to maintain price stability, while supporting the economic policies of the Government, insofar as this does not constrain the pursuit of the basic objective of the NBP.
Portugal	3(1)	The Bank, as the central bank of the Portuguese Republic, shall be an integral part of the European System of Central Banks, hereinafter called "ESCB".
	3(2)	The Bank shall pursue the objectives and shall participate in the performance of the tasks entrusted to the ESCB and shall be subject to the provisions of the Statute of the ESCB and of the European Central Bank, hereinafter called "ESCB/ECB Statute", acting in accordance with the guidelines and instructions of the European Central Bank, hereinafter called "ECB", pursuant to the same Statute.
Romania	2(1)	The primary objective of Banca Națională a României shall be to ensure and maintain price stability.
	2(3)	Without prejudice to its primary objective of ensuring and maintaining price stability, Banca Națională a României shall support the State's general economic policy.
Slovakia	2(1)	The primary objective of the National Bank of Slovakia shall be to maintain price stability. To this end, the National Bank of Slovakia shall: <ul style="list-style-type: none"> a) participate in the common monetary policy which the European Central Bank determines for the euro area (hereinafter the "common European monetary policy"); b) issue euro banknotes and euro coins in accordance with the

		<p>separate legal provisions applicable in the euro area to the issuance of euro banknotes and coins;</p> <p>c) support the smooth functioning of payment systems and settlement systems, control, coordinate and ensure the circulation of money, payments and settlement between banks within the scope established by this Law and a separate law, and ensure the efficient and economic performance of these operations;</p> <p>d) maintain foreign reserve assets, use these reserve assets, and conduct foreign exchange operations; as of the euro introduction date, it shall, in conducting operations within the Eurosystem, proceed in accordance with the separate legal provisions applicable to Eurosystem operations,</p> <p>e) perform other activities pursuant to this Law and separate laws.</p>
	2(2)	<p>With a view to accomplishing its primary objective pursuant to paragraph 1, the National Bank of Slovakia shall also perform authority, activities, tasks, rights and obligations arising from its participation and objectives in the European System of Central Banks, where the National Bank of Slovakia, as a member of the European System of Central Banks, shall proceed in accordance with the rules governing the European System of Central Banks, and as a member of the Eurosystem as of the euro introduction date shall also proceed in accordance with the rules applicable solely to the Eurosystem.</p>
	2(3)	<p>In the area of the financial market, the National Bank of Slovakia shall contribute to the stability of the financial system as a whole, as well as to the secure and sound functioning of the financial market for the sake of maintaining its credibility, client protection and out of respect for the rules of economic competition; whereby the National Bank of Slovakia shall perform</p> <p>a) financial market supervision pursuant to this Law and separate legal provisions;</p> <p>b) other activities in the area of the financial market pursuant to this Law and separate legal provisions</p>
Slovenia	4(1)	<p>The primary objective of Banka Slovenije shall be to maintain price stability.</p>
	4(2)	<p>Without prejudice to the objective of ensuring price stability, Banka Slovenije shall support general economic policy in accordance with the objectives set in the Treaty establishing the European Community (Official Gazette of the Republic of Slovenia – International Treaties, No. 7/04).</p>
	4(3)	<p>In pursuing the primary objective specified in the first paragraph of this Article and the objective specified in the second paragraph of this Article, Banka Slovenije shall strive for financial stability, while taking into account the principles of an open market economy and free competition.</p>
Spain	7(2)	<p>Without prejudice to its main objective of maintaining price stability and fulfilling its duties as a member of the ESCB in accordance with the terms of article 105.1 of the Treaty, the Bank shall support the general economic policy of the government.</p>
Sweden	Chapter 1, Article 2(2)	<p>The objective of the Riksbank's activities shall be to maintain price stability.</p>
The United Kingdom	11	<p>In relation to monetary policy, the objectives of the Bank of England shall be –</p> <p>(a) to maintain price stability, and</p> <p>(b) subject to that, to support the economic policy of Her Majesty's Government, including its objectives for growth and</p>

		employment.
	12(1)	The Treasury may by notice in writing to the Bank specify for the purposes of section 11 – (a) what price stability is to be taken to consist of, or (b) what the economic policy of Her Majesty’s Government is to be taken to be.
	12(2)	The Treasury shall specify under subsection (1) both of the matters mentioned there – (a) before the end of the period of 7 days beginning with the day on which this Act comes into force, and (b) at least once in every period of 12 months beginning on the anniversary of the day on which this Act comes into force.
	12(3)	Where the Treasury give notice under this section they shall – (a) publish the notice in such manner as they think fit, and (b) lay a copy of it before Parliament.

Table 3-2 Prohibition on giving instructions

Member State	Article	Text
Austria	2(5)	In pursuing the objectives and performing the tasks set out in paragraphs 2 to 4, the Oesterreichische Nationalbank shall act in accordance with the guidelines and instructions of the ECB pursuant to Article 14.3 of the ESCB/ECB Statute; in doing so, neither the Oesterreichische Nationalbank nor any member of its decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State of the European Community, or from any other body.
Belgium	15 Articles of Association	When carrying out the tasks and duties referred to in this section, neither the Bank nor any members of its decision-making bodies shall seek or take instructions from institutions or bodies of the European Community, from any government of a Member State of the Community or from any other body.
	22	1. Except as regards the tasks and transactions within the domain of the ESCB, the Minister of Finance, through his representative, shall have the right to supervise the Bank’s transactions and to oppose the implementation of any measure which is contrary to the law, the Statutes or the interests of the State. 2. The representative of the Minister of Finance shall, <i>ex officio</i> , attend the meetings of the Council of Regency and the Board of Censors. Except as regards the functions and transactions within the domain of the ESCB, he shall supervise the Bank’s transactions and suspend and bring to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State. If the Minister of Finance has not given a decision within eight days on the suspension, the decision may be implemented.
Bulgaria	44	When exercising their powers and carrying out their duties under this Law, the BNB, the Governor and the members of the Governing Council shall be independent, and neither the BNB, nor the Governor, nor the members of the Governing Council shall seek or take instructions from the Council of Ministers or from any other body or institution. The Council of Ministers and other bodies and institutions shall not give instructions to the BNB, the Governor or the members of the Governing Council.
Cyprus	7	When carrying out the tasks conferred upon them under this Law, neither the Bank nor any member of its decision-making bodies shall seek or take instructions from the Community

		institutions or bodies, from the Government or any government of a Member State or from any other body.
The Czech Republic	3(1)	The Czech National Bank shall submit a report on monetary development to the Chamber of Deputies of Parliament at least twice a year for review. If the Chamber of Deputies so resolves, the Czech National Bank shall submit an extraordinary report on monetary development within thirty days. The resolution of the Chamber of Deputies must state what the extraordinary report should contain.
	3(2)	The report on monetary development shall be submitted to the Chamber of Deputies by the Governor of the Czech National Bank, who in such an event shall be entitled to attend the session of the Chamber of Deputies and must be called upon to speak.
	3(4)	If the Chamber of Deputies asks for a revised report, the Czech National Bank shall within six weeks submit a revised report that complies with the requirements of the Chamber of Deputies.
	9(1)	When providing for the primary objective of the Czech National Bank and when carrying out other activities, neither the Czech National Bank nor the Bank Board shall seek or take instructions from the President of the Republic, from Parliament, from the Government, from administrative authorities or from any other body.
	47(3)	Within three months of the end of the calendar year, the Czech National Bank shall submit its annual financial report to the Chamber of Deputies for review. This report shall include information on the salaries of the members of the Bank Board of the Czech National Bank.
	47(5)	If the Chamber of Deputies rejects the financial report of the Czech National Bank, the Czech National Bank shall within six weeks submit a revised report that complies with the requirements of the Chamber of Deputies.
Denmark	N/A	
Estonia	3(1)	Eesti Pank operates independently of other state agencies. Eesti Pank shall report on its activities to the Riigikogu and it is not subordinated to the Government of the Republic or any other executive state agency or any third person
	3(1 ¹)	As part of the European System of Central Banks, Eesti Pank and members of its directing bodies may apply for and receive instructions to be carried out only from the European Central Bank.
	10(3)	The Governor and Deputy Governors of Eesti Pank shall be independent in the performance of their functions. They shall not hold any office, be in service or be party to any activities which, by their nature, restrict or may restrict the autonomy of Eesti Pank or adversely affect or may adversely affect Eesti Pank in the achievement of its objectives or the performance of its functions.
Finland	4(1)	In performing tasks of the European System of Central Banks, neither the Bank of Finland nor members of its governing bodies shall seek or take instructions concerning such tasks from entities other than the European Central Bank.
	15(2)	The independence and the powers of the Governor of the Bank of Finland in respect to the performance of his duties in the Governing Council of the European Central Bank are laid down in the Treaty and the Statute.
France	L 141-1	The Banque de France shall be an integral part of the European System of Central Banks, instituted by Article 8 of the Treaty establishing the European Community, and shall participate in carrying out the tasks, and complying with the objectives, assigned to the European System of Central Banks by the Treaty.

		<p>Within this framework, and without prejudice to the primary objective of price stability, the Banque de France shall support the Government's general economic policy.</p> <p>In performing the tasks arising from its participation in the European System of Central Banks, the Banque de France, as represented by its Governor or its Deputy Governors, shall neither seek nor accept instructions from the Government or any other person or body.</p>
Germany	12	In exercising the powers conferred on it by this Act, the Deutsche Bundesbank shall be independent of and not subject to instructions from the Federal Government. As far as is possible without prejudice to its tasks as part of the European System of Central Banks, it shall support the general economic policy of the Federal Government.
Greece	5A	When carrying out the tasks conferred upon them, neither the Bank of Greece nor any member of its decision-making bodies shall seek or take instructions from the government or any organisation. Neither the government nor any other political authority shall seek to influence the decision-making organs of the Bank in the performance of their duties.
Hungary	1(2)	The MNB and the members of its decision-making bodies shall be independent in carrying out the tasks and meeting their obligations conferred upon them by this Act, and shall neither seek nor take instructions from the Government, the institutions and bodies of the European Union, the governments of its Member States and any other bodies, except from the European Central Bank
	38	The Government may not instruct the MNB in relation to its scope of tasks as set forth in this Act.
Ireland	5A(4)	The Bank is required to perform its functions and exercise its powers in a manner consistent with the Rome Treaty and the ESCB Statute.
	19A(2)	The Governor has sole responsibility for the performance of the functions imposed, and the exercise of powers conferred, on the Bank by or under the Rome Treaty or the ESCB Statute
Italy	1(2)	In performing their functions, the Bank of Italy and the members of its decision-making bodies shall act autonomously and independently in observance of the principle of transparency and may not seek or accept instructions from other public or private-sector entities.
Latvia	13(1)	In fulfilling its tasks and performing supervision in accordance with the Republic of Latvia Law "On Credit Institutions" and this Law, the Bank of Latvia shall neither seek nor take instructions from the Government or any other institution and shall not be subject to the decisions and regulations adopted by the Government or any other institution.
	13(2)	The Bank of Latvia shall be independent in the adoption of its decisions and in their practical implementation.
Lithuania	3(2)	When implementing the objectives and performing its functions as well as pursuing the activities necessary for that, neither the Bank of Lithuania, nor the Chairperson of the Board of the Bank of Lithuania, the Deputy Chairpersons, the Board members nor other members of the staff of the Bank of Lithuania (hereinafter referred to as the "Bank of Lithuania staff") must seek and take instructions from the institutions and bodies of the European Union, the governments of the Member States of the European Union or any other institutions or bodies. The Government of the Republic of Lithuania and State institutions must respect the

		independence of the Bank of Lithuania and must not seek to influence the Bank of Lithuania and its staff in discharge of their duties.
Luxembourg	5(2)	In the exercise of the powers and in the fulfilment of the tasks and duties entrusted to them within the domain of the ESCB, neither the Central Bank nor any member of its bodies may seek or accept instructions from institutions or bodies of the European Community, governments of Member States or any other body
Malta	5(2)	In accordance with the Treaty and the Statute, neither the Bank nor any member of the Board or any official of the Bank, when exercising any function, duty or power under this Act, shall seek or take instructions from the Government or any other body.
The Netherlands	3.3	In implementation of the Treaty, the Bank may, in carrying out its tasks and duties under subsections (1) and (2), seek and take instructions exclusively from the ECB
Poland	11(3)	The President of the NBP shall represent the interests of the Republic of Poland within international banking institutions, and, unless the Council of Ministers decides otherwise, within international financial institutions.
	12(1)	The Monetary Policy Council shall determine the annual monetary policy guidelines and submit these to the Sejm, for the information thereof, together with the submission by the Council of Ministers of the draft Budget. The Council shall present a report to the Sejm on the performance of monetary policy guidelines within five months of the end of the budget year
	21	In performing its tasks, the NBP shall collaborate with the competent State bodies in developing and implementing national economic policy, in so doing striving to ensure the proper performance of monetary policy guidelines, and in particular shall: 1) submit the monetary policy guidelines as well as reports on the performance of monetary policy and on the situation within the banking system to State bodies, (...)
	23(1)	Acting on behalf of the Council, the President of the NBP shall: 1) submit to the Sejm and Council of Ministers: a) quarterly reports on the balance of payments, b) annual survey of the international investment position, 2) forward to the Council of Ministers and Minister of Finance draft monetary policy guidelines, opinions on the draft law on budget, balance of payments forecasts and the rulings of the Council, 3) draw up periodic reports on transfers of (payments from) profit.
Portugal	27(2)	The Governor and the other members of the Board of Directors shall be independent in accordance with the Statute of the European System of Central Banks and of the Central Bank (ESCB/ECB) and shall not seek or take instructions from Community institutions, the State sovereign bodies or any other institutions.
Romania	3(1)	When carrying out their tasks, Banca Națională a României and the members of its decision-making bodies shall not seek or take instructions from public authorities or from any other institution or authority.
Slovakia	7(7)	In connection with the performance of their functions or with activities of the National Bank of Slovakia, members of the Bank Board may not seek or take instructions from state authorities, self-government bodies, any other public bodies, or any legal persons or natural persons; state authorities, self-government bodies, any other public bodies, or any legal persons

		or natural persons may not influence the National Bank of Slovakia or members of the Bank Board in connection with the performance of their function and the operations of the National Bank of Slovakia. The Bank Board shall not exercise influence over the Governor, and the Governor of the National Bank of Slovakia may not seek or take instructions from the Bank Board in connection with the performance of his function in bodies of the European System of Central Banks and the European Central Bank; the same shall apply to a person acting for the Governor of the National Bank of Slovakia in these bodies.
	12(1)	The National Bank of Slovakia shall fulfil its tasks independently of instructions from state authorities, self-government bodies, any other public bodies and from legal persons and natural persons.
Slovenia	2	Banka Slovenije and members of its decision-making bodies shall be independent, and in performing the tasks pursuant to this Act shall not be bound by any decisions, positions or instructions issued by the State or any other authorities, nor shall they seek any instructions or guidelines from them.
	26	(1) Notwithstanding other laws, Banka Slovenije shall report on its work exclusively to the National Assembly of the Republic of Slovenia. Banka Slovenije shall report on its work at least bi-annually. (2) Notwithstanding the previous paragraph Banka Slovenije shall also report to the decision-making bodies of the European System of Central Banks to the extent defined by Article 14.3 of the ESCB and ECB Statute.
	54(2)	Banka Slovenije shall act in accordance with the instructions and guidelines of the European Central Bank and implement the decisions of the European System of Central Banks' decision-making bodies in accordance with its status under the ESCB and ECB Statute.
Spain	7(4)	Without prejudice to the terms of article 1.3, in carrying out the functions envisaged in point three of this article, specified in sections 1, 2 and 4 of chapter II, but in these latter cases only when it addresses matters resulting from the functions of the ESCB, neither the government nor any other national or Community body shall give instructions to the Bank, and nor may the latter request or accept them.
Sweden	Chapter 3 Article 2	Members of the Executive Board may neither seek nor take instructions when fulfilling their monetary policy duties.
The United Kingdom	19(1)	The Treasury, after consultation with the Governor of the Bank, may by order give the Bank directions with respect to monetary policy if they are satisfied that the directions are required in the public interest and by extreme economic circumstances.

Table 3-3 Prohibition on approving, suspending, annulling or deferring decisions

Member State	Article	Text
Austria	N/A	
Belgium	22(1); 41 Articles of Association	Except as regards the tasks and transactions within the domain of the ESCB, the Minister of Finance, through his representative, shall have the right to supervise the Bank's transactions and to oppose the implementation of any measure which is contrary to the law, the Statutes or the interests of the State.
	22(2); 41 Articles of	The representative of the Minister of Finance shall, <i>ex officio</i> , attend the meetings of the Council of Regency and the Board

	Association	of Censors. Except as regards the functions and transactions within the domain of the ESCB, he shall supervise the Bank's transactions and suspend and bring to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State. If the Minister of Finance has not given a decision within eight days on the suspension, the decision may be implemented.
	22(3) 41 Articles of Association	The salary of the representative of the Minister of Finance shall be fixed by the Minister of Finance in consultation with the management of the Bank and shall be borne by the latter. The representative of the Minister shall report to the Minister of Finance each year on the performance of his task
Bulgaria	N/A	
Cyprus	N/A	
The Czech Republic	3(4)	If the Chamber of Deputies asks for a revised report [on monetary development], the Czech National Bank shall within six weeks submit a revised report that complies with the requirements of the Chamber of Deputies.
	47(5)	If the Chamber of Deputies rejects the financial report of the Czech National Bank, the Czech National Bank shall within six weeks submit a revised report that complies with the requirements of the Chamber of Deputies.
Denmark	N/A	
Estonia	3(1)	Eesti Pank operates independently of other state agencies. Eesti Pank shall report on its activities to the Riigikogu and it is not subordinated to the Government of the Republic or any other executive state agency or any third person.
	11(3)	If the Governor of Eesti Pank does not agree with a decision of the Supervisory Board of Eesti Pank, he or she shall report to the President of the Riigikogu not later than within three working days and make a proposal to submit an interpellation in the matter to the Chairman of the Supervisory Board of Eesti Pank.
Finland	N/A	
France	Article L.142-3, II (4-5)	An observer, or their alternate, appointed by the Minister for Economic Affairs, shall attend the meetings of the General Council and may submit draft resolutions for the General Council's consideration. Decisions adopted by the General Council shall be final, unless an objection is lodged by the observer or the observer's alternate.
Germany	N/A	
Greece	47(1)	The Minister of Finance may nominate a Government Commissioner who shall have the right to attend all General Meetings of Shareholders and meetings of the General Council, but would not have the right to vote. The remuneration of the Government Commissioner shall be paid by the State.
	47(2)	The Commissioner shall have the right to protest against any decision of either the General Meeting of Shareholders or the General Council, which he considers in conflict to this Statute or other laws of the State. Any such protest, if adopted by the Minister of Finance within two days, shall have the force of a suspensive veto until the question in dispute has been resolved by a Committee consisting of three persons, to be named within seven days on a request to that effect being made either by the Bank or the Government Commissioner; the Committee should report within seven days from nomination. The

		Committee shall consist of one representative of the Government, one representative of the General Council, and a Chairman, to be elected upon a mutual agreement of the Government and the Bank. Failing an agreement, Chairman shall be the President of the Supreme Court.
	49	Any other question in dispute between the Government and the Bank, other than those leading to a suspensive veto of the Government Commissioner, shall also be settled by arbitration in the same manner as is laid down in Article 47.
Hungary	N/A	
Ireland	N/A	
Italy	N/A	
Latvia	N/A	
Lithuania	N/A	
Luxembourg	N/A	
Malta	N/A	
The Netherlands	N/A	
Poland	N/A	
Portugal	N/A	
Romania	N/A	
Slovakia	N/A	
Slovenia	N/A	
Spain	N/A	
Sweden	Sveriges Riksbank Act, Chapter 1 Art. 1.	The Riksbank (the Swedish Central Bank), which pursuant to Chapter 9, Article 13 of the Instrument of Government is the country's central bank and a public authority under the Riksdag (the Swedish Parliament), may only conduct, or participate in, such activities for which it has been authorised by Swedish law.
	The Instrument of Government, Chapter 9, Art. 13	The Riksbank is the central bank of Sweden and is an authority under the Riksdag. The Riksbank is responsible for monetary policy. No authority may determine the decisions made by the Riksbank on issues relating to monetary policy. [...]
The United Kingdom	N/A	

Table 3-4 Prohibition on censoring decisions on legal grounds

Member State	Article	Text
Austria	N/A	
Belgium	22(1); 41(1) Articles of Association	Except as regards the tasks and transactions within the domain of the ESCB, the Minister of Finance, through his representative, shall have the right to supervise the Bank's transactions and to oppose the implementation of any measure which is contrary to the law, the Statutes or the interests of the State.
Bulgaria	N/A	
Cyprus	N/A	
The Czech Republic	N/A	
Denmark	N/A	
Estonia	N/A	
Finland	N/A	
France	N/A	
Germany	N/A	
Greece	N/A	
Hungary	60(4)	The Minister responsible for justice affairs need not be consulted

		in the case of a decree of the Governor of the MNB.
Ireland	N/A	
Italy	N/A	
Latvia	N/A	
Lithuania	N/A	
Luxembourg	N/A	
Malta	N/A	
The Netherlands	N/A	
Poland	N/A	
Portugal	N/A	
Romania	N/A	
Slovakia	N/A	
Slovenia	N/A	
Spain	N/A	
Sweden	N/A	
The United Kingdom	N/A	

Table 3-5 Prohibition on participation in decision-making bodies of an NCB with a right to vote

Member State	Article	Text
Austria	40	The Federal Minister of Finance shall appoint a State Commissioner and a Deputy State Commissioner, who shall be entitled to participate in an advisory capacity in the General Meetings and the meetings of the General Council. The State Commissioner and his deputy shall receive no remuneration for their services.
Belgium	22(2) Statute 41(2) 22(3) Statute 41(3)	The representative of the Minister of Finance shall, <i>ex officio</i> , attend the meetings of the Council of Regency and the Board of Censors. Except as regards the functions and transactions within the domain of the ESCB, he shall supervise the Bank's transactions and suspend and bring to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State. If the Minister of Finance has not given a decision within eight days on the suspension, the decision may be implemented. The salary of the representative of the Minister of Finance shall be fixed by the Minister of Finance in consultation with the management of the Bank and shall be borne by the latter. The representative of the Minister shall report to the Minister of Finance each year on the performance of his task.
Bulgaria	N/A	
Cyprus	N/A	
The Czech Republic	11(1)	The Minister of Finance or another nominated member of the Government may attend the meetings of the Bank Board in an advisory capacity and may submit motions for discussion.
Denmark	7	The Minister of Economic Affairs in his capacity of Royal Bank- Commissioner shall supervise that the Bank fulfils its obligations under this present Act and under the ordinances and provisions given pursuant to this present Act. The Minister of Economic Affairs presides at the meetings of the Board of Directors. He shall have admission to the meetings of the Committee of Directors and to be supplied with information concerning the Bank to the extent he might desire.

		Decisions of particularly far-reaching character cannot be taken at a meeting of the Committee of Directors when the Minister of Economic Affairs is not present, unless he has been informed in advance that the case will be dealt with at the meeting.
	6 By Laws	The Committee of Directors shall meet once every month unless other decision be made, and otherwise as often as the Chairman deems it necessary, or when the Royal Bank-Commissioner or 3 members demand it. The Committee of Directors forms a quorum when 4 members are present. When none of the members mentioned in § 1 b) is present, no decision can be made without the consent of the Royal Bank-Commissioner. Decisions shall be taken by a majority of votes; in the case of an equality of votes the Chairman shall have the casting vote. The Royal Bank-Commissioner shall have admission to the meetings of the Committee of Directors. Decisions of particularly far-reaching character cannot be taken at a meeting of the Committee of Directors when the Royal Bank-Commissioner is not present, unless he has been informed in advance that the case will be dealt with at the meeting.
	25 By-laws	The Board of Governors shall fix the rate of discount and the rate of interest for advances. When the Board of Governors wishes to alter the rate of discount (the Bank Rate) it shall notify the Royal Bank-Commissioner and the [Minister of Finance?] to that effect. The Royal Bank-Commissioner and the [Minister of Finance?] shall be entitled personally or by deputy to take part in the negotiations, but they shall have no right of voting. When a decision has been taken the Chairman of the Board of Directors and of the Committee of Directors shall immediately be notified.
Estonia	9(5)	Meetings of the Supervisory Board of Eesti Pank shall be closed unless otherwise decided by the Chairman of the Supervisory Board of Eesti Pank. The Minister of Finance, the Governor and Deputy Governors of Eesti Pank participate in the meetings with the right to speak
Finland	12(2)	The members of the Board shall have the right to be present and to be heard at meetings of the Parliamentary Supervisory Council.
France	Article L.142-2 (1-2)	The General Council shall administer the Banque de France. It shall consider matters relating to the management of the Banque de France's activities other than those which are tasks of the European System of Central Banks.
	Article L.142-3, II (4-5)	An observer, or their alternate, appointed by the Minister for Economic Affairs, shall attend the meetings of the General Council and may submit draft resolutions for the General Council's consideration. Decisions adopted by the General Council shall be final, unless an objection is lodged by the observer or the observer's alternate.
Germany	N/A	
Greece	47(1)	The Minister of Finance may nominate a Government Commissioner who shall have the right to attend all General Meetings of Shareholders and meetings of the General Council, but would not have the right to vote. The remuneration of the Government Commissioner shall be paid by the State.

	47(2)	The Commissioner shall have the right to protest against any decision of either the General Meeting of Shareholders or the General Council, which he considers in conflict to this Statute or other laws of the State. Any such protest, if adopted by the Minister of Finance within two days, shall have the force of a suspensive veto until the question in dispute has been resolved by a Committee consisting of three persons, to be named within seven days on a request to that effect being made either by the Bank or the Government Commissioner; the Committee should report within seven days from nomination. The Committee shall consist of one representative of the Government, one representative of the General Council, and a Chairman, to be elected upon a mutual agreement of the Government and the Bank. Failing an agreement, Chairman shall be the President of the Supreme Court.
Hungary	39(1)	The agenda of the meetings of the Monetary Council (Article 49) shall be submitted to the Government.
	39(2)	The Government shall be represented without voting rights by the Minister or a person duly authorised by the Minister at the meetings of the Monetary Council.
Ireland	N/A	
Italy	N/A	
Latvia	N/A	
Lithuania	N/A	
Luxembourg	9(5)	The Minister responsible for relations with the Central Bank or his representative shall be invited to attend Council meetings. He may participate without having the right to vote.
Malta	N/A	
The Netherlands	14(1)	On behalf of Our Minister, the person appointed to the Supervisory Board pursuant to the provisions of section 13(2) may, at the request of Our Minister or on his own initiative, and with due observance of Article 1071 of the Treaty, obtain from the Governing Board of the Bank data and information about the manner in which the Bank performs its tasks. At the request of Our Minister or on his own initiative, and with due observance of Article 1071 of the Treaty, he may communicate his findings to Our Minister.
	14(2)	The Governing Board of the Bank shall be obliged at all times to provide the person referred to in subsection (1) at his request with all such data and information as he may deem necessary for the proper performance of his task as referred to in subsection (1), with the exception of data and information which, pursuant to the Treaty or the statutory regulations referred to in section 4, are secret.
	15(4)	The Governing Board of the Bank and the Treasurer-General or his alternate shall attend the meetings of the Bank Council and may take part in the deliberations.
Poland	15	The Vice-Presidents of the NBP shall participate at the meetings of the [Monetary Policy] Council without right to vote.
Portugal	N/A	
Romania	33(10)	The Minister of Public Finance and one of the State Secretaries in the Ministry of Public Finance may participate, without voting rights, in the meetings of Banca Națională a României's Board.
Slovakia	8(4)	Bank Board meetings shall not be open to the public. Apart

		from its members, Bank Board meetings may be attended by a Government member authorized by the Government, persons designated in the Bank Board's rules of procedure, and other persons invited by the Bank Board. The Bank Board may decide to publish the conclusions and materials from of its meetings; however, information about approved documents of meetings of the Bank Board or other body of the National Bank of Slovakia shall be published as required by this Law.
Slovenia	33(1)	The representative of the committee of the National Assembly of the Republic of Slovenia in charge of finance and monetary policy, and the minister in charge of finance, may participate in meetings of the Governing Board of Banka Slovenije, but shall have no right to vote.
	33(2)	Depending on the nature of the particular subject under consideration, the Governing Board of Banka Slovenije may also invite experts for such matters to participate in meetings.
Spain	20(3)	The Director-General of the Treasury and Financial Policy and the Vice-president of the National Securities Market Commission shall not be permitted to vote when the Council makes decisions on issues related to the matters regulated under section 1 and under sections 2 and 4 of chapter II of this Law, but in the case of the latter two sections only when decisions are made on issues arising from the functions of the ESCB.
	20(4)	The Economy and Finance Minister or the Secretary of State for Economy may attend the meetings of the Council, as participating but non-voting members, when they consider it necessary in the light of the importance of the matters under consideration. They may also submit a motion for consideration by the Governing Council.
Sweden	Chapter 3 Article 3(3)	The Chairman and Vice-Chairman of the General Council have the right to be present at the Executive Board's meetings with the right to speak, but without the right to make proposals and vote
The United Kingdom	N/A	

Table 3-6 Prohibition on ex ante consultation relating to an NCB's decision

Member State	Article	Text
Austria	32(5)	The Governor and the Vice Governor shall report to the Finance Committee of the Nationalrat at least twice a year on the measures taken in the field of monetary policy, while observing the obligation of professional secrecy laid down in Article 38 of the ESCB/ECB Statute.
Belgium	28	The Governor shall send to the Chairmen of the Chamber of Representatives and the Senate the annual report referred to in Article 109 B(3) of the Treaty establishing the European Community. The Governor may be heard by the competent committees of the Chamber of Representatives and the Senate at the request of these committees or on his own initiative.
Bulgaria	3	The BNB and the Council of Ministers shall keep each other informed about the formulation of the general outlines of monetary policy.
Cyprus	53(1)	The Bank may render advice to the Government and to the Minister on any matter which in its opinion is likely to affect the

		attainment of the objectives of the Bank as defined in section 5.
	53(2)	The Government and the Minister may request from the Bank to provide them with data on the prevailing economic conditions or advice on any particular measures which may be taken and information on the general conditions of money and the banking system.
	54(1)	Without prejudice to section 7, the Governor may be invited and may attend meetings of the Council of Ministers or competent committees of the Council of Ministers whenever the issues discussed pertain to the objectives and tasks of the Bank.
	54(2)	Without prejudice to the provisions of Article 105 paragraph 4 of the Treaty, the Bank shall be consulted on any draft legislative provision concerning its tasks: Provided that, the Bank may submit proposals to the Government on matters in its fields of competence.
	55(1)	Subject to paragraph 5 of Article 119 of the Constitution, the Bank shall lay before the President of the Republic and the House of Representatives an annual report on the monetary policy of the previous and the current year.
	55(2)	Subject to the provisions of Article 108 of the Treaty and Articles 10.4 and 38 of the Statute, the Governor, when duly asked in this respect, shall appear before the committees of the House of Representatives to report on matters relating to the fields of competence of the Bank.
The Czech Republic	9(2)	The Czech National Bank and the Government shall inform each other on matters concerning the principles and measures of monetary and economic policy.
	10(1)	The Czech National Bank shall take a position on proposals presented to the Government for consideration that concern the fields of competence of the Czech National Bank.
	10(2)	The Czech National Bank shall act in an advisory capacity vis-à-vis the Government in matters of monetary policy and the financial market.
Denmark	7	The Minister of Economic Affairs in his capacity of Royal Bank-Commissioner shall supervise that the Bank fulfils its obligations under this present Act and under the ordinances and provisions given pursuant to this present Act. The Minister of Economic Affairs presides at the meetings of the Board of Directors. He shall have admission to the meetings of the Committee of Directors and to be supplied with information concerning the Bank to the extent he might desire. Decisions of particularly far-reaching character cannot be taken at a meeting of the Committee of Directors when the Minister of Economic Affairs is not present, unless he has been informed in advance that the case will be dealt with at the meeting.
Estonia	3(1)	Eesti Pank operates independently of other state agencies. Eesti Pank shall report on its activities to the Riigikogu and it is not subordinated to the Government of the Republic or any other executive state agency or any third person
Finland	4(1)	In performing tasks of the European System of Central Banks, neither Suomen Pankki nor members of its governing bodies shall seek or take instructions concerning such tasks from entities other than the European Central Bank.
	4(2)	Suomen Pankki shall cooperate as necessary with the Council of State and other authorities.
	27	Suomen Pankki shall be obliged to provide any concerned committee of Parliament with all information that is necessary for the performance of the Committee's tasks.
France	L 141-1	The Banque de France shall be an integral part of the European

		<p>System of Central Banks, instituted by Article 8 of the Treaty establishing the European Community, and shall participate in carrying out the tasks, and complying with the objectives, assigned to the European System of Central Banks by the Treaty.</p> <p>Within this framework, and without prejudice to the primary objective of price stability, the Banque de France shall support the Government's general economic policy.</p> <p>In performing the tasks arising from its participation in the European System of Central Banks, the Banque de France, as represented by its Governor or its Deputy Governors, shall neither seek nor accept instructions from the Government or any other person or body.</p>
	L 143-1	<p>At least once a year, the Banque de France's Governor shall send the President of the Republic and the Parliament a report on the Banque de France's transactions, on the monetary policy it implements within the framework of the European System of Central Banks and on its forecasts.</p> <p>In accordance with Article 108 of the Treaty establishing the European Community and the European Central Bank's confidentiality rules, the Banque de France's Governor is asked to appear before the finance committees of the two chambers of Parliament and the Governor may ask to appear before them.</p> <p>The Banque de France's accounts and the auditors' report shall be sent to the finance committees of the National Assembly and the Senate.</p>
Germany	13(1)	The Deutsche Bundesbank shall advise the Federal Government on monetary policy issues of major importance and shall furnish it with information on request.
	13(2)	The Federal Government should invite the President of the Deutsche Bundesbank to attend its deliberations on important monetary policy issues.
Greece	5B(3)	Without prejudice to the previous article, the Governor of the Bank of Greece shall be invited and may attend meetings of the Council of Ministers or of competent committees thereof whenever the issues discussed pertain to the objectives and tasks of the Bank of Greece.
Hungary	2	The Governor of the MNB shall report to the Parliament
	35	The Governor of the MNB shall report to the Parliament in respect of the activities and monetary policy of the MNB on an annual basis. The Parliament may also request information on an ad hoc basis.
	36	The MNB shall be consulted regarding the drafts of decisions and legislative provisions related to the tasks of the MNB and the operation of the financial system.
	37	The Minister shall provide the MNB with preliminary information regarding the budget proposal. The MNB may express its opinion on the budget proposal to the Government and to the competent parliamentary committee following submission of the budget draft to the Parliament.
	38	The Government may not instruct the MNB in relation to its scope of tasks as set forth in this Act.
	40	The Government shall invite the Governor of the MNB to attend its meetings for items of the agenda pertaining to the MNB's scope of tasks.
	41(2)	Upon request, the MNB shall provide information to the Government and the ministries on an ad hoc basis in respect of

		monetary developments and other important issues related to its basic tasks.
	41(3)	The Governor of the MNB shall notify the Minister of his decisions relating to the management of the operation of the MNB and of high priority in respect of the operations of the MNB made under his powers pursuant to Article 50, paragraph 1 after such decisions have been taken. The MNB shall report to the Minister on foreign exchange transactions performed as well as on the gold and foreign exchange reserves on a weekly basis. Each year, the Minister and the Governor of the MNB shall agree in writing on the scope of additional information to be made available by the MNB.
Ireland	6A(3)	The Minister may, from time to time, request the Governor, the Board or the Regulatory Authority to consult with the Minister, in relation to their respective functions, as regards the performance by the Bank of any function of the Bank (other than one imposed on it by the Rome Treaty or the ESCB Statute)
	6A(4)	The Minister may, from time to time, request the Governor to inform the Minister with respect to the pursuit of the primary objective of the Bank.
	6A(5)	The Governor, or the Board, shall comply with a request made to the Governor or the Board under this section in so far as the request is consistent with the Rome Treaty, the ESCB Statute or any law of the State.
Italy	N/A	
Latvia	6(1)	The Bank of Latvia shall advise the Saeima and the Cabinet of Ministers on monetary policy and other matters pertaining to the execution of its tasks
Lithuania	41	The Bank of Lithuania may consult and give proposals to the Government on the issues related to financial markets and State Treasury policy
Luxembourg	11(2)	The Central Bank shall report annually to the Government and to the Chamber of Deputies on its activities and on the monetary policy of the previous year and current year.
Malta	29	The Bank shall keep the Minister informed of the policy of the Bank: Provided that: (a) this does not result in interference with the independence of the members of the Bank's decision making bodies; (b) the special status of the Governor in his capacity as member of the Governing Council and General Council of the European Central Bank is fully respected; and (c) confidentiality requirements resulting from the Statute are observed.
The Netherlands	N/A	
Poland	12(1)	The Monetary Policy Council shall determine the annual monetary policy guidelines and submit these to the Sejm, for the information thereof, together with the submission by the Council of Ministers of the draft Budget. The Council shall present a report to the Sejm on the performance of monetary policy guidelines within five months of the end of the budget year
	21	In performing its tasks, the NBP shall collaborate with the competent State bodies in developing and implementing national economic policy, in so doing striving to ensure the proper performance of monetary policy guidelines, and in particular shall: 1) submit the monetary policy guidelines as well as reports on the performance of monetary policy and on the situation within the banking system to State bodies, (...)

	23(1)	Acting on behalf of the Council, the President of the NBP shall: 1) submit to the Sejm and Council of Ministers: a) quarterly reports on the balance of payments, b) annual survey of the international investment position, 2) forward to the Council of Ministers and Minister of Finance draft monetary policy guidelines, opinions on the draft law on budget, balance of payments forecasts and the rulings of the Council, 3) draw up periodic reports on transfers of (payments from) profit.
Portugal	N/A	
Romania	3(3)	Banca Națională a României shall cooperate with the Ministry of Public Finance in setting the macroeconomic indicators based on which the annual draft budget shall be drawn up.
	3(5)	To fulfil the commitments arising from agreements, treaties and conventions to which Romania is party, Banca Națională a României shall cooperate with domestic and foreign authorities by providing information, by adopting appropriate measures or in any other way consistent with this Law.
Slovakia	12(2)	The Governor or a member of the Bank Board delegated by the Governor shall inform the Government of the conclusions from meetings of the Bank Board and on the adopted decisions.
	13(2)	The National Bank of Slovakia shall perform advisory functions vis-à-vis the Government in areas falling within the scope of its authority.
Slovenia	26(1)	Notwithstanding other laws, Banka Slovenije shall report on its work exclusively to the National Assembly of the Republic of Slovenia. Banka Slovenije shall report on its work at least bi-annually.
	26(2)	Notwithstanding the previous paragraph Banka Slovenije shall also report to the decision-making bodies of the European System of Central Banks to the extent defined by Article 14.3 of the Statute of the ESCB and ECB.
	27	Banka Slovenije and the ministry in charge of finance shall by virtue of an agreement set out the type, scope, conditions and manner of conducting of operations that Banka Slovenije performs for the Republic of Slovenia on the basis of points 3, 4 and 7 of Article 12(1) of this Act.
Spain	10(1)	The Bank shall regularly inform Parliament and the government of the objectives and the implementation of monetary policy, without prejudice to the terms of article 107 of the Treaty and the ECB rules on professional secrecy. To this end, the Governor of the Bank may be asked to appear, in accordance with Parliamentary regulations, before any Congress or Senate committee or joint committee of both chambers, or be asked to attend for this purpose cabinet meetings or meetings of its Commission for Economic Affairs.
	10(2)	In addition, the Governor of the Bank may be asked to attend the meetings of the «Consejo de Política Fiscal y Financiera de las Comunidades Autónomas» referred to in article 3 of Organic Law 8/1980, of September 22, on Financing of Comunidades Autónomas and to report on issues within the scope of the Bank's authority, with a view to facilitating the tasks of financial coordination of the above-mentioned Consejo.
Sweden	Chapter 6 Article 3	Prior to the Riksbank making a monetary policy decision of major importance, the minister appointed by the Government shall be informed.
The United Kingdom	N/A	

Table 3-7 The conditions required for the performance of the Governor

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
Austria	33(3)	Members of the Governing Board may only perform their function as their chief occupation and may only be persons who hold Austrian citizenship and whose right to vote in elections has not been suspended. No person who is in the active service of the Bund or of a Land or one of the bodies of the European Community or who is a member of the Nationalrat, Bundesrat, a Landtag or the European Parliament, the Federal Government or the government of a Land, or the European Commission may be a member of the Governing Board. Furthermore, the members of the Governing Board may not be involved in any other activity which might interfere with their independence.		YES	YES		YES ⁸⁰⁰	YES
Belgium	29(1) Articles of association	In addition to the Governor, who presides, the Board of Directors shall be composed of at least five but not more than seven directors, one of whom shall bear the title of Vice-Governor, conferred on him by the King. The Board of Directors shall include an equal number of French and Dutch speakers, with, possibly, the exception of the Governor. The members of the Board of Directors must be Belgian.		YES				
	28(6) Articles of Association	The Governor may not, during his term of office, receive any pension payable by the State.						YES
	20(3); 30(7) Articles of	The Council [of Regency] shall fix the individual salaries and pensions of the members of the Board of Directors. These salaries and pensions may not include a share in the profits and no						

⁸⁰⁰ The assessment is implicit as the provision aims at the prevention of conflict of interest. Under normal circumstances, the Governor's post can not be held simultaneously with another position outside the NCB. However, the list of positions creating a conflict of interest is rather high-ranking; this would mean that a person who qualifies to the position of a Governor could also potentially qualify for other positions having the same criteria for the position.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	Association	remuneration whatsoever may be added thereto by the Bank, either directly or indirectly.						
	25; 37 Articles of association	Members of the Legislative Chambers, the European Parliament, the Councils of the Communities and the Regions, persons who hold the position of minister or secretary of state or of member of the Government of a Community or Region and members of the staff of a member of the Federal Government or of the Government of a Community or Region may not hold the office of Governor, Vice-Governor, member of the Board of Directors, regent or censor. The last-mentioned functions shall automatically cease when their holder takes the oath of office for exercise of the abovementioned offices or performs such functions..					YES ⁸⁰¹	YES
	26(1) 38(1) Articles of association	The Governor, Vice-Governor and the other members of the Board of Directors may not hold any office in a commercial company or a company which is commercial in form or in any public body which carries on an industrial, commercial or financial activity; subject to the approval of the Minister of Finance they may however hold office in (1) international financial institutions established under agreements to which Belgium is a party, (2) the Securities Regulation Fund, the Fund for the Protection of Deposits and Financial Instruments, the Rediscount and Guarantee Institute and (3) the entities to which the Bank is allowed under the Law to entrust the performance of tasks that do not fall within the domain of the ESCB.						Yes
		The prohibitions referred to in the first paragraph shall continue to apply for one year after the Governor, Vice-Governor or other members of the Board of Directors have relinquished their office; this term shall be extended to two years in the case of an office to be held in a credit institution.						YES
	26(3);	Members of the Board of Directors and members of the Bank's staff						

⁸⁰¹ See footnote 800.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	38(3) Articles of Association	must respect the code of ethics drawn up by the Council of Regency on the proposal of the Board of Directors. Persons responsible for supervising compliance with that code must maintain professional secrecy as provided for in Article 458 of the Penal Code.						
	27(1) 40(1) Articles of association;	The terms of the members of the Board of Directors, the Council of Regency and the Board of Censors shall expire no later than when they reach the age of sixty-seven years.	YES					
	27(2) 40(2); Articles of Association	However, subject to authorisation by the Minister of Finance, they may complete their current term. The terms of the members of the Board of Directors may after while still be extended by one year, which term may be renewed. In the case of the Governor's term of office, the authorisation to complete the current term or its extension shall be granted by Royal Decree deliberated in the Council of Ministers.	YES					
	27(3) 40(3) Articles of Association	On no account may the office-holders referred to above remain in office beyond the age of seventy years	YES					
Bulgaria	11(2)	Members of the Governing Council shall only be Bulgarian citizens.		YES				
	11(3)	Members of the Governing Council shall be elected and appointed only [amongst] persons of the highest integrity and prominent qualifications in economics, finance or banking.					YES	
	11(4)	Member of the Governing Council shall not be a person: (1) sentenced to imprisonment for a premeditated crime; (2) adjudicated in bankruptcy in a capacity as a sole proprietor or general partner in a commercial company; (3) who has been a member of a managing or supervisory body of a company or cooperative in the last two years prior to adjudicating the said company or cooperative in insolvency.					YES	

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	12(5)	The Governor and the Deputy Governors shall not engage in any activity, other than teaching, or as members of the bodies in companies where the Bulgarian National Bank participates or in international organizations related to Bulgarian National Bank activities. They may perform a non-remunerative activity following a unanimous decision of the Governing Council insofar as there is no conflict of interest.				YES ⁸⁰²		YES
	12(9)	The Governor, Deputy Governors and other members of the Governing Council shall file with the body that elects or appoints them the declarations under Article 12, items 1, 2 and 3 of the Law on Prevention and Disclosure of Conflict of Interests. The declaration under Article 12, item 4 of the Law on Prevention and Disclosure of Conflict of Interests shall be submitted to the Governing Council in accordance with the procedure under Article 17, paragraph 4.						
		Members of the Governing Council shall not participate in the deliberation and shall abstain from decision-making on issues in which they or members of their families may have interest. They must notify the Governing Council in advance of any such interests.						
Cyprus	13(5)	A director who has a personal interest in a matter under discussion shall not take part in the discussion or vote on it: Provided that, in such case, the director shall be under a duty to disclose if he has any such interest.						
	13(6)	The remuneration of directors shall be determined by the Council of Ministers on their appointment for their whole five-year term.						

⁸⁰² That can be deemed implicitly as holding a teaching post in a university or an equivalent usually implies that the holder has to have a higher education as well.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	14 first part	A person shall not be qualified to be a director if he holds any position which may create a conflict of interest between his duties as director and that position and in particular if he: (a) is a Minister, or a member of the House of Representatives; (b) is a member of a Municipal Council, including a Mayor; (c) is a member of the armed or security forces of the Republic; (d) is the holder of a public office or office in a municipal authority or he is acting as a deputy in such post. Provided that, “public office” means any office with financial benefit in the service of the Republic, the emoluments of which are under the control of the Republic and includes any office in any public corporation or public utility body;					YES ⁸⁰³	YES
	14 second part	Provided further that, no person shall be disqualified under this paragraph if he – (i) is a holder of a teaching post in a university or an equivalent educational institution in the Republic; (ii) is acting, without being a member of the public service, as representative of the Republic in an international monetary or financial organisation of which the Republic is a member;.				YES ⁸⁰⁴		YES
	14 third part	(e) has been declared bankrupt and has not been discharged or against whom a receiving order has been made or who has made an arrangement or composition with his creditors; (f) is a person certified to be insane or otherwise declared to be of unsound mind; (g) is a director, officer or employee of any other bank or financial institution or their subsidiary or has as a shareholder a controlling interest in any other banking or financial institution or their subsidiary operating in the Republic, or controlled by an organisation operating in the Republic.			YES			

⁸⁰³ See footnote 800.

⁸⁰⁴ See footnote 802.

Member State	Article	Text	Assessment					
			<i>Age limit</i>	<i>Citizen-ship</i>	<i>Full legal capacity</i>	<i>Higher education</i>	<i>Sound back-ground</i>	<i>Full-time position</i>
	18(1)	The Governor and the Deputy Governor shall be citizens of the Republic and shall be fit and proper persons of recognised experience in economic and financial matters.		YES			YES	
	19(1)	The Governor and the Deputy Governor shall, while in office, devote their entire time exclusively to the service of the Bank and shall not engage in any other business, profession or undertaking						YES
	19(2)	The Governor and Deputy Governor shall not take in the Republic any office or accept interest in any banking or other financial institution or their subsidiary operating in the Republic or controlled by an organisation operating in the Republic and which is supervised by the Bank or receive therefrom any remuneration whatsoever for a period of two years after the termination of their appointment.						YES
The Czech Republic	6(6)	Membership of the Bank Board shall be incompatible with the position of a member of a legislative body, member of the Government and membership of the governing, supervisory or inspection bodies of other banks or commercial undertakings, and the performance of any independent gainful occupation, except for scientific, literary, journalistic, artistic and pedagogical activities and except for management of own assets; membership of the Bank Board shall be incompatible with any activity which might cause any conflict of interest between the performance of this activity and membership of the Bank Board.						YES
	6(7); 6(8)	Any citizen of the Czech Republic who (a) is fully competent to perform legal acts, (b) has completed a university education, (c) has not been lawfully convicted of a criminal offence, (d) is a person of recognized standing and professional experience in monetary matters and in the area of the financial market, may be appointed as a member of the Bank Board.		YES	YES	YES	YES	
Denmark	3(2)	The members of the Board of Directors, the Committee of Directors and the Board of Governors shall be Danish subjects with domicile in Denmark, besides they shall be of age, in possession of the civil	YES	YES	YES			

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		rights and not be deprived of the right to dispose of their estate.						
	6(2); 8(2) By-laws	The Governors shall reside in Copenhagen or in places closely connected with Copenhagen. They shall not have a seat in the management of trade organisations or companies nor carry on or take part in the working of private trading activities. The Governors shall be under the obligation to send in their resignation before the expiration of the month in which they complete their 70th year.	YES					YES
	15 By-laws	A member of the Board of Directors or the Committee of Directors shall have no vote in cases concerning agreements between the Bank and such member or relating to actions brought against such member nor in case of agreements with or actions brought against third party in so far as such member has a considerable interest therein, which may be in conflict with that of the Bank. The Directors are under the obligation to keep secret what they learn through their work in the Bank. A Governor shall not make nor take part in decisions which concern himself in a similar manner.						
	16 By-laws	It shall rest with the Committee of Directors and the Board of Governors to watch the justifiableness of and the security for the engagements which the Bank makes with the single members of the Committee of Directors or the Board of Directors or with companies of which these members are managers or directors. The same shall hold good of engagements which might be contracted with the Bank by persons attached to the Governors through marriage, relationship or affinity in lineal ascent and descent or as brothers and sisters, or by companies of which such persons are managers.						
	17 By-laws	If a member of the Committee of Directors or Board of Governors of the Bank, a branch manager or other member of the staff of the Bank on behalf of the Bank supervises an undertaking in which the Bank is interested economically, any remuneration of the person in question						

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		will have to be defrayed by the Bank. The amount of the remuneration shall be fixed by the Committee of Directors.						
	18 By-laws	Governors, branch managers or other members of the staff of the Bank must not in any form make or join in speculative transactions.						
	19 By-laws	Governors, branch managers and auditors must not raise loans in the Bank, obtain the guarantee of the Bank for loans or enter into contracts of suretyship for debts due to the Bank.						
Estonia	10(2) first sentence	The Governor of Eesti Pank must be an Estonian citizen and have a university degree. Deputy Governors of Eesti Pank must be Estonian citizens and have a university degree.		YES		YES		
	10(3)	The Governor and Deputy Governors of Eesti Pank shall be independent in the performance of their functions. They shall not hold any other office, be in service or be party to any activities which, by their nature, restrict or may restrict the autonomy of Eesti Pank or adversely affect or may adversely affect Eesti Pank in the achievement of its objectives or the performance of its functions						YES
Finland	10(2)	A member of the Parliamentary Supervisory Council is obliged to resign if he is appointed as a member of the Council of State or a member of the Board, or if he has undertaken an occupation that, according to a unanimous decision of the Parliamentary Supervisory Council, is incompatible with membership on the Parliamentary Supervisory Council.						
	13(1) last sentence	A member of the Board must possess the expertise required for the tasks involved.					YES	
	17(1)	A member of the Board shall neither accept nor carry on a secondary occupation unless the Parliamentary Supervisory Council, upon application, grants him a permit to do so. Such a permit can also be granted for a fixed term or with restrictions. A permit for a secondary occupation can also be withdrawn for justifiable reasons.						YES
	17(2)	When considering the granting of a permit for a secondary occupation, the Parliamentary Supervisory Council shall ensure that						YES

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		the secondary occupation does not disqualify the member of the Board from his position. Nor shall the secondary occupation jeopardize confidence in the member of the Board in respect of his performance of tasks of the European System of Central Banks or other tasks or otherwise impede the appropriate performance of his duties.						
	17(3)	For the purposes of paragraphs 1 and 2 above, secondary occupation shall mean a position, paid or unpaid work, or a duty that the member of the Board is entitled to refuse, or a profession, trade or business.						YES
France	L. 142-3(3), third sentence	The names on the list shall be chosen from among persons of recognized standing and professional experience in monetary, financial and economic matters.					YES	
	L. 142-5(2)	The Governor, Deputy Governors and other members of the Monetary Policy Council may not engage in any other public or private professional occupation, gainful or not, except the exercise of a term of office as a member of the Economic and Social Council. Exemptions may be granted by the Council of Monetary Policy for teaching activities or positions in international organizations. They may not hold elected offices.				YES ⁸⁰⁵		YES
	L. 142-8	The Governor and the two Deputy Governors shall be appointed by an Order made in the Council of Ministers for a six-year term of office, which may be renewed once. The age limit for holding these offices shall be sixty-five.	YES					
	L 142-8 (9) (10)	The Governor and the two Deputy Governors may not engage in any other public or private professional activity, whether or not remunerated, except, where applicable and with the consent of the General Council, teaching activities or duties within international organisations. They may not hold elected office. If they are civil servants, they shall be seconded and shall not be eligible for						YES

⁸⁰⁵ See footnote 802.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		<p>discretionary promotion.</p> <p>If the Governor or a Deputy Governor relinquishes office for any reason other than dismissal for serious misconduct, they shall continue to receive their basic salary for three years. During that period, unless authorised by the General Council, they may not undertake any professional activities other than elected public office or as members of the Government. If the General Council authorises their undertaking a professional activity, or if they hold non-national elected public office, the General Council shall determine the conditions under which all or part of their salary may continue to be paid.</p>						
Germany	7(2) last sentence	Members of the Executive Board must have relevant professional qualifications.					YES	
Greece	14	<p>The following persons shall not be entitled to exercise the rights of shareholders at the General Meetings, individually or by proxy:</p> <p>(a) persons not having the Greek citizenship;</p> <p>(b) persons declared bankrupt, during the period of the limitation of their rights;</p> <p>(c) persons who have not fulfilled their obligations towards the Bank, or whose bills, kept by the Bank, have been protested and remain unpaid;</p> <p>(d) persons whose civil or political rights have been curtailed or withdrawn, as a result of conviction for a criminal offence, so long as such curtailment or withdrawal remains in force.</p>						
	22(1)	<p>Persons belonging to the following categories cannot be elected Councillors:</p> <p>(1) members of the Government, or civil servants, or employees of</p>		YES ⁸⁰⁶	YES ⁸⁰⁷			

⁸⁰⁶ The implicit evidence under Articles 22(1) and 14 of the Greek NCB Statute suggests that there is a requirement for Greek citizenship.

⁸⁰⁷ The implicit evidence under Articles 22(1) and 14 of the Greek NCB Statute suggests that there is a full legal capacity.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		public institutions and enterprises; (2) members of Parliament; (3) counsels or employees of other Banks; (4) any person whose status comes within the definitions of Article 14						
	22(4)	Persons who are associated in a business or who are relatives up to the third degree inclusive may not serve at one and the same time as Governors or Councillors of the Bank						
	29(1)	The Governor and the Deputy Governors shall be appointed for a six-year term by a Presidential Decree on a proposal of the Council of Ministers following a proposal by the Bank's General Council. They shall devote their whole time to the affairs of the Bank, except in cases where, by law, they are members of the Board of Directors of legal entities in public law, public enterprises or state advisory bodies.						YES
	29(2)	University professors of Law and Economics may be appointed to the positions of Governor and Deputy Governor of the Bank, while retaining the right to exercise their university duties.				YES ⁸⁰⁸		Partly
	35	The Governor and Deputy Governors shall not engage in any business for their own account. No bills or notes signed by them shall be accepted for discount or as guarantee for an advance granted by the Bank.						

⁸⁰⁸ See footnote 802.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	35A(4)	The members of the Monetary Policy Council shall be appointed from among persons of recognized standing and professional experience in monetary and banking matters, and shall perform their duties on a full-time basis. Civil servants and employees of legal entities in public or private law shall not have the right to retain their position once they have accepted their appointment as members of the Monetary Policy Council. However, university professors appointed members of the Monetary Policy Council retain the right to exercise their university duties as well.				YES ⁸⁰⁹	YES	YES; Partly
Hungary	49(18)	Members of the Monetary Council, including the Governor and the Deputy Governors of the MNB, and of the Supervisory Board shall not be nominated for membership of the Monetary Council within three years of the termination of their office.						
	49(5)	Hungarian citizens with outstanding theoretical and/or practical professional knowledge on issues related to monetary, financial and banking activities may be appointed as members of the Monetary Council.		YES			YES	
	50(9)	The provisions of Paragraphs (5)–(10) of Article 49 shall also apply in respect of the Governor of the MNB.						
	58(1)	Members of the Monetary Council of the MNB may only carry out other activities which are compatible with their central bank decision making duties. Such members may not hold office in political parties, may not carry out public activities on behalf of or in the interest of political parties, may not be representatives in Parliament or in local governments and may not be senior officers or public officials in the national or local government.					YES ⁸¹⁰	YES
	58(2)	Members of the Monetary Council of the MNB may not be executive officers or supervisory board members of a business organisation.						YES

⁸⁰⁹ See footnote 802.

⁸¹⁰ See footnote 800.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	58(3)	The Governor and Deputy Governors of the MNB may not establish any other employment relationships or other legal relationships for the performance of work.						YES
	58(5)	Members of the Monetary Council may establish other legal relationships for the performance of work related to scientific, educational, artistic, proof-reading and editorial activities, as well as intellectual activities protected by copyright. Such relationships shall be reported prior to being established.				YES ⁸¹¹		YES; Partly
	58(7)	In respect of members of the Monetary Council of the MNB the conflict of interest provisions set forth in Article 57, paragraph (1) shall also apply for a period of six months following termination of the employment relationship.						
	58A(1)	The Governor and Deputy Governors of the MNB, as well as the members of the Monetary Council defined in Article 49, paragraph (4), point c) and the members of the Supervisory Board shall declare their wealth in the same way, with the same data contents and frequency as members of parliament. The annual declaration of wealth shall reflect the status on December 31 preceding the year when the obligation falls due. The declaration of wealth due upon appointment or dismissal shall reflect the status on the day of the appointment or dismissal. The person obliged to make this declaration shall enclose the declaration of his/her spouse or common-law spouse living in the same household, as well that of his/her children (dependents), with the same contents as the declaration of wealth of members of parliament. The declaration of wealth – except that of the dependents – is public, and an exact copy of it shall be made public by the Speaker of Parliament on the website of the Parliament.						
Ireland	19(2)	(2) A person is not eligible for appointment as Governor if the						YES

⁸¹¹ See footnote 802.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		<p>person—</p> <p>(a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member or is nominated as a member of Seanad Éireann, or</p> <p>(b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or</p> <p>(c) is a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member.</p>						
	19(5)	A person holding office as Governor is disqualified from being a director of a credit institution, financial institution or insurance undertaking.						YES
	19(6)	If a person who is appointed to the office of Governor is a director of a credit institution, financial institution or insurance undertaking, the person ceases to hold that office at the end of 10 days after the date of the appointment unless, within that period, the person ceases to be such a director.						
	20(1)	Every person appointed to be Governor shall within three months after his appointment absolutely sell or otherwise dispose of all shares in any financial institution which he shall, at the time of his appointment, own or be interested in for his own benefit.						
	20(2)	If and whenever any shares in a financial institution shall come to or vest in the Governor by will or succession for his own benefit, he shall, within three months after the same shall have so come to or vested in him, absolutely sell or otherwise dispose of the same or his interest therein.						
	20(3)	The Governor shall not purchase, take or become interested in for his own benefit any shares in any financial institution.						
	20(4)	If the Governor shall retain, purchase, take, or become or remain interested in any shares in any financial institution in contravention of this section he shall forthwith become and be disqualified from						

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		holding the office of Governor.						
	20(4A)	This section does not prohibit the Governor from (a) entering into a policy of insurance, or (b) purchasing units of, or participating in, a collective investment scheme whose funds are invested in bonds or equities generally (including the bonds or shares of a financial institution), or (c) establishing and maintaining an ordinary savings account with a building society or a friendly society.						
	20(5)	In this section 'bank' includes a bank incorporated outside the State as well as a bank incorporated in the State; 'financial institution' includes a credit institution and an insurance undertaking; 'shares', in relation to a bank, include stock, shares, debentures, debenture stock, bonds and other securities of the bank.						
Italy	42(1)	Neither the members of the Directorate nor any employee of the Bank may perform activities in the interest of banks, financial intermediaries or other entities subject to supervision, engage in commerce, be a director, agent or member of the board of auditors of any company, participate in a general partnership, or, as a general partner, in a limited partnership.						YES
	42(2)	The Board of Directors may nevertheless allow directorships of companies or other entities to be accepted, where this is recognized to be in the interest of the Bank.						YES
	42(3)	On the same grounds it may also allow employees having a grade not higher than that of head of department or a comparable grade to be members of boards of auditors.						
	43(1)	Senators and Deputies and other persons holding political office may not be members of the boards of the Bank.						
	43(2)	In addition, employees of banks and other entities operating in the field of financial intermediation and persons performing						

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		administrative, managerial or control functions therein, managers and employees of the public administration and all persons having a conflict of interest with the Bank in view of their personal situation or professional positions shall be excluded from membership of the Board of Directors of the Bank.						
	43(3)	The provisions of the preceding paragraphs shall also be observed for the appointments entrusted to the Board of Directors under point 8 of Article 18 of this statute.						
Latvia	31	Restrictions on holding more than one position by the Bank of Latvia's Governor, Deputy Governor, members of the Council of the Bank of Latvia and the Board and their responsibilities regarding the prevention of the conflict of interest shall be as laid down by the Law "On the Prevention of the Conflict of Interest in Activities of Public Officials"		YES ⁸¹²				YES
	32	Members of the Board of the Bank of Latvia and managers of the organisational units of the Bank of Latvia shall be prohibited from engaging either directly, or indirectly in any commercial activity.						
Lithuania	10(2)	Only citizens of the Republic of Lithuania may be the Chairperson, Deputy Chairpersons, and Members of the Board of the Bank of Lithuania, provided they have not reached the age of 65 by the date of their appointment.	YES	YES				
	15	Where an issue considered during a meeting of the Board is related to the private interests of a Member of the Board, involving the conflict between public and private interests, the Member of the Board concerned shall, prior to the discussion of the above issue, present a written notice thereon and shall not have the right to participate in the discussion of the said issue and in the adoption of a decision thereon.						
	16(1)	The Chairperson, Deputy Chairpersons and Members of the Board of				YES ⁸¹³		YES

⁸¹² The assessment is implicit as the provision aims at the prevention of conflict of interest. Since the Law "On the Prevention of the Conflict of Interest in Activities of Public Officials" aims at public official, who as a rule are to be citizens, we can deem that there is a citizenship requirement.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		the Bank of Lithuania may only be employed at the Bank of Lithuania and may not engage in any other activities that would cause a conflict of private and public interests. The Board of the Bank of Lithuania may give them consent to engage in research and pedagogical activities						
	16(2)	The Chairperson, Deputy Chairpersons, and Members of the Board of the Bank of Lithuania must, during the first year after their duties have ceased, avoid any conflict of private and public interests that would be caused by their new activities. When intending to engage in the activities that the above-mentioned persons consider might cause a conflict of private and public interests, they shall inform in writing the Board of the Bank of Lithuania and shall seek its opinion before committing themselves.						
	16(3)	Upon the expiration of the term of office, the Chairperson, Deputy Chairpersons, and Members of the Board of the Bank of Lithuania shall be paid a severance pay. The pay shall amount to the number of the average monthly salaries, paid to them, corresponding to the years of their uninterrupted term of office at the Bank of Lithuania, but shall not exceed six average monthly salaries. The severance pay shall not be paid if they have stopped performing their duties because they have been found guilty of serious misconduct.						
Luxembourg	5(2)	In the exercise of the powers and in the fulfilment of the tasks and duties entrusted to them within the domain of the ESCB, neither the Central Bank nor any member of its bodies may seek or accept instructions from institutions or bodies of the European Community, governments of Member States or any other body						
	7(3)	No person shall appointed to or remain a member of the Council whilst holding any office outside the Central Bank in conflict with the requirements of Article 5 (2) or with the professional secrecy						YES

⁸¹³ See footnote 802.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		provisions applicable to the ESCB						
Malta	8(1) first sentence	The Governor and the Deputy Governor shall be persons of recognised standing and experience in economic, financial or banking matters and shall each be appointed by the President of Malta, acting on the advice of the Prime Minister. They shall be appointed for a term of five years but shall be eligible for re-appointment.					YES	
	8(4)	The Governor and the Deputy Governor shall devote the whole of their professional time to the service of the Bank and while holding that office shall not occupy any other office or employment whether remunerated or not: Provided that they may be appointed in their capacity as Governor or Deputy Governor of the Bank, as the case may be, to sit on any board, commission or committee, by whatever name called, whether in Malta or outside Malta and provided further that such activity is not in the opinion of the Board in conflict with the performance of their duties under this Act						YES
The Netherlands	24(1) Articles of Association	The Governing Board shall ensure that, without prejudice to the provisions of the law, the President, the Executive Directors, the employees of the Bank and those who perform activities for the Bank shall be bound towards the Bank by rules aimed at preventing insider trading.						YES
	24(2) Articles of Association	The Supervisory Board shall ensure that, without prejudice to the provisions of the law, the members of the Supervisory Board shall be bound towards the Bank by rules aimed at preventing insider trading, to be drawn up by the Supervisory Board on the recommendation of the Governing Board.						
	24(3) Articles of Association	The rules referred to in paragraphs 1 and 2 shall be made generally available.						
	25(1) Articles of	The Governing Board shall ensure that there are rules specifying that, without prejudice to the provisions of law, employees have the						

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	Association	opportunity, without jeopardising their legal position, to report to the President, or to an officer appointed by him, any supposed irregularities of a general, operational or financial nature within the Bank.						
	25(2) Articles of Association	Supposed irregularities relating to the functions of the President and the Executive Directors shall be reported to the Chairman of the Supervisory Board.						
	25(3) Articles of Association	The rules referred to in paragraph 1 shall be made generally available.						
	26(1) Articles of Association	The joint meeting of the Governing Board and the Supervisory Board shall ensure that the members of the Supervisory Board, the President and the Executive Directors are each individually bound towards the Bank by rules, to be drawn up on the recommendation of the Governing Board, aimed at preventing the performance of jobs or activities which, considering the objective, the tasks and the activities of the Bank, are incompatible with the membership or former membership of the Supervisory Board or the Governing Board, respectively.						YES
	26(2) Articles of Association	The principles underlying the rules referred to in paragraph (1) shall be included in the rules of procedure referred to in article 28.						
	26(3) Articles of Association	The rules referred to in paragraph 1 shall be made generally available.						
	27(1) Articles of Association	The joint meeting of the Governing Board and the Supervisory Board shall, acting on a recommendation of the Governing Board, lay down rules for the Supervisory Board on dealing with conflicts of interest, which shall include potential conflicts of interest in relation to the Bank in the case of Governing Board Members, Supervisory Board members and the expert referred to in article 20 of the Articles of						YES

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		Association. These rules shall in any event state the transactions for which Supervisory Board approval is necessary.						
	27(2) Articles of Association	The basic principles underlying the rules referred to in paragraph 1 shall be included in the rules of procedure referred to in article 28.						
	27(3) Articles of Association	On request by the Supervisory Board or Governing Board member concerned, or by the expert referred to in article 20 of the Articles of Association, the joint meeting referred to in paragraph 1 may, giving reasons therefore, deviate from the conditions specified in that paragraph, whether or not under more detailed conditions.						
	27(4) Articles of Association	The rules referred to in paragraph 1 shall be made generally available.						
Poland	14(1)	During his/her term of office, a Monetary Policy Council member shall not hold any other positions nor engage in profit-gaining or public activity other than academic work, teaching or writing, although the Council may adopt a resolution (without the participation of the person concerned) expressing its consent to a member engaging in activity in international organisations.				YES ⁸¹⁴		YES
	14(2)	A Monetary Policy Council member being a member of a political party or trade union is required to suspend activity in that party or union for his/her term of office, on pain of dismissal from the Council.						YES
	14(3)	Members of the Monetary Policy Council shall be entitled to remuneration equivalent to that of the Vice-Presidents of the NBP. Such remuneration shall also be due for a period of three months following the expiry of their term of office, except if this is the result of a member being dismissed due to a conviction for a criminal offence under a legally binding court verdict.						

⁸¹⁴ See footnote 802.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	18	Members of the NBP Management Board shall not hold any other positions nor engage in profit-gaining or public activity other than academic work, teaching or writing. The provisions of Art. 14, para. 2, shall apply accordingly.				YES ⁸¹⁵		YES
Portugal	61(1)	The members of the Board of Directors and the staff shall neither be members of the supervisory and managing bodies of other credit institutions, financial companies or any other institution subject to the Bank's supervision, nor perform any other duties therein unless when representing the Bank or its staff.						
	61(2)	Without prejudice to other legally envisaged incompatibilities or preventions, the members of the Board of Directors shall not perform any remunerated duties outside the Bank, except lecturing at Universities, or be members of the supervisory and managing bodies of any company, unless when representing the Bank's interests and when duly authorized by the Board of Directors.				YES ⁸¹⁶		YES
Romania	34(1)	Members of the National Bank of Romania's Board may not be deputies, senators, or politically affiliated and may not belong either to the judicial authority or to the public administration.					YES ⁸¹⁷	YES
	34(2)	Upon Romania's accession to the Eurosystem, the members of the National Bank of Romania's board involved in the performance of ESCB-related tasks may not hold other positions, which would conflict with their duties as members of the Board.						YES
	34(3)	Members of the Board and the executives of Banca Națională a României shall observe the legal provisions on the incompatibilities and conflict of interest regime.						
	34(4)	Members of the Board shall perform their duties on a full-time basis, while being allowed to perform teaching and research activities.						YES; Partial

⁸¹⁵ See footnote 802.

⁸¹⁶ See footnote 802.

⁸¹⁷ See footnote 800.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
Slovakia	7(4) third, fourth and fifth sentence	To be appointed a member of the Bank Board a natural person must have appropriate professional knowledge and experience in the field of monetary policy or finance, and have full legal capacity and moral integrity. Deemed as appropriate professional knowledge and experience shall be completed university education and at least five years of experience in a management, scientific, or academic position in the monetary or finance areas. Deemed as a person with moral integrity shall be a natural person who has never been lawfully convicted of an intentional criminal offence; such integrity is to be proven by an extract from the criminal records register.			YES	YES	YES	
	7(5)	A member of the Bank Board shall be required to exercise his office with due professional care, in accordance with legal provisions and in line with the objectives, interests and tasks of the National Bank of Slovakia and the European System of Central Banks; in doing so, the member shall exploit and take into account the available information relating to the exercise of his powers and authority and preserve confidentiality in relation to facts, the divulgence of which could jeopardize the due and efficient performance of the activities, or the objectives and interests of the National Bank of Slovakia or the European System of Central Banks. When performing his function, a member of the Bank Board must not place his personal interests over the public interest and must abstain from all acts that might be in conflict with the performance of his function as a Bank Board member.						YES
	7(6)	Membership of the Bank Board shall be incompatible with the post of President of the Slovak Republic, Deputy of the National Council of the Slovak Republic, Member of the Government, judge, public prosecutor, and any other function, office or employment in state					YES ⁸¹⁸	YES

⁸¹⁸ See footnote 800.

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		authorities, self-government bodies or any other public bodies, position in the management or supervisory body of a legal person doing business, performing entrepreneurial or other economic or income-earning activities which may create conflict of interest. A member of the Bank Board may not perform any other function or non-income-earning activity which may create the conflict of interest between duties of the member of the Bank Board and that function or activity. If, at the time of his appointment, a member of the Bank Board holds a position or pursues an occupation, employment, or activity that is incompatible with membership of the Bank Board, he shall be obligated to take, without delay, demonstrable legal action aimed at terminating such office, profession, employment or activity and shall be obligated without delay to give up such office, profession, employment or activity.						
	7(7)	In connection with the performance of their functions or with activities of Národná banka Slovenska, members of the Bank Board may not seek or take instructions from state authorities, self-government bodies, any other public bodies, or any legal persons or natural persons; state authorities, self-government bodies, any other public bodies, or any legal persons or natural persons may not influence Národná banka Slovenska or members of the Bank Board in connection with the performance of their function and the operations of Národná banka Slovenska. The Governor of Národná banka Slovenska may not seek or take instructions from the Bank Board in connection with the performance of his function in bodies of the European System of Central Banks and the European Central Bank; the same shall apply to a person acting for the Governor of Národná banka Slovenska in these bodies.						
Slovenia	38(1)	Members of the Governing Board of Banka Slovenije shall carry out their functions on the basis of full-time employment at Banka Slovenije.						YES

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
	38(2)	The function of a member of the Governing Board of Banka Slovenije shall be incompatible with: 1. functions in State bodies, bodies of local communities, bodies of political parties and trade unions bodies, 2. work in State bodies, bodies of local communities, and in bodies entrusted with public authorities, 3. membership in management or supervisory bodies of banks, savings banks or other commercial companies, institutes and cooperatives, 4. other gainful activity, except scientific and research work that does not conflict with Banka Slovenije's interests, 5. other work or activities that might affect their independence or could conflict with Banka Slovenije's interests.						YES
	38(3)	Following their appointment, the member of the Governing Board of Banka Slovenije may begin performing the function only after they have brought their status into line with the provisions of this Article. The compatibility and taking up the function shall be established by the Governing Board of Banka Slovenije following a proposal by the Governor of Banka Slovenije. Members of the Governing Board of Banka Slovenije shall bring their status into line with the provisions of this Article within three months following their appointment at the latest, otherwise the decree of appointment shall cease to be valid from the day of expiry of this time-limit.						YES
	38(4)	The function of a member of the Governing Board of the Bank of Slovenia is incompatible with: (1) functions in state bodies, statutory authorities of local communities, bodies of political and trade unions, (2) work in state bodies, in statutory authorities of local authorities of local communities and in other public entities, (3) membership in boards of management or supervisory boards of banks, savings banks or other corporations, institutes and co-operatives, (4) other gainful employment, scientific and research work excepted as long as it does						YES; Partial

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		not conflict with the interest of the Bank of Slovenia, (5) other work or activities, which might affect their independence or could be in conflict with the interest of the Bank of Slovenia.						
	39a	The provisions of the law governing the prevention of corruption and the law governing the incompatibility of holding public office with gainful activity, respectively, that provide for the sanction of early termination of the term of office, shall not apply to the members of the Governing Board of Banka Slovenije.						
Spain	24(1) second sentence	Nominees shall be Spanish and will have recognised competence in monetary or banking matters.		YES			YES	
	25(4)	The Governor, the Deputy Governor and elected Council members shall leave office for the following reasons: a. Expiration of their terms of office. b. Resignation, which will take effect once the government is notified or, in the case of a member of the Executive Commission, when the Governing Council is notified. c. Reaching seventy years of age. d. Dismissal decided by the government, due to permanent incapacity to perform their functions, serious lack of compliance with their obligations, incompatibility that may have arisen during the term of office, or prosecution for deliberate crimes. In these cases, the order opening the oral hearing in the proceeding referred to in Title III of book IV of the Law of Criminal Justice shall be deemed to be equivalent to the bill of indictment. With the exception of cases of prosecution for deliberate crimes, the separation decision shall be adopted following a proposal by the Bank's Governing Council, after a hearing with the individual in question.	YES					
	26(1)	The Governor and the Deputy Governor shall be subject to the system of incompatibilities applicable to senior officials. Their posts shall also be incompatible with the exercise of any public or private profession or activity, unless these are inherent to their status or are						YES

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		imposed as part of their role as representatives of the Bank. Once their term of office ends, over the next two years they may not engage in any professional activity linked to credit institutions or securities markets. During this period, they shall be entitled to a monthly economic compensation equivalent to 80% of the total salary assigned to that post during the indicated period. This compensation may not be received if the individual holds a paying job, post or activity in the public or private sector, except for teaching, or when the dismissal has occurred due to a separation decided by the government.						
	28(1)	Members of the Governing Council shall refrain from acquiring or owning goods or rights and from engaging in any activities that might compromise their independence and impartiality in the exercise of their responsibilities, cause conflicts of interest, or permit them to use privileged information. In particular, they must contractually entrust to a financial institution registered with the National Securities Market Commission the administration of any tradable securities or financial assets of which they, their non-separated spouses or dependent children are owners. The said institution shall administer these assets subject only to the general indications of profitability and risk established in the contract, and may not request nor receive investment instructions from the interested parties. It may not inform the parties of the composition of their investments, except in the case of mutual funds or when, for a justified cause, authorisation by the National Securities Market Commission may have been granted. Without prejudice to the responsibility of the interested parties, failure of the said institution to comply with these requirements shall be considered a very serious offence under the system of sanctions applicable to it as a financial institution.						YES
	28(2)	In the three months following their taking of office and the end of their terms, and on an annual basis, the members of the Governing						

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		Council must file a statement on their activities and their net worth situation, and those of their non-separated spouses and their dependent children. The statement shall be submitted to the Ministry of Public Administration, which may verify the information included and determine whether the interests revealed in the statement infringe the conditions set out in the previous paragraph. The statement shall be inscribed in the Registro de Intereses de Altos Cargos						
Sweden	Chapter 3 Article 1(1)	A member of the Executive Board may not: (1) be a member of the Riksdag, (2) be a Cabinet minister; (3) be employed at the Government Offices, (4) be employed by the central administration of a political party; (5) be a member or deputy member of a board of directors of a bank or any other company subject to supervision by the Financial Supervisory Authority, or (6) hold any other employment or assignment which makes him unsuitable as member of the Executive Board.						YES
	Chapter 3 Article 1(2)	Nor may a member of the Executive Board be a minor, or a declared bankrupt, or be subject to a prohibition against carrying on a business, or have a trustee in accordance with Chapter 11, Article 7, of the Code relating to Parents, Guardians and Children.			YES			
	Chapter 3 Article 1(3)	If a member takes an employment or assignment which can come into conflict with the provisions of the first paragraph, he shall immediately notify the General Council.						YES
	Chapter 3 Article 1(4)	For a period of one year after a member has ceased to serve on the Executive Board, he may not hold such employment or carry out such assignments as are referred to in the first paragraph (5) and (6), without the consent of the General Council.						
	Chapter 4 Article 4	The Chairman and the Vice-Chairman of the General Council and the members of the Executive Board shall notify the Riksdag in writing <ul style="list-style-type: none"> 1. holdings of financial instruments as stipulated in Chapter 1, Article 1, of the Financial Instruments Trading Act (1991:980), 						

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		<p>2. holdings of shares in a partnership or an economic association except tenant-ownership associations, and shares in similar foreign legal entities,</p> <p>3. ownership, wholly or partly, of business premises pursuant to Chapter 2, Article 14, of the Income Tax Act (1999:1229),</p> <p>4. agreements of a financial nature with previous employers, such as agreements on wage and pension benefits, which are paid during the period covered by the assignment on the General Council or the employment on the Executive Board, and</p> <p>5. credits and other liabilities and the conditions for these.</p> <p>Notification of assets and agreements according to the first paragraph 2-4 need not be made if they together do not exceed a market value of SEK 500,000. The same applies to credits and other liabilities according to the first paragraph 5 if these together are less than SEK 500,000.</p> <p>Notification according to the first paragraph shall be made when the assignment or employment is commenced. If, according to the second paragraph, notification of assets and agreements or credits and other liabilities needs not be made at this time, notification shall be made at the latest within four weeks of exceeding the threshold stipulated in the second paragraph.</p> <p>Notification shall thereafter be made for every change that entails that</p> <p>1. an asset as stipulated in the first paragraph 1 has been acquired,</p> <p>2. the total value of assets and agreements pursuant to the first</p>						

Member State	Article	Text	Assessment					
			Age limit	Citizen-ship	Full legal capacity	Higher education	Sound back-ground	Full-time position
		paragraph 2-4 or the total value of credits and other liabilities pursuant to the first paragraph 5 has changed by more than SEK 100,000 since notification was last made on condition that the total value or amount after the change is not less than SEK 500,000, or a change in conditions has taken place with respect to credits and other liabilities that have been notified.						
The United Kingdom	Schedule 1 1(2)	A person appointed as Governor or Deputy Governor of the Bank shall work exclusively for the Bank.						YES
	Schedule 1 5(1)	A person is disqualified for appointment as Governor, Deputy Governor or director of the Bank if he is a Minister of the Crown or a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament.						YES
	Schedule 1 5(2)	A person is disqualified for appointment as director of the Bank if he is a servant of the Bank.						YES

Table 3-8 Appointment procedure and the term of office

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
Austria	33(2)	Members of the Governing Board shall be appointed by the Federal President on the basis of a proposal from the Federal Government. Each appointment shall be made for a term of five years. Persons holding office may be reappointed.	YES			Federal Government	5 years	YES
Belgium	23(1);	The Governor shall be appointed by the King for a renewable	YES			N/A	5 years	YES

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
	34(1) Articles of Association	term of five years. He may be relieved from office by the King only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. With regard to this decision, he shall have the right of appeal as provided in Article 14.2 of the Statute of the ESCB.						
	23(2); 34(2) Articles of Association;	The other members of the Board of Directors shall be appointed by the King, on the proposal of the Council of Regency, for a renewable term of six years. They may be relieved from office by the King only if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct.						
	27; 40 Articles of Association	The terms of the members of the Board of Directors, the Council of Regency and the Board of Censors shall expire no later than when they reach the age of sixty-seven years. However, subject to authorisation by the Minister of Finance, they may complete their current term. The terms of the members of the Board of Directors may afterwards still be extended by one year, which term may be renewed. In the case of the Governor's term of office, the authorisation to complete the current term or its extension shall be granted by Royal Decree deliberated in the Council of Ministers. On no account may the office-holders referred to above remain in office beyond the age of seventy years.						
	34	Within the month following their assumption of office, the Governor must provide evidence of ownership of 50 registered shares and each of the directors of 25 registered shares. They may not dispose of or pledge these shares before the expiry of their terms of office.						
Bulgaria	12(1)	The Governor of the Bulgarian National Bank shall be elected by the National Assembly.			YES	N/A		
	12(2)	The National Assembly shall elect the Deputy Governors –						

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		heads of the basic departments under Article 19 – on a proposal by the Governor						
	13(1)	At entering into office, the Governor, the Deputy Governors and the other three members of the Governing Council shall be sworn in to abide by law, to contribute to the performance of the functions entrusted to the Bank, as well as to keep professional, bank, commercial and another secrecy protected by law even after their duties have ceased.						
	13(2)	The Governor and the Deputy Governors shall swear an oath to the National Assembly, and the other three members of the Governing Council to the President.						
	12(4)	The term of office of the members of the Governing Council shall be six years. Election/appointment of a new member of the Governing Council shall be made not earlier than three months and not later than two months before the end of the term of office of the current member. If the election/appointment is not made until the end of the term of office, the member of the Governing Council whose term of office has expired shall continue to perform his duties until the new election/appointment.					6 years	N/A
	12(7)	When a member of the Governing Council resigns, the duties of this member shall cease after a period of three months if a new member of the Governing Council is not elected/appointed within this period						
	12(8)	Relationships between the Bulgarian National Bank and the Governor and Deputy Governors shall be regulated by managing contracts according to rules determined by the Governing Council.						
	14(2)	Where the duties of a member of the Governing Council cease before the expiry of the term of office, another person shall be elected/appointed for the outstanding period of the term of office.					Less than 6 years	N/A

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
Cyprus	13(1)	The directors shall be appointed by the Council of Ministers and shall be citizens of the Republic of recognised professional qualifications, and / or recognised economic and business experience who are not disqualified for appointment under section 14.						
	13(2)	Each director shall be appointed for a term of office of five years which shall be renewable, and may be relieved from office by decision of the Council of Ministers, on a recommendation from the Minister and after hearing the views of the Governor, provided he no longer fulfils the conditions required for the performance of his duties or is guilty of serious misconduct: Provided that, a person who holds at the date that this Law shall enter into force, the post of director, shall continue to hold such post, under the same conditions until the expiry of his term of office, unless otherwise provided by a subsequent law.						
	13(3)	When a person ceases to be a director before the expiry of the period of his appointment, the Council of Ministers shall appoint as director a person having the qualifications provided in subsection (1), for a term of five years.						
	18(1)	Subject to paragraph 1 of Article 118 of the Constitution, the Governor and the Deputy Governor shall be appointed by the President and the Vice-President of the Republic	YES			N/A		
	118(1) ⁸¹⁹	The President and the Vice-President of the Republic shall appoint jointly two fit and proper persons one to be the Governor and the other to be the Deputy Governor of the Issuing Bank of the Republic: Provided that the Governor and the Deputy Governor of the Issuing Bank of the Republic shall not belong to the same Community.						

⁸¹⁹ Constitution of the Republic of Cyprus.

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
	18(3)	The Governor and the Deputy Governor shall be appointed for a renewable term of office of five years: Provided that, a person who holds at the date that this Law shall enter into force, the post of Governor or Deputy Governor, shall continue to hold such post, under the same conditions until the expiry of his term of office, unless otherwise provided by a subsequent law					5 years	YES
	26	Every person shall, before assuming the duties of Governor, Deputy Governor, director or employee of the Bank, subscribe and take the oath provided in the Schedule. ⁸²⁰						
The Czech Republic	6(2)	The Governor, Vice-Governors and other members shall be appointed and relieved from office by the President of the Republic.	YES			N/A		
	6(4)	No person shall be allowed to hold the position of member of the Bank Board more than twice.						YES
	6(5)	The members of the Bank Board shall be appointed for a term of six years.					6 years	
Denmark	6(1); 8(1) By-laws	The Board of Governors shall consist of 3 members. One of the Governors shall be nominated by the King, and the other Governors appointed by the Board of Directors on the recommendation of the Committee of Directors. The first mentioned Governor shall be chairman of the Board of Governors	YES			Committee of Directors		
	9(1) By-laws	The Governor nominated by the King as well as the Governors elected by the Board of Directors shall be appointed for an unlimited time, but may be dismissed by the King and the					Unlimited	N/A

⁸²⁰ “I,, from..... do solemnly swear that I will faithfully, truly and to the best of my judgement, skill and ability, execute and perform the duties required of me as a Governor, Deputy Governor, director, or employee, as the case may be, of the Central Bank of Cyprus and which properly relate to the office or employment in the said Bank held by me. I further solemnly swear that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs and tasks in general of the Bank, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Bank and relating to the business and tasks in general of the Bank.”

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		Board of Directors respectively. A majority of 2/3 of the whole Board of Directors shall be required in the latter case						
Estonia	10(1)	The Governor of Eesti Pank is appointed to office for a term of seven years by the President of the Republic on the proposal of the Supervisory Board of Eesti Pank. The Governor of Eesti Pank shall not be appointed to office for more than one consecutive term.	YES			Supervisory Board	7 years	No
	10(1 ¹)	The Governor of Eesti Pank shall notify the Supervisory Board of Eesti Pank of his or her resignation at least four months in advance.						
	11 ² (1)	Candidates for Governor of Eesti Pank and for Chairman and member of the Supervisory Board of Eesti Pank shall pass a security check before being appointed Governor of Eesti Pank or Chairman or a member of the Supervisory Board of Eesti Pank, unless they have a valid access permit in order to access state secrets classified as "top secret".						
	11 ² (2)	The status of candidate for Chairman of the Supervisory Board of Eesti Pank is acquired by a person to whom the President of the Republic makes a proposal to apply for the office and who agrees thereto in writing. The status of candidate for member of the Supervisory Board of Eesti Pank is acquired by a person to whom the Chairman of the Supervisory Board of Eesti Pank makes a proposal to apply for the office and who agrees thereto in writing. The status of candidate for Governor of Eesti Pank is acquired by a person to whom the Supervisory Board of Eesti Pank makes a proposal to apply for the office and who agrees thereto in writing.						
	11 ² (3)	The security check of candidates for Governor of Eesti Pank and for Chairman and member of the Supervisory Board of Eesti Pank shall be performed by the Security Police Board pursuant to the procedure provided for in the Surveillance Act						
	11 ² (4)	In order to pass the security check, candidates for Governor of						

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		Eesti Pank and for member of the Supervisory Board of Eesti Pank shall submit through Eesti Pank and candidates for Chairman of the Supervisory Board of Eesti Pank shall submit through the Office of the President of the Republic a completed application form for a permit to access state secrets classified as "top secret" to the Security Police Board, and also written consent which permits the agency performing security checks to obtain information concerning the person from natural and legal persons and from state and local government agencies and bodies during the performance of the security check.						
	11 ² (5)	Within three months as of receipt of the documents specified in subsection (4) of this section, the Security Police Board shall present the information gathered as a result of the security check on a candidate for Governor of Eesti Pank to the Supervisory Board of Eesti Pank, the information gathered as a result of the security check on a candidate for Chairman of the Supervisory Board of Eesti Pank to the President of the Republic and the information gathered as a result of the security check on a candidate for member of the Supervisory Board of Eesti Pank to the Chairman of the Supervisory Board of Eesti Pank and shall provide an opinion concerning the compliance of the candidate with the conditions for the issue of a permit for access to state secrets.						
	11 ² (6)	If the authority of the Chairman of the Supervisory Board of Eesti Pank or the Governor of Eesti Pank terminates prematurely, a security check on the candidate for Chairman of the Supervisory Board of Eesti Pank or for Governor of Eesti Pank shall be performed within one month as of receipt of the documents specified in subsection (4) of this section. With the permission of the Committee for the Protection of State Secrets, the term for performing the security check may be						

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		extended by one month if circumstances specified in clause 30 (2 ¹) 1) or 2) of the State Secrets Act arise or if it is possible that circumstances specified in clause 30 (2 ¹) 3) or 4) of the State Secrets Act may arise within one month.						
	11 ³	If a new Governor of Eesti Pank or a new Chairman or member of the Supervisory Board of Eesti Pank has not been appointed by the due date for termination of the authority of the Governor of Eesti Pank or the Chairman or a member of the Supervisory Board of Eesti Pank, the authority of the person in office shall extend until the entry into force of a corresponding decision on appointment to office.						
Finland	13(1)	The Board shall consist of the Chairman and a maximum of five other members, as appointed by the President of the Republic without public announcement of vacancies. The Chairman of the Board is appointed for a seven-year term and the other members of the Board each for a five-year term. A member of the Board must possess the expertise required for the tasks involved.	YES			Council of State, ⁸²¹ Supervisory Board	7 years	
	13(2)	The Chairman of the Board shall be the Governor of the Bank of Finland.						
	13(3)	One and the same person can be appointed as a member of the Board for a maximum of three terms. However, one and the same person can be appointed Chairman of the Board for two terms even if the said person has previously been a member of the Board.						YES
France	L. 142-8	The Governor and the two Deputy Governors shall be appointed by an Order made in the Council of Ministers for a six-year term of office, which may be renewed once. The age limit for holding these offices shall be sixty-five.		YES		N/A	6 years	YES
Germany	7(3)	The members of the Executive Board shall be appointed by the	YES			Federal	5 - 8 years	N/A

⁸²¹ Under Article 11(2) of the Finnish NCB Statute, the Parliamentary Supervisory Council shall make proposals to the Council of State on the filling of positions as members of the Board.

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		President of the Federal Republic of Germany. The President, the Vice-President and two other members shall be nominated by the Federal Government; the other four members shall be nominated by the Bundesrat (the upper house of Parliament representing the federal states) in agreement with the Federal Government. The Federal Government and the Bundesrat shall consult the Executive Board with regard to their nominations. Members shall be appointed for eight years or in exceptional cases for a shorter term of office, but not for less than five years. Appointments and retirements shall be published in the Federal Gazette (Bundesanzeiger).				Government		
Greece	5(3) ⁸²²	The Governor and the Deputy Governors shall be appointed for a renewable six year term by presidential decree on a recommendation from the Council of Ministers following a proposal by the Bank's General Council. The Governor and the Deputy Governors may be relieved from office, in accordance with the procedure laid down in the Statute of the Bank, only if they are no longer capable of performing their duties or are guilty of serious misconduct. Except for matters hereby assigned to the Monetary Policy Council, the Governor shall be responsible for all other matters falling within the duties of the ESCB and shall retain the responsibilities conferred upon him by the Statute of the Bank and the legislation in force. From the establishment of the ESCB, the Governor shall participate ex officio as an independent personality in the General Council and the Governing Council of the ECB, in accordance with the Statute of the ESCB.	YES			Council of Ministers; General Council	6 years	N/A
	21(2)	The Governor and Deputy Governors shall be appointed as provided for in Article 29, while the other members of the Monetary Policy Council as provided for in Article 35A.						

⁸²² Law No. 2548 "Provisions relating to the Bank of Greece"

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
	22(5)	The Governor, Deputy Governors, and Councillors shall, on taking up office, take oath to strictly and faithfully observe the provisions of this Statute, to promote the welfare of the Bank in all respects, to devote themselves, honourably and assiduously, to the administration of the Bank's business, and be pledged to secrecy with regard to the Bank's transactions. The Governor and Deputy Governors shall take oath before [the President of the Republic], and the Councillors before the Governor at a meeting of the General Council						
	29(1)	The Governor and the Deputy Governors shall be appointed for a six-year term by a Presidential Decree on a proposal of the Council of Ministers following a proposal by the Bank's General Council. They shall devote their whole time to the affairs of the Bank, except in cases where, by law, they are members of the Board of Directors of legal entities in public law, public enterprises or state advisory bodies.	YES			Council of Ministers; General Council	6 years	N/A
	29(2)	University professors of Law and Economics may be appointed to the positions of Governor and Deputy Governor of the Bank, while retaining the right to exercise their university duties.						
	35A(6) first sentence	The Governor and Deputy Governors are members of the Monetary Policy Council as long as they retain their position.						
Hungary	50(3)	The President of the MNB shall be appointed by the President of the Republic for a term of six years, at the proposal of the Prime Minister.	YES			Prime Minister	6 years	N/A
	49(6)	Candidates for the Monetary Council shall be heard by the competent parliamentary committee.						
	49(7)	The members of the Monetary Council shall enter into office on the day specified in their respective appointments or, in the absence of such date, when appointed. The member of the Monetary Council shall make an oath or a solemn promise and						

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		sign a document before the President of the Republic, with the words stipulated in the Act on the Oath and Solemn Promise of Certain Public Officials.						
Ireland	19(1)	The Governor shall be appointed by the President on the advice of the Government and shall receive such remuneration and allowances and be subject to such conditions of service as the Board shall from time to time determine.	YES					
	19(3)	A person appointed as Governor holds office for 7 years from the date of the person's appointment, unless the person previously ceases to hold that office as provided by this Part.					7 years	
	19(4)	The President, on the advice of the Government, may appoint a person holding office as Governor for a further period of 7 years to take effect at the end of the person's current period of appointment. This subsection applies whether the person was appointed under subsection (1) or this subsection.						YES
Italy	17(1)	Pursuant to Articles 19(7) and 19(8) of Law no. 262 of 28 December 2005, the appointment of the Governor, his reappointment and his removal from office in the cases provided for by Article 14(2) of the Statute of the ESCB shall be enacted by means of a decree issued by the President of the Republic, acting on a proposal from the President of the Council of Ministers following the adoption of a resolution by the Council of Ministers after hearing the opinion of the Bank of Italy's Board of Directors.	YES			Prime Minister; Board of Directors		
	17(2)	In order to express the opinion referred to in the previous paragraph, the Board of Directors shall be convened and chaired by the senior member in terms of appointment or, if this is the same, of age. The opinion, approved by a qualified majority of two thirds of the members of the Board, shall be issued for the purposes of the resolution of the Council of Ministers.						
	24(6)	The Governor's term of office shall be six years; it may be					6 years	YES

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		renewed only once.						
Latvia	22(1)	The Governor of the Bank of Latvia shall be appointed through a secret ballot by the Saeima of the Republic of Latvia upon the recommendation of at least ten members of the Saeima of the Republic of Latvia.			YES	10 members of the Saeima		
	22(3)	The Governor of the Bank of Latvia, the Deputy Governor, and members of the Council shall hold office for six years. In case any member of the Council resigns before his/her term of office has expired, a new member of the Council of the Bank of Latvia shall be appointed.					6 years	N/A
Lithuania	10(4)	The Chairperson of the Board of the Bank of Lithuania shall be appointed for a term of five years and dismissed prior to the expiration of his or her term of office by the Seimas on the recommendation of the President of the Republic.			YES	President of the Republic	5 years	
	10(6)	The Chairperson of the Board of the Bank of Lithuania may be appointed to his position for unlimited number of terms of office. The Deputy Chairpersons and Members of the Board may be appointed to their respective positions for no more than two consecutive terms.						YES
Luxembourg	7(2)	Appointments shall be made for a six-year period and shall be renewable.						YES
	12(2)	Board members shall be appointed by the Grand Duke on a proposal by the Government in Cabinet for a six-year period. Appointments shall be renewable	YES			Government	6 years	YES
	12(5)	Prior to taking up duties, Board members shall take the following oath before the Minister responsible for relations with the central bank: "I swear loyalty to the Grand Duke, obedience to the Constitution and to the laws of the State. I promise to fulfill my duties with integrity, thoroughness and impartiality and to maintain the secrecy of deliberations".						
Malta	8(1)	The Governor and the Deputy Governor shall be persons of recognised standing and experience in economic, financial or	YES			Prime Minister	5 Years	YES

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		banking matters and shall each be appointed by the President of Malta, acting on the advice of the Prime Minister. They shall be appointed for a term of five years but shall be eligible for re-appointment. They shall receive such remuneration as shall be set out in their respective letters of appointment						
The Netherlands	12(2); 6(6) Articles of Association	The President and the Executive Directors shall be appointed by Royal Decree, each time for a term of seven years. For the purpose of each such appointment, a short list containing the names of three persons shall be drawn up at a joint meeting of the Governing Board and the Supervisory Board.	YES			N/A	7 years	N/A
Poland	9(1)	The President of the NBP shall be appointed and dismissed by the Sejm, at the request of the President of the Republic of Poland.			YES	President of the Republic		
	9(2)	The term of office of the President of the NBP shall be six years. The same person shall not serve as President of the NBP for more than two consecutive terms.					6 years	YES
	9(3)	The President of the NBP shall assume his/her duties after taking the following oath before the Sejm: "In assuming the duties of the President of Narodowy Bank Polski, I solemnly swear that I shall strictly observe the provisions of the Constitution and other laws, and that in all my actions I shall pursue the economic development of our Homeland and the well-being of its citizens". This oath may be taken with the addition of the words, "So help me God".						
Portugal	27	The Governor and the other members of the Board of Directors of the Bank shall be appointed by the Cabinet, on a proposal from the Finance Minister.		YES		Finance Minister		
	33(2)	The members of the Board of Directors shall be in office for renewable terms of five years.					5 years	YES
	33(3)	The five-year term of office shall terminate on the date of the approval of accounts for the last fiscal year that started within that term						

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
Romania	33(3)	Members of the National Bank of Romania's Board are appointed by the Parliament - that also nominates the executive management - on the recommendation of the competent standing committees of the two Chambers of Parliament.			YES	standing committee of the Parliament ⁸²³		
	33(4)	Appointments are made for a period of five years, with the possibility of renewal.					5 years	YES
	33(5)	If the Board becomes incomplete, the vacancies shall be filled for the respective office, in compliance with paragraphs (3) and (4) hereof.						
	33(8)	Appointment, retirement and recalling from office of any member of the National Bank of Romania's Board shall be published in <i>Monitorul Oficial al României</i> , Part One.						
Slovakia	7(2)	The Governor and the Vice-Governors shall be appointed and dismissed by the President of the Slovak Republic upon the recommendation of the Government and with approval of the National Council of the Slovak Republic; if they have not been appointed from among employees of Národná banka Slovenska, they shall become employees of Národná banka Slovenska on the date of their appointment.	YES			Government; National Council		
	7(3)	Eight other members of the Bank Board shall be appointed and dismissed by the Government upon the recommendation of the Governor of the National Bank of Slovakia.						
	7(4)	The members of the Bank Board shall be appointed for a term of five years. The term of office of the Governor, Vice-Governor or another member of the Bank Board shall start to run on the effective date of their appointment to the relevant office. The same person can be reappointed as a member of the Bank Board but for no more than two consecutive terms of office. To be appointed a member of the Bank Board a natural					5 years	YES

⁸²³ It appears that there may be two committees as the law refers to the 'competent standing committees of the two Chambers of Parliament'.

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		person must have appropriate professional knowledge and experience in the field of monetary policy or finance, and have full legal capacity, and moral integrity. Deemed as appropriate professional knowledge and experience shall be completed university education and at least five years experience in a management, scientific, or academic position in the monetary or finance areas. Deemed as a person with moral integrity shall be a natural person who has never been lawfully convicted of an intentional criminal offence; such integrity is to be proven by an extract from the criminal records register						
Slovenia	35	The Governor of the Bank of Slovenia shall be appointed by the National Assembly of the Republic of Slovenia for a six-year term of office upon the proposal made by the President of the Republic of Slovenia, and shall be eligible for re-appointment.			YES	President of the Republic	6 years	YES
	37(1)	The Governor of the Bank of Slovenia shall notify the President of the Republic of Slovenia and the National Assembly of the Republic of Slovenia about the expiry of the term of office of any member of the Governing Board of the Bank of Slovenia no later than six months prior to the expiry of his term of office.						
	37(2)	The President of the Republic of Slovenia shall publish in 30 days upon the receive of the notification pursuant to the above paragraph of this Article in Official Gazette of the Republic of Slovenia an announced call for proposals for potential candidates for members of the Governing Board of the Bank of Slovenia.						
	37(3)	The proposals shall be sent in a term not to be shorter than 30 days from the publishing of the call for proposals. In the case of premature dismissal from the office the term shall not be shorter than 15 days from the publishing of the call for proposals. The proposals shall be explained and shall include						

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		written consent by the candidates.						
	37(4)	Amongst the entered potential candidates for the members of the Governing Board of the Bank of Slovenia, the President of the Republic of Slovenia shall propose to the National Assembly candidates for members of Governing Board of the Bank of Slovenia, although he can also propose other candidates. The proposal shall be made in 30 days from the expiration of the term defined in the previous paragraph of this Article. Each proposal shall be explained and a written consent by the candidate shall be added.						
	37(5)	The National Assembly of the Republic of Slovenia shall vote about the proposed candidate for the member of the Governing board of the Bank of Slovenia in 30 days from the submission of the proposal. Nomination is made by a secret ballot. The proposed candidate is appointed for the office if a majority of all deputies voted for him.						
	37(6)	If the proposed candidate does not acquire the necessary majority, the President of the National Assembly immediately shall notify the President of the Republic of Slovenia who shall in the next 14 days notify the President of the National Assembly of the Republic of Slovenia about his decision regarding the further procedure of appointment.						
Spain	24(1)	The Governor of the Bank shall be appointed by the King following a proposal by the President of the Government. Nominees shall be Spanish and will have recognised competence in monetary or banking matters. Prior to the appointment of the Governor, the Economy and Finance Minister shall appear before the relevant parliamentary committee under the terms envisaged in article 203 of the Spanish Parliamentary Internal Regulations, to report on the proposed candidate.	YES			Prime Minister		
	25(1)	The terms of office of the Governor and the Deputy Governor					6 years	No

Member State	Article	Text	Appointed by			Proposed by	Term of five years or more	Re-appointment possible
			Head of State	Government	Parliament			
		will be simultaneous, for a period of six years, and non-renewable for the same position.						
Sweden	Chapter 1, Article 4(1)	Pursuant to Chapter 9, Article 13 of the Instrument of Government, the activities of the Riksbank are managed by an Executive Board, consisting of six members, who are appointed by the General Council for a period of six years. The General Council appoints the Chairman of the Executive Board, who at the same time shall be the Governor of the Riksbank, and at least one Vice-Chairman, who at the same time shall serve as Deputy Governor of the Riksbank.			General Council ⁸²⁴		6 years	N/A
The United Kingdom	Schedule 1 1(1)	Appointment as Governor or Deputy Governor of the Bank shall be for a period of 5 years.						

Table 3-9 Appointment of an alternate under national law

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
Austria	34(4)	Should the Governor be absent or unable to perform his duties, he shall be represented by the Deputy Governor or, in the latter's absence, by the Governing Board member with the longest term of office. If this applies to several members of the Governing Board, the oldest Governing Board member shall deputize.	Yes		Yes	N/A
Belgium	18 (1);(2) 28(1);(2) Articles of Association	The Governor shall direct the Bank and preside over the Board of Directors and the Council of Regency. If he is unable to attend, he shall be replaced by the Vice-Governor without prejudice to the application of Article 10.2 of the Statute of the	Yes		Yes	

⁸²⁴ The Swedish NCB General Council is composed of members of Parliament.

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
		ESCB.				
	71(1)	The Governor shall sign agreements, settlements and documents of all kinds without being required to furnish proof of any power whatsoever vis-à-vis third parties. He may delegate this authority.			Yes	
Bulgaria	15(2)	The sessions of the Governing Council shall be presided by the Governor of the Bank; should the Governor be absent, by a Deputy Governor appointed by him.	Yes			No
	18(1)	The Governor of the Bulgarian National Bank shall organize, direct and supervise the activities of the Bank, other than those mandated by this or another law exclusively to the Deputy Governors, and shall represent the Bank at home and abroad. He may delegate some of his competences to other officials.			Yes	
	12(7)	When a member of the Governing Council resigns, the duties of this member shall cease after a period of three months if a new member of the Governing Council is not elected/appointed within this period				No
Cyprus	9(6)	Chairman of the Committee shall be the Governor, who shall convene a meeting of the Committee, at least once a month and whenever necessary, or in his temporary absence or temporary incapacity the Deputy Governor.	Yes		Yes	
	17(2)	The Governor shall preside at the meetings of the Board, or in his temporary absence or temporary incapacity the Deputy Governor, and in case of the absence of both from any meeting, the remaining members of the Board attending such meeting shall elect one of them to preside at such meeting.	Yes		Yes	
	21	The Deputy Governor shall assist the Governor in the performance of his tasks and , in the absence or temporary incapacity of the Governor, shall perform all the tasks of the Governor as provided by the Constitution or under this Law	Yes		Yes	
The Czech	7(1)	The Governor, or, in his absence, a Vice-Governor nominated by	Yes		Yes	

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
Republic		him, shall chair the meetings of the Bank Board. The Bank Board shall act by a simple majority of the votes cast. The Bank Board shall have a quorum if the Governor, or his nominee, and at least three other members of the Bank Board are present. In the event of a tie, the chairperson shall have the casting vote.				
	8	The Governor shall represent the Czech National Bank externally; in his absence, a Vice-Governor nominated by him shall act on his behalf	Yes		Yes	
Denmark	3 By-laws	No person in the service of the Bank may be a member of the Board of Directors. During the absence of a Governor a member of the Board of Directors may temporarily be appointed Governor; but the person appointed shall not in that period be entitled to vote on the Board of Directors. A deputy of the Governor nominated by the King shall be appointed by the Royal Bank-Commissioner. A deputy of a Governor appointed by the Board of Directors shall be appointed by the Chairman of the Board of Directors, as far as possible after conference with the Committee of Directors.	Yes		Yes	N/A
Estonia	10(4)	In the absence of the Governor of Eesti Pank, a Deputy Governor shall substitute for him or her and the Governor of Eesti Pank shall transfer his or her authority temporarily to the Deputy Governor by a regulation. If it is not possible to transfer the authority to a Deputy Governor, the Supervisory Board of Eesti Pank shall designate the person to substitute for the Governor from among the Deputy Governors. If the Supervisory Board has not designated a person to substitute for the Governor, the Deputy Governor who is senior in age shall substitute for the Governor. The person substituting for the Governor of Eesti Pank shall, during his or her term of authority, have the full authority of the Governor of Eesti Pank.	Yes		Yes	N/A
	11 ³	If a new Governor of Eesti Pank or a new Chairman or member			Yes	

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
		of the Supervisory Board of Eesti Pank has not been appointed by the due date for termination of the authority of the Governor of Eesti Pank or the Chairman or a member of the Supervisory Board of Eesti Pank, the authority of the person in office shall extend until the entry into force of a corresponding decision on appointment to office.				
Finland	11, second part	In respect of the Bank's administration, the Parliamentary Supervisory Council shall: [2] decide on the principles for determining salaries, leaves of absence and annual leaves of members of the Board as well as on the execution of their duties during leaves of absence exceeding one week;]	Yes		Yes	
France	L. 142-8(5)	The Governor shall appoint all of the Bank's employees, subject to the provisions of Article L. 142-3. The Governor shall be assisted by a First Deputy Governor and a Second Deputy Governor. The Deputy Governors shall exercise the functions delegated to them by the Governor. Should the Governor be absent or prevented from attending a meeting, one of the Deputy Governors, specifically nominated for that purpose by the Governor, shall preside over the Monetary Policy Council and the General Council.	Yes		Yes	
Germany	1(5) Organizational Statute	The schedule of responsibilities shall establish the system of representation of the members of the Board. If the member of the Board concerned is temporarily absent, policy decisions and organisational changes may not be made by his alternate without a compelling reason.	Yes		Yes	
Greece	32(2)	The senior Deputy Governor, who is second only to the Governor, shall replace him when absent, unable to be present or non-existing, to the full extent of his duties; in the absence of both, the Governor shall be replaced by the junior Deputy Governor.	Yes		Yes	Yes

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
	32(3)	The seniority of Governors shall be determined on the basis of the time elapsed since their initial appointment, provided that their term of office has been uninterrupted since then.				
	32(4)	If all members of the Administration of the Bank are unable to be present, the Governor shall be replaced by another member of the General Council, to be appointed at the beginning of the year to this effect	Yes		N/A	N/A
Hungary	50(6)	The President of the MNB shall appoint a Vice-President with general authorisation to represent him in the event that he is obstructed.	Yes		Yes	
	52(6)	The Board of Directors shall adopt its resolutions by a simple majority of the votes cast. In the event of a tie, the Chairperson shall have the casting vote. In the event that the Chairperson is unable to vote from voting, the Vice-President described in Article 50, paragraph (6) shall have the casting vote. The Board of Directors shall have a quorum if at least three of its members are present.	Yes		N/A	
Ireland	N/A					
Italy	22(1)	The Governor or, in the event of his absence or inability to act, the Director General, shall convene the Directorate and set the agenda whenever he considers this necessary or upon a motivated request from one of the other members of the Directorate indicating the matters to be dealt with.	Yes		Yes	N/A
	22(2)	The meetings of the Directorate shall be chaired by the Governor or, in the event of his absence or inability to act, the person who stands in for him as provided for in Articles 25 and 26; the quorum shall be three members.	Yes		Yes	
	25(4)	The Director General shall assist the Governor in the performance of his duties and shall stand in for the Governor in the event of the latter's absence or inability to act; the signature of the Director General shall be full proof thereof vis-à-vis third	Yes		Yes	N/A

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
		parties.				
	26(1)	The Deputy Directors General shall assist the Director General in the performance of his duties and shall stand in for him in the event of his absence or inability to act. Each of them may stand in for the Governor and the Director General in the event of their simultaneous absence or inability to act.				
	26(2)	The signature of one of the Deputy Directors General shall be full proof vis-à-vis third parties of the absence or inability to act of the Governor and the Director General.				
Latvia	28(5)	In the event the Governor of the Bank of Latvia is absent, his/her rights and obligations shall be fulfilled by the Deputy Governor or by the person appointed by an express order.	Yes	Yes ⁸²⁵	Yes	N/A
	29 second sentence	The Chairperson of the Board of the Bank of Latvia shall be entitled to participate in meetings of Republic of Latvia Government when authorised by the Governor of the Bank or in the event of the Governor's absence, and shall be entitled to represent Bank of Latvia interests.		Yes	Yes	N/A
Lithuania	17(2)	In the event of the absence of the Chairperson of the Board of the Bank of Lithuania, his or her duties shall be performed by one of the Deputy Chairpersons on a mandate from the Chairperson of the Board.	Yes		Yes	No ⁸²⁶
Luxembourg	8(1)	The Council shall be presided by the Director-General of the Central Bank or, in his absence, by the oldest member of Board of Directors present.	Yes		Yes	
Malta	8(3)	The Deputy Governor shall perform such duties as the Governor may direct and, in the event of the absence of, or a vacancy in the office of, the Governor, the Deputy Governor shall perform the duties of the Governor and shall have and may exercise the	Yes		Yes	Yes

⁸²⁵ The assessment is based on the phrase “by the person appointed by an express order”.

⁸²⁶ The authority can be delegated only by the Chairperson.

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
		powers and perform the functions of the Governor				
The Netherlands	6(4) Articles of Association second sentence	With due observance of Article 10.2 of the Statute, the President may appoint an alternate as a member of the ECB Governing Council.	Yes		Yes	No
	8(1) Articles of Association	If one or more members of the Governing Board are absent or unable to act, the remaining members shall continue to be charged with the management of the Bank. If the President is absent or unavailable to act, the office of President shall, with due observance of the provision of Article 6(4), be taken temporarily by the then most senior Executive Director present or, if he is absent or unavailable to act, by the then most senior Executive Director present, and so on.	Yes		Yes	No
	8(2) Articles of Association	If all members of the Governing Board save one are absent or unavailable to act, the remaining member shall continue to be charged with the management of the Bank. In that case, the Supervisory Board may decide to appoint, whether or not from among its own members, one or more persons to bear temporarily the responsibility for the Bank's management, the office of President being taken temporarily by the remaining member of the Governing Board.		Member of the Supervisory Board	Yes	
	8(3) Articles of Association	If all members of the Governing Board are absent or unable to act, the Supervisory Board shall be charged temporarily with the management of the Bank. In that case, the Supervisory Board may decide to appoint, whether or not from among its own members, two or more persons to bear temporarily the responsibility of the Bank's management. The office of President shall then be taken temporarily by the Chairman of Supervisory Board.		Supervisory Board	No	Yes
	8(4)	The person referred to in Article 11(2) [Supervisory Board				

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
	Articles of Association	member appointed by the Government] cannot be appointed to bear or share temporarily the responsibility of the Bank's management.				
	8(5) Articles of Association	In the event that, in his capacity as a member of the ECB Governing Council, the President is replaced, the provisions of Article 6(5) and (7) shall, to the extent necessary, apply correspondingly to the person so replacing the President.				
Poland	10(1)	In the event of absence, the President of the NBP shall be substituted by the Vice-President of the NBP – the First Deputy President of the NBP	Yes		Yes	
	16(1a)	During the absence of the Chairperson the meeting shall be presided by one of the members of the Council.	Yes		Yes	
	16(2)	The procedures for the activities of the Council and for selecting the member who presides the meeting during the absence of the Chairperson of the Council shall be laid down in a bylaw adopted by the Council by majority vote.				
Portugal	31(1)	The Governor, if he is absent or prevented, shall be replaced in the following way and order: (a) by the senior Vice-governor or, in equal circumstances, by the oldest in age; (b) by the senior director or, in equal circumstances, by the oldest in age.	Yes		Yes	
	31(2)	The substitution rule laid down in the foregoing paragraph shall apply to vacancies.	Yes		No	Yes
	31(3)	The signature of a Vice-governor or of a Director, alleging the situations envisaged in the foregoing paragraphs, shall be a presumption of the aforesaid absence, prevention or vacancy before third parties, including notaries, registrars, and other public office holders				
Romania	35(1)	The National Bank of Romania's Governor shall take measures to enforce legal provisions, the Board's decisions and other regulations concerning the National Bank of Romania. The Governor may delegate some of his powers to the Senior Deputy	Yes		Yes	

Member State	Article	Text	Governor replaced by:		Authority granted when:	
			Member of the same decision-making body	Other	Governor remains in the office	No Governor appointed
		Governor and to the Deputy Governors, under the terms established by the Board.				
	35(5)	Should the Governor be absent or incapacitated to act, the Senior Deputy Governor shall take charge.	Yes		Yes	N/A
Slovakia	9(1)	The Governor shall represent the National Bank of Slovakia vis-à-vis third parties; when he is not present, he will be represented by a Vice-Governor delegated by him, or, if neither of the Vice-Governors is present, by another member of the Bank Board delegated by the Governor. If the function of the Governor ceases and a new Governor has not been appointed, the powers of Governor of the National Bank of Slovakia shall pass to the Vice-Governor authorized by the Bank Board; if neither of the Vice-Governors is appointed, these powers shall pass to another Bank Board member authorized by the Bank Board.	Yes		Yes	Yes
Slovenia	30(3)	The Governor of the Bank of Slovenia shall empower one of the vice-governors to act in the capacity of a deputy	Yes		Yes	No
Spain	19	The Deputy Governor shall substitute for the Governor when the post becomes vacant or in the event of absence or illness, in performing managing or representative functions for the Bank. In addition, the Deputy Governor shall have the powers assigned to him by internal Bank rules and delegated to him by the Governor.	Yes		Yes	No
Sweden	Chapter 1 Article 4(2)	When required, in the absence or incapacity of the Governor, the General Council shall determine in which order the Deputy Governors shall serve in his place.	Yes		Yes	No
The United Kingdom	N/A					

Table 3-10 Grounds of dismissal and the procedure

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
Austria	33(4)	The members of the Governing Board may be removed from office only if they no longer fulfil the conditions for holding office (paragraph 3) or if they should be guilty of serious misconduct. The non-fulfilment of conditions for holding office shall also include a member of the Governing Board being prevented from performing the duties of office for a period of more than one year.		Yes	Yes ⁸²⁷	No	
Belgium	23(1) 34(1) Articles of Association;	The Governor shall be appointed by the King for a renewable term of five years. He may be relieved from office by the King only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. With regard to this decision, he shall have the right of appeal as provided in Article 14.2 of the Statute of the ESCB.		Yes		Yes	Yes
Bulgaria	14(1)	The competent authority under Article 12 may relieve from office a member of the Governing Council only if he no longer fulfils the conditions required for the performance of his duties under Article 11, para. 4, if he is in practical inability to perform his duties for more than six months, or if he has been guilty of serious misconduct.			Yes	Yes	No
	14(3)	From the date of accession of Bulgaria to the European Union, a decision to remove the Governor of the BNB					

⁸²⁷ The text is expanded compared to the wording of Article 14.2 of the Statute.

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		from office may be referred to the Court of Justice by the Governor concerned or by the Governing Council of the European Central Bank.					
Cyprus	18(4)	Subject to paragraph 4 of Article 118 of the Constitution, the Governor and the Deputy Governor may be relieved from office, only if in the opinion of the Council established under paragraph 8 of Article 153 of the Constitution, they no longer fulfil the conditions required for the performance of their duties or they are guilty of serious misconduct.		Yes		Yes	No
	118(4) ⁸²⁸	The President and the Vice-President of the Republic acting jointly may, at any time, terminate the appointment of either the Governor or the Deputy Governor of the Issuing Bank of the Republic or both as such Governor or Deputy Governor, as the case may be					
	118(6) ⁸²⁹	Any disciplinary matter in connexion with the exercise of the functions of the Governor and the Deputy Governor of the Issuing Bank of the Republic shall be within the competence of the Council established under paragraph 8 of Article 153					
	153(8) ⁸³⁰	(1) There shall be established a Council consisting of the President of the Supreme Constitutional Court as Chairman and the Greek and the Turkish judge of the Supreme Constitutional Court as members. (2) This Council shall have exclusive competence to					

⁸²⁸ Constitution of the Republic of Cyprus.

⁸²⁹ Constitution of the Republic of Cyprus.

⁸³⁰ Constitution of the Republic of Cyprus.

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		<p>determine all matters relating to-</p> <p>(a) the retirement, dismissal or otherwise the termination of the appointment of the President of the High Court in accordance with the conditions of service laid down in the instrument of his appointment;</p> <p>(b) the retirement or dismissal of any Greek judge or the Turkish judge of the High Court on any of the grounds provided in subparagraphs (3) and (4) of paragraph 7 of this Article.</p> <p>(3) The proceedings of the Council under subparagraph (2) of this paragraph shall be of a judicial nature and the judge concerned shall be entitled to be heard and present his case before the Council.</p> <p>(4) The decision of the Council taken by a majority shall be binding upon the President and the Vice-President of the Republic who shall jointly act accordingly.</p>					
The Czech Republic	6(13)	The Governor shall be relieved from office by the President of the Republic if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. The President of the Republic may also relieve the Governor from office if he fails to perform his duties for a period exceeding six months. A decision to this effect may be referred to the European Court of Justice by the Governor concerned or the Governing Council of the European Central Bank on grounds of infringement of the Treaty establishing the European		Yes	Yes ⁸³¹	Yes	Yes

⁸³¹ See footnote 827.

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		Community or of any rule of law relating to its application.					
Denmark	9(1) By-laws	The Governor nominated by the King as well as the Governors elected by the Board of Directors shall be appointed for an unlimited time, but may be dismissed by the King and the Board of Directors respectively. A majority of 2/3 of the whole Board of Directors shall be required in the latter case			Yes	Yes	No
Estonia	12(2)	The Governor and a Deputy Governor of Eesti Pank may be dismissed only on the basis specified in Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank		Yes		No	No
	28(7) Articles of Association	If the Governor of Eesti Pank ceases to comply with the requirements necessary for the performance of the Governor's duties or is convicted of serious misconduct, the Supervisory Board may make a proposal to the President of the Republic to remove the Governor of Eesti Pank before the expiry of the term of his or her authority.					
Finland	16(1)	The President of the Republic may dismiss a member of the Board only if the member no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct.		Yes		Yes	
	16(2)	A member of the Board other than the Chairman of the Board may appeal a decision referred to above in paragraph 1 to the Supreme Administrative Court as prescribed in applicable provisions of the Act on Application of Administrative Law (586/1996). The					Yes ⁸³²

⁸³² The wording of the law suggests that Article 14.2 of the Statute would apply directly to the Chairman of the Board.

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		Statute provides for the right of appeal of the Chairman of the Board.					
France	L. 142-5(1)	The members of the Monetary Policy Council shall be bound by professional secrecy. A member may be dismissed before his term of office expires only if he is no longer capable of performing his duties or if he is guilty of serious misconduct. Any such removal from office shall require a reasoned submission from the Monetary Policy Council acting on a majority vote of its members excluding the person concerned.		Yes		No	
	L. 144-3	Any litigation relating to the internal management of the <i>Banque de France</i> or between the <i>Banque de France</i> and members of the Monetary Policy Council, the General Council or its own staff shall fall within the jurisdiction of the administrative courts.					No
	L 142-8 (8)	The Governor and the two Deputy Governors shall not be dismissed before their term of office expires unless they become incapable of performing their duties or are guilty of serious misconduct. Any such dismissal shall be on the basis of a reasoned request by the General Council supported by a majority of its members excluding the person concerned.					
Germany	N/A	N/A	Yes			No	No
Greece	24	The Governor, Deputy Governors and Councillors may be relieved from office by the General Meeting of Shareholders if they are no longer capable of performing their duties or are guilty of serious misconduct, especially if they have violated the present Statute, disclosed confidential information about the affairs of the Bank or abused their position for their		Yes	Yes	Yes	No

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		own benefit or for business purposes.					
Hungary	49(8)	The mandate of a member of the Monetary Council shall terminate upon: a) expiration of the term of office; b) resignation; c) dismissal; or d) death.					
	49(10)	The President of the Republic may only terminate the mandate of a member of the Monetary Council by dismissal, <i>a)</i> if the member of the Monetary Council no longer fulfils the conditions required for the performance of his duties for reasons beyond his control; <i>b)</i> if the member of the Monetary Council no longer fulfils the conditions required for the performance of his duties for reasons within his control, or if he has been guilty of serious misconduct, in particular, if he deliberately fails to satisfy the obligation to declare his wealth or deliberately includes in such a declaration essential information or facts which are untrue.		Yes	Yes ⁸³³		
	50(3)	The President of the Republic shall dismiss the President of the MNB in accordance with the provisions set forth in Article 49, paragraph (10), at the proposal of the Prime Minister.				Yes	
	50(4)	A proposal for dismissal pursuant to paragraph (3) shall be sent to the President of the MNB, who may apply to the labour court, in accordance with the regulations set forth in the Labour Code.				Yes	No

⁸³³ See footnote 827.

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
	50(5)	The proposal for dismissal may be submitted to the President of the Republic following expiration of the period for application to the labour court, or, in the event that the labour court is applied to, following the rendering of a final decision by the court.				Yes	
	50(6)	A proposal for dismissal may be submitted to the President of the Republic following the expiration of the period for application to the labour court, or, in the event that the labour court is applied to, after the court decision has been rendered final.					
Ireland	19(7)	A person ceases to hold office as Governor if the person (a) dies, or (b) completes a term of office and is not re-appointed, or (c) resigns by notice in writing given to the President, or (d) is, with the person's consent, nominated as a candidate for election as a member of either House of the Oireachtas or is nominated as a member of Seanad Éireann, or (e) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or (f) is, with the person's consent, nominated as a candidate for election as a member of a local authority, or (g) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the			Yes		

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		<p>person's creditors, or</p> <p>(h) becomes physically or mentally incapable of performing the duties of Governor, or</p> <p>(i) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or</p> <p>(j) ceases to hold the office because of subsection (6), or</p> <p>(k) becomes disqualified from holding the office under section 20, or</p> <p>(l) is removed from the office under section 21.</p>					
	21(1)	The President may, on the advice of the Government, remove the Governor from office on the ground that the Governor has, because of ill-health, become permanently incapacitated from carrying out the responsibilities of Governor.				Yes	
	21(2)	The President may, on the advice of the Government, remove the Governor from office if the other members of the Board have passed a unanimous resolution requesting the President to remove the Governor from office on one or more specified grounds of serious misconduct.				Yes	
	21(3)	A decision of the President removing a Governor from office under this section takes immediate effect from the date on which the decision is notified to the Governor or the date on which the decision is first published, whichever date first occurs.				Yes	
	21(4)	A decision of the President removing a Governor from office under this section can be referred to the European Court of Justice in such manner and on					Yes

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		grounds consistent with Article 14.2 of the ESCB Statute.					
Italy	17(1)	Pursuant to Articles 19(7) and 19(8) of Law no. 262 of 28 December 2005, the appointment of the Governor, his reappointment and his removal from office in the cases provided for by Article 14(2) of the Statute of the ESCB shall be enacted by means of a decree issued by the President of the Republic, acting on a proposal from the President of the Council of Ministers following the adoption of a resolution by the Council of Ministers after hearing the opinion of the Bank of Italy's Board of Directors.		Yes		Yes	
	17(2)	In order to express the opinion referred to in the previous paragraph, the Board of Directors shall be convened and chaired by the senior member in terms of appointment or, if this is the same, of age. The opinion, approved by a qualified majority of two thirds of the members of the Board, shall be issued for the purposes of the resolution of the Council of Ministers.					
	17(4)	Without prejudice to the second paragraph, the resolutions referred to in this article must be adopted with at least two thirds of the Board members present, excluding the Governor in the cases referred to in the second paragraph, and with the affirmative vote of at least two thirds of those present.					
Latvia	22(4)	The Governor of the Bank of Latvia, the Deputy Governor and members of the Council of the Bank of Latvia shall be discharged by the Saeima before the term of office stipulated by Paragraph 3 of this Article if and only if			Yes	Yes	No

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		<p>1) he/she has submitted his/her resignation;</p> <p>2) the court decision on sentencing the Governor of the Bank of Latvia, the Deputy Governor or a member of the Council of the Bank of Latvia for a deliberate crime has taken legal effect;</p> <p>3) the Governor of the Bank of Latvia, the Deputy Governor or a member of the Council of the Bank of Latvia is not able to officiate for a period exceeding six successive months because of illness.</p>					
Lithuania	12(1)	The Chairperson of the Board of the Bank of Lithuania, Deputy Chairpersons and Members thereof shall be dismissed prior to the expiration of their term of office only if they do not fulfil the conditions required for the performance of their duties or they have been found guilty of serious misconduct.		Yes			
	12(2)	A decision regarding the dismissal of the Chairperson of the Board of the Bank of Lithuania on the grounds provided for in Paragraph 1 of this Article shall be made by the Seimas of the Republic of Lithuania on the recommendation of the President of the Republic; a decision regarding the dismissal of Deputy Chairpersons and Members of the Board shall be made by the President of the Republic on the recommendation of the Chairperson of the Board of the Bank of Lithuania.				Yes	
	12(3)	A decision regarding a dismissal shall be adopted within one month from the date of submission of the recommendation thereon to the Seimas of the Republic of Lithuania or the President of the Republic. In the event a decision is not adopted within the above time				Yes	

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		limit, the person in question shall continue to perform his or her duties.					
	12(4)	The Chairperson of the Board of the Bank of Lithuania shall have the right to refer to the European Court of Justice a decision regarding his dismissal prior to the expiration of his term of office within two months from the announcement of the decision or from the receipt of the notification thereof or, if the above has not occurred, from the date when the decision became known to the plaintiff on the grounds that the decision was in breach of the Treaty Establishing the European Community or any other legal provision related to the application of the above Treaty. The Deputy Chairpersons and the Members of the Board of the Bank of Lithuania shall have the right to appeal against a decision regarding a dismissal prior to the expiration of their terms of office to Vilnius Regional Court.				Yes	Yes
	13(1)	The Chairperson of the Board of the Bank of Lithuania may resign from his or her post upon submitting a resignation request to the President of the Republic of Lithuania; Deputy Chairpersons and Members of the Board may resign upon submitting resignation requests to the Chairperson of the Board.					
	13(2)	The resignation request submitted by the Chairperson of the Board shall be considered by the Seimas and requests of Deputy Chairpersons and Members of the Board shall be considered by the President of the Republic.					
	13(3)	A decision regarding the resignation shall be adopted within one month from the date of receipt of a					

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		resignation request.					
	13(4)	In the event a decision is not adopted during the time period indicated in Paragraph 3 of this Article, the Chairperson of the Board, Deputy Chairpersons and Members of the Board shall be considered to have resigned after one month from the day of filing such request.					
	13(5)	In the event a decision to decline a request is adopted, the Chairperson of the Board, Deputy Chairpersons and Members of the Board shall be regarded to have resigned after one month from the date of the adoption of the above decision if they submit a request confirming their previous request within two weeks after the adoption of the decision to decline the request.					
Luxembourg	12(3)	The Government may propose to the Grand Duke, after consultation with the Central Bank Council, to dismiss Board members who no longer satisfy the conditions of their employment or are guilty of serious misconduct.		Yes		Yes	No
Malta	8(5)	The Governor and the Deputy Governor may be relieved of their office only if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct.		Yes		No	No
The Netherlands	12(3); 6(7) Articles of Association	The President and the Executive Directors may be suspended or relieved from office only if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct.		Yes		No	No
Poland	9(4)	The term of office of the President of the NBP shall expire: 1) following a period of six years,					

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		2) in the event of his/her death, 3) in the event of his/her resignation, 4) in the event of his/her dismissal.					
	9(5)	The President of the NBP may be dismissed if: 1) he/she has been unable to fulfil his/her duties due to prolonged illness, 2) he/she has been convicted of a committed criminal offence under a final and legally binding court sentence, 2a) he/she submitted untruthful disclosure declaration [disclosure declarations as foreseen by the Law of 18 October 2006 on disclosure of information relating to documents of state security services from the period 1944-1990 and to the content of such documents], as confirmed by a final and legally binding court judgement, 3) the Tribunal of State [<i>Trybunał Stanu</i>] has prohibited him/her from occupying executive positions or holding posts of particular responsibility in state bodies.			Yes	No	
	198(1) ⁸³⁴	For violations of the Constitution or of a statute committed by them within their office or within its scope, the following persons shall be constitutionally accountable to the Tribunal of State: the President of the Republic, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Chamber of Control, members of the National Council of Radio					No

⁸³⁴ Constitution of the Republic of Poland.

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		Broadcasting and Television, persons to whom the Prime Minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces					
Portugal	33(3)	The members of the Board of Directors shall be irremovable from office; they may only be relieved from office should any of the circumstances envisaged in Article 14.2 of the ESCB/ECB Statute occur					
	33(4)	The Governor and the other members of the Board of Directors may only be relieved from office should any of the circumstances envisaged in Article 14.2 of the ESCB/ECB Statute occur.		Yes		No	
	33(5)	The Governor may institute proceedings against such decision, pursuant to the provisions laid down in Article 14.2 of the ESCB/ECB Statute.					Yes
	33(6)	The members of the Board of Directors shall vacate office upon expiry of their term, or due to permanent incapacity, resignation or legal incompatibility					
Romania	33(6)	A member of the Board may be recalled from office by the Parliament, at the joint proposal submitted by the competent standing committees of the two Chambers of Parliament, if s/he no longer fulfils the conditions required for the performance of her/his duties or if s/he has been found guilty of serious misconduct.		Yes		Yes	
	33(7)	No member of the National Bank of Romania's Board can be replaced for other reasons or following a procedure other than that stipulated under para. (6) hereof.				Yes	
	33(8)	Appointment, retirement and recalling from office of any member of the National Bank of Romania's Board				Yes	

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		shall be published in <i>Monitorul Oficial al României</i> , Part One.					
	33(9)	The decision to recall from office a member of the National Bank of Romania's Board may be appealed to the High Court of Cassation and Justice within 15 days from its publication in <i>Monitorul Oficial al României</i> .				Yes	No
Slovakia	7(2)	The Governor and the Vice-Governors shall be appointed and dismissed by the President of the Slovak Republic upon the recommendation of the Government and with approval of the National Council of the Slovak Republic; if they have not been appointed from among employees of Národná banka Slovenska, they shall become employees of Národná banka Slovenska on the date of their appointment.				Yes	
	7(8)	The function of a member of the Bank Board shall cease a) on the day when the member's term of office expires; b) upon resignation from the function, namely on the day of the delivery of the letter of resignation from the function of a Bank Board member, unless a later date is specified in the letter of resignation; c) when the member is recalled from the Bank Board in cases specified in paragraph 9; d) when a member dies or is officially pronounced dead; e) the day of coming into effect of the appointment of the Bank Board member to another function on the Bank Board, with his prior written consent.					
	7(9)	A member of the Bank Board may only be recalled		Yes			

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		from his function in the event that a member of the Bank Board no longer fulfils the conditions required for the performance of his duties or if a member of the Bank Board has been found guilty pursuant to separate legal provision of serious misconduct committed in the performance of his office.					
	7(10)	Any disputes relating to the dismissal of a member of the Bank Board from his function shall be decided by a court in proceedings pursuant to a separate Act, whereby the decision on preliminary question in the proceeding is made in accordance with separate legal provision; however the disputes involving removing the governor from office shall be resolved by the European Court of Justice pursuant to separate legal provision. Unless separate legal provision stipulates otherwise, action for court proceeding on invalidity of dismissal of a member of the Bank Board from his office needs to be filed with a court within the period of two months from the date of delivery of the decision on dismissal to the respective member of the Bank Board or, if it has not been delivered, from the date when the respective member of the Bank Board has been made aware of such decision. Filing an action for invalidity of dismissal of a member of the Bank Board from his office has a suspensory effect on legal force and enforceability of the appealed decision on dismissal until either the respective court or the European Court of Justice resolves the dispute by legally effective decision.					Yes
Slovenia	32(1)	The Governing Board of Banka Slovenije shall also					

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		decide on other matters concerning the operations of Banka Slovenije, and shall: [...] 3. establish the incompatibility of functions performed by the members of the Governing Board of Banka Slovenije, [...].					
	32(2)	The Governing Board of Banka Slovenije shall notify the National Assembly of its findings from point 3 of the previous paragraph of this Article					
	39(1)	A member of the Governing Board of Banka Slovenije may be relieved from office before expiry of the term only if: 1. they ask to be relieved, 2. grounds for the incompatibility of functions arise during their term of office, 3. it has been found in a prescribed procedure that they no longer fulfil the conditions required for the performance of their duties or that they have been guilty of serious misconduct. Banka Slovenije shall – in agreement with the minister in charge of finance – adopt a regulation to govern this procedure		Yes			
	39(2)	A member of the Governing Board of the Bank of Slovenia shall be relieved from office prematurely as of the day when the National Assembly of the Republic of Slovenia establishes that one of the reasons laid down in the previous paragraph of this Article has arisen				Yes	
	39(3)	Against the decision of the National Assembly of the Republic of Slovenia regarding the dismissal from office, an administrative dispute can be brought before a court in accordance with the Act governing administrative disputes				Yes	

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
	57(1)	From the date of accession of the Republic of Slovenia to the European Union the Governor of the Bank of Slovenia is entitled to appeal to the European Court of Justice against the decision of the National Assembly of the Republic of Slovenia from the second paragraph of Article 39 of this Act					Yes
	57(2)	From this date on the third paragraph of Article 39 of this Act no longer applies for the Governor of the Bank of Slovenia				Yes	Yes
Spain	25(4)	The Governor, the Deputy Governor and elected Council members shall leave office for the following reasons: a. Expiration of their terms of office. b. Resignation, which will take effect once the government is notified or, in the case of a member of the Executive Commission, when the Governing Council is notified. c. Reaching seventy years of age. d. Dismissal decided by the government, due to permanent incapacity to perform their functions, serious lack of compliance with their obligations, incompatibility that may have arisen during the term of office, or prosecution for deliberate crimes. In these cases, the order opening the oral hearing in the proceeding referred to in Title III of book IV of the Law of Criminal Justice shall be deemed to be equivalent to the bill of indictment. With the exception of cases of prosecution for deliberate crimes, the separation decision shall be adopted following a proposal by the Bank's Governing Council, after a			Yes	No	No

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		hearing with the individual in question.					
Sweden	Chapter 2, Article 2(1)	The right of the General Council to sever a member of the Executive Board from his employment follows from Chapter 9, Article 13, of the Instrument of Government					
	Chapter 9, Article 13 ⁸³⁵	<p>The Riksbank is the central bank of the Realm and an authority under the Riksdag. The Riksbank is responsible for monetary policy. No public authority may determine how the Riksbank shall decide in matters of monetary policy.</p> <p>The Riksbank has a Governing Council comprising eleven members, who are elected by the Riksdag. The Riksbank is under the direction of an Executive Board appointed by the Governing Council.</p> <p>The Riksdag considers whether the members of the Governing Council and the Executive Board shall be granted discharge of responsibility. If the Riksdag refuses a member of the Governing Council discharge of responsibility he is severed thereby from his appointment. The Governing Council may remove from office a member of the Executive Board only if he no longer fulfils the requirements laid down for performing his duties or if he has been guilty of gross negligence.</p> <p>Rules concerning elections for the Governing Council and concerning the management and activities of the Riksbank are laid down in law.</p>			Yes	Yes	
	Chapter 2,	An appeal against a decision on severance from the				Yes	Yes

⁸³⁵ Instrument of Government (Constitution of the Kingdom of Sweden).

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
	Article 2(2)	employment shall be made within two months of the decision being served. The Governor of the Riksbank may bring a case before the European Court of Justice. Other members of the Executive Board may appeal at the Supreme Court					
	Chapter 2, Article 2(4)	If an appeal is not made within the time prescribed in the second paragraph, the party has lost the right to appeal				Yes	
The United Kingdom	Schedule 1 7(1)	A person appointed as Governor or Deputy Governor of the Bank shall vacate office if he becomes a person to whom paragraph 5(1) applies. [paragraphs 5(1) and (2) state (1) A person is disqualified for appointment as Governor, Deputy Governor or director of the Bank if he is a Minister of the Crown or a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament. (2) A person is disqualified for appointment as director of the Bank if he is a servant of the Bank.]					
	Schedule 1 7(2)	A person appointed as director of the Bank shall vacate office if he becomes a person to whom paragraph 5(1) or (2) applies.					
	Schedule 1 8	The Bank may, with the consent of the Chancellor of the Exchequer, remove a person from office as Governor, Deputy Governor or director of the Bank if it is satisfied – (a) that he has been absent from meetings of the court for more than 3 months without the consent of the court, (b) that he has become bankrupt, that his estate has					

Member State	Article	Text	Grounds of dismissal:			Dismissal procedure prescribed in the NCB Statute	Court of Justice competence noted
			not regulated	copy of Article 14.2	different than Article 14.2		
		been sequestered or that he has made an arrangement with or granted a trust deed for his creditors, or (c) that he is unable or unfit to discharge his functions as a member.					

Table 3-11 Budget rules

Member State	Article	Text
Austria	N/A	
Belgium	20(4); 30(8) Articles of Association	The Council [of Regency] shall approve the expenditure budget and the annual accounts submitted by the Board of Directors. It shall finally determine the distribution of profits proposed by the Board.
Bulgaria	48(1)	The expenditure of the BNB shall be made in accordance with the annual budget approved by the Governing Council of the BNB and published in Darjaven Vestnik.
	48(2)	The administrative expenditure shall be made in accordance with the decisions of the Governor or a Deputy Governor authorised by him.
	48(3)	The reports on the budgeted expenditure of the BNB shall be examined by the National Audit Office, which shall prepare a special report on its examination. The report on the budgeted expenditure of the BNB shall be sent to the National Assembly together with the annual report.
	50	The BNB shall send the annual budget, adopted by the Governing Council, to the National Assembly, within thirty days after its adoption, and twice a year it shall send a report reviewing and assessing the BNB's activities during the previous period. This report shall be published.
Cyprus	62(1)	The Board shall be responsible for the preparation and adoption of the annual budget of the Bank.
	62(2)	The annual budget of the Bank shall be communicated to the House of Representatives.
The Czech Republic	47(1)	The Czech National Bank shall manage its finances in compliance with a budget broken down so as to show clearly the operating and investment expenditure of the Czech National Bank.
	47(2)	The Czech National Bank shall defray the necessary costs of its operations from its income. The profit it generates shall be used to replenish its reserve fund and other funds created from profits and for other purposes in the budgeted amount. It shall transfer the remaining profit to the state budget.
	59	The Budgetary Rules of the Republic shall apply to the Czech National Bank, with the exception of the provisions governing the duties of the central bodies of the state administration and those governing the inspection of budgetary financial management.
Denmark	N/A	
Estonia	9(2)(6)	The following issues are within the exclusive competence of the Supervisory Board of Eesti Pank: supervision of the implementation of the budget of Eesti Pank;
	11(1)(7)	The following issues are within the exclusive competence of the Governor of Eesti Pank: approval of Eesti Pank's budget;
	29(1)	The revenue of Eesti Pank includes: 1) interest on foreign currency reserves invested abroad; 2) interest on deposits in other banks and on loans granted to banks; 3) revenue from the issue of currency; 4) revenue from foreign currency operations and from securities and collateral transactions; 5) revenue from other transactions which are not contrary to this Act or the statute of Eesti Pank.

Member State	Article	Text
	29(2)	The expenditure of Eesti Pank includes: 1) interest payable on amounts deposited with Eesti Pank or received in any other manner; 2) expenditure relating to cross-border transactions; 3) interest on and other expenditure relating to foreign loans; 4) expenditure from foreign currency operations, securities transactions and the provision of collateral; 5) expenditure relating to the production and issue of banknotes and coins; 6) depreciation of fixed assets; 7) administrative expenses; 8) other expenditure necessary to perform the functions of Eesti Pank.
Finland	14(1)	The Board shall be responsible for the administration of Suomen Pankki and for ensuring that all tasks assigned to the Bank are duly executed, except for statutory tasks of the Parliamentary Supervisory Council and matters that are otherwise provided for in the Act on the Financial Supervision Authority (503/1993).
France	Article L.142-2 (4)	The General Council shall also: discuss the use of own funds; draw up, making sure to allocate the Banque de France the necessary means to carry out the tasks delegated to it as a consequence of its participation in the European System of Central Banks, the projected and amended expenditure budget; and approve the Banque de France's balance sheet and accounts, as well as the plans for allocating profits and fixing the dividend due to the State.
Germany	26(4)	To assist it in its management and administrative tasks, the Deutsche Bundesbank shall prepare a cost account. Before the start of a financial year, the Deutsche Bundesbank shall draw up a standard cost account and an investment plan. At the end of the financial year, it shall make a comparative analysis of the budgeted figures and the actual costs and investment. This analysis shall be reviewed separately by the auditors.
Greece	31(1)	The Governor shall, on behalf of the General Council, be in permanent control of the management of the Bank's assets and general business, taking decisions in all cases not specifically reserved to the General Council or the Monetary Policy Council or governed by regulations which the said Councils have issued.
	37	The Management Council shall submit to the General Council a detailed report every month regarding the business and the position of the Bank, in particular those issues relevant to the discounts and advances, and shall deliver its opinion on all matters referred to it by the General Council.
Hungary	N/A	
Ireland	6G	(1) The Bank shall continue to keep and operate the fund called the general fund. (2) The Bank shall pay into the general fund all money received by the Bank and shall pay from that fund all amounts that it is required to pay. (3) The Bank shall pay its surplus income as and when determined under this section into the Exchequer in such manner as the Minister for Finance directs and may at any time pending such determination pay into the Exchequer such sums on account of surplus income as may be agreed on by the Minister for Finance and the Bank. (4) The expenses incurred by the Bank in performing functions or exercising powers under this or any other Act or law are

Member State	Article	Text
		<p>payable out of the general fund of the Bank, except where otherwise provided by or under this or any other Act.</p> <p>(5) Any claims on or liabilities to the European Central Bank are to be treated as assets or liabilities of the general fund or any other fund established by order made by the Minister for Finance for that purpose.</p> <p>(6) The Minister for Finance may, after consultation with the Bank, make regulations providing for the periodic determination of the Bank's surplus income and, in particular, such regulations may-</p> <p>(a) enable provision to be made for reserves, depreciation and other similar matters before the surplus income is determined, and</p> <p>(b) provide for any matter arising from the implementation of Chapters VI, VIII and IX of the ESCB Statute.</p> <p>(7) In exercising the powers conferred by this section, the Minister for Finance is required to have regard to the functions imposed and the powers conferred on the Bank by or under the Rome Treaty and the ESCB Statute.</p>
Italy	18(2)	In conformity with legislative and regulatory provisions and, in the case of resolutions referred to in points 9) and 10), in compliance with the statute of the ESCB and the provisions adopted by the European Central Bank (ECB), the Board shall: 2) approve the annual expenditure budget;
Latvia	26(2)	The Council of the Bank of Latvia shall review and approve the annual budget of the Bank, determining that all expenses of the Bank shall be financed from the Bank's revenue.
Lithuania	11(1)(15)	The Board of the Bank of Lithuania shall: (...) approve the Bank of Lithuania budget.
	21	The Bank of Lithuania shall plan its annual budget taking into account the needs related to the implementation of the objectives and functions, as well as its activities prescribed by this Law. The budget shall consist of operating expenses and investment in tangible and intangible assets.
Luxembourg	6(c)	The competences of the Council of the Central Bank shall be: To approve, annually, the budget, the financial accounts and the report of the Executive Board.
	29(2)	No later than the end of each financial year the Executive Board shall submit to the Council for approval the income and expenditure budget for the forthcoming year. An opinion of the staff representatives shall be appended to the budget and form an integral part of it together with the organisation chart including tables showing the number of staff both current and as planned, according to the categories defined in Article 14 (3), and, also, guidelines, where appropriate, on remuneration supplements pursuant to Article 14 (4) (a).
	30	The budget, annual accounts and reports approved by the Council shall be sent to the Government and the Chamber of Deputies. The Government in Cabinet shall decide whether the Central Bank bodies be granted discharge. Such a decision is taken without prejudice to the provisions of Article 5 (2) and without calling into question the obligations of the Central Bank within the framework of the ESCB. The decision granting discharge to the bodies of the Central Bank shall be published together with the Central Bank's annual accounts in the Mémorial (Official Gazette).
Malta	N/A	
The Netherlands	19(2) Articles of	Each year, the Governing Board shall compile a budget of the Bank's expected expenditure and shall do so before 1 January of

Member State	Article	Text
	Association	the year to which the budget relates. The budget requires the prior consent of the Supervisory Board.
Poland	64	The NBP shall conduct its finances on the basis of an annual financial plan.
	17(4)	The scope of activities of the NBP Management Board shall include, in particular: (...) 6) adopting the NBP plan of activity and financial plan,
	12(2)	In consideration of monetary policy guidelines, the Monetary Policy Council shall, in particular: (...) 4) approve the NBP financial plan and the report on the activity of the NBP
Portugal	52(1)	An operating budget shall be drawn up every year.
	52(2)	The annual budget shall be forwarded to the Finance Minister not later than November 30 of the preceding year.
Romania	41	The annual revenue and expenditure budget shall be approved by Banca Națională a României's Board and its execution shall be verified according to the practices and procedures of internal control and audit.
	3(3)	Banca Națională a României shall cooperate with the Ministry of Public Finance in setting the macroeconomic indicators based on which the annual draft budget shall be drawn up.
Slovakia	6(2)(b)	Furthermore, the Bank Board shall in particular: approve the budget of the National Bank of Slovakia, financial statements of the National Bank of Slovakia, annual results of operations and annual reports of the National Bank of Slovakia, decide on the use of profits or settlement of losses of the National Bank of Slovakia, and set the types of funds of the National Bank of Slovakia, their level and application;
Slovenia	49(3)	Banka Slovenije shall plan its income and expenditure in a financial plan to be adopted by 31 December of the preceding year.
	49(4)	Should the financial plan not have been adopted by 31 December of the preceding year, financing shall be carried out pursuant to a decision on temporary financing adopted by the Governing Board of Banka Slovenije.
	49(6)	Banka Slovenije shall notify the National Assembly of the annual accounts and financial plan. The annual financial statements are an integral part of the annual report and shall be published.
Spain	4(1)	The rules governing the State budget, property and contracting shall not apply to the Bank unless otherwise specifically indicated.
	4(2)	The Bank's draft budget for operating expenses and investments, once approved by its Governing Council according to article 21.1.g), shall be forwarded to the government, which will submit it to Parliament for approval. The budget shall be prospective in nature, and shall not be consolidated with other State public sector budgets. The government, upon proposal by the Economy and Finance Minister, shall have the authority to approve the annual balance sheet and accounts of the Bank, which will be sent to Parliament for informational purposes. Without prejudice to the terms of article 27 of the Statutes of the ESCB, the Bank shall be subject to external auditing by the «Tribunal de Cuentas», under the terms of Organic Law 2/1982, of May 12, on the Tribunal de Cuentas. The report accompanying the annual balance sheet and

Member State	Article	Text
		accounts shall give further detail on different operations or items on the balance sheet, according to their characteristics. In particular, the Bank's contributions to the Deposit Guarantee Funds shall be detailed, as will any loans or other operations transacted for the benefit of any other institution or person not on an arm's-length basis, or which in any other way involve loss of profit or losses for the Bank. In such cases the amount of such loss of profit or losses shall be specified.
	21(1)	The Governing Council shall: f. Approve the internal rules of the Bank at the proposal of the Executive Commission.
Sweden	Chapter 10 Article 2	The Riksbank's accounting year is the calendar year. Each year before the end of December, the Executive Board shall draft a budget for the Riksbank's administrative activities during the following accounting year. The Executive Board shall submit the budget to the Riksdag Committee on Finance and the Swedish National Audit Office as well as the General Council for information.
United Kingdom	N/A	

Table 3-12 Accounting rules

Member State	Article	Text
Austria	67(1)	The financial year of the Oesterreichische Nationalbank shall commence on January 1 and end on December 31.
	67(2)	The rules established by the Governing Council of the ECB in accordance with Article 26.4 of the ESCB/ECB Statute shall be taken into consideration in drawing up the balance sheet and the profit and loss account. The foregoing financial statements shall close on December 31 every year. Furthermore, the balance sheet and the profit and loss account shall be drawn up according to the principles of generally accepted accounting practice.
	67(3)	The provisions of the third volume of the Handelsgesetzbuch (Commercial Code) shall be applicable only insofar as they are compatible with this federal act. In particular, Articles 199 and 244 to 267 of the Handelsgesetzbuch shall not apply.
	68 (1)	No later than May 31 of the calendar year following the financial year in question, the Governing Board shall present to the General Council for approval a report on the preceding financial year as well as the annual accounts expanded by means of an appendix and audited by the Auditors.
	68 (2)	After approval by the General Council, the report and the annual accounts shall be submitted to the General Meeting for adoption.
	68 (3)	The provisions of Article 243 paragraphs 1 to 3 (with the exception of paragraph 2 last sentence and paragraph 3 items 2 and 5) of the Handelsgesetzbuch shall apply to the report.
Belgium	20(4); 30(8) Articles of Association	The Council shall approve the expenditure budget and the annual accounts submitted by the Board of Directors. It shall finally determine the distribution of profits proposed by the Board.

Member State	Article	Text
	33; 52 Articles of Association	The accounts and, if appropriate, the consolidated accounts of the Bank shall be drawn up : in accordance with this Act and the mandatory rules drawn up pursuant to Article 26.4 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank; and otherwise in accordance with the rules laid down by the Council of Regency. Articles 2 to 4, 6 to 9 and 16 of the Act of 17 July 1975 on business accounting and their implementing decrees shall apply to the Bank with the exception of the decrees implementing Articles 4 (6) and 9, § 2.
	44	The annual accounts shall be drawn up as at 31 December of each year. They shall be prepared by the Board of Directors and submitted to the Council of Regency, which shall have twenty days to examine and approve them. Approval of the accounts by the Council of Regency shall relieve the administration of responsibility.
	45	Administrative expenses, charges and provisions of all kinds, as well as depreciation allowances, shall be deducted from the gross profit before or in the balance sheet.
	51	The annual accounts and the distribution of the profit shall be published in the Moniteur belge/Belgisch Staatsblad. These documents, accompanied by the reports of the Board of Directors and the Council of Regency on the financial year's operations, shall be sent, at least five days before the Ordinary General Meeting, to the shareholders whose shares are the subject of a registration by name or who have satisfied the conditions for admission to the General Meeting.
Bulgaria	8(1)	To cover uncollectable and unsecured receivables, the BNB shall allocate provisions for an amount specified by the Governing Council which shall be an expense item in the accounts and an adjustment in the balance sheet assets.
	46	The BNB shall keep accounts and records in compliance with the Law on Accountancy and in accordance with international accounting standards.
	48(3)	The reports on the budgeted expenditure of the BNB shall be examined by the National Audit Office, which shall prepare a special report on its examination. The report on the budgeted expenditure of the BNB shall be sent to the National Assembly together with the annual report.
	48(4)	The implementation of the Public Procurement Law shall be monitored by the National Audit Office. The Public Financial Inspection Agency shall not carry out inspections of the BNB.
	49(2)	The format and contents of the BNB's consolidated balance sheet, and the separate balance sheets of the Issue and Banking Departments, shall be determined by an ordinance issued by the BNB and shall comply with the requirements of international accounting standards.
	49(3)	The consolidated financial statement of the BNB shall be certified by an external auditor and shall be published together with the auditor's report in accordance with the requirements of international accounting standards.
	49(4)	The external auditor shall be appointed by the Governing Council for a term of three years on the basis of a procedure complying with the Public Procurement Law.
Cyprus	57(1)	Within three months after the end of each financial year the Bank shall prepare the annual financial statements.

Member State	Article	Text
	57(2)	The Bank shall determine its net profit or net loss for each financial year according to approved accounting standards applying from time to time for the European System of Central Banks, as they are adopted by the European Central Bank.
	57(3)	The Bank shall prepare and publish, by the end of each month a summary balance sheet of the Bank as at the end of the preceding month.
The Czech Republic	48(1)	The Czech National Bank shall keep accounts in accordance with a special legal rule.
Denmark	12	The Bank shall at the expiration of every month report to the Minister of Economic Affairs on the funding of the active note circulation. In case of any deviation from the rules governing the funding of the notes of the Bank under §§ 9-11 it shall be the duty of the Bank to redress the deviation within the expiration of the succeeding month.
	17	The financial year of the Bank shall be the calendar year. As soon as possible after the expiration of the financial year the books shall be balanced and the accounts for the year expired drawn up. The accounts shall contain a working account and a balance sheet. The accounts shall under careful consideration of existing values and obligations and with the undertaking of necessary writings-off and allocations be rendered as proper and cautious business practice dictates. Securities admitted to public quotation on the Royal Exchange shall not be entered at a higher value than the latest buying rate quoted at the close of the financial year. Securities not admitted to public quotation on the Royal Exchange shall be entered at the supposed value on the day of settlement, but the value shall not exceed the price at which they were acquired. Foreign currency shall not be entered at a higher value than the rate of exchange quoted at the close of the financial year. Real estate shall not be booked at a higher value than the buying price with addition of costs of improvements and deductions corresponding to the depreciation through age and use and not exceeding the value assessed for land and building tax. The booked value of other assets shall not exceed the market value. The accounts when approved by the Board of Directors shall be sent to the Minister of Economic Affairs together with a report on the work of the Bank during the year expired. When the accounts have been approved by the Minister of Economic Affairs, they shall be published together with the Bank's report for the year expired.
Estonia	28	Eesti Pank's financial year begins on 1 January and ends on 31 December.
	31(2)	Eesti Pank's annual report shall be prepared pursuant to the rules established on the basis of Article 26.4 of the Statute of the European System of Central Banks and of the European Central Bank.
Finland	11	As a body supervising the administration and activities of Suomen Pankki, the Parliamentary Supervisory Council shall perform the following tasks: 1) confirm, upon proposal of the Board, the basic principles applied in drawing up the annual accounts of Suomen Pankki;
	19(1)	Suomen Pankki's financial year is the calendar year.
	19(2)	Suomen Pankki's annual accounts, which comprise the balance

Member State	Article	Text
		sheet, profit and loss account, notes to the financial statements and the annual report, shall be drawn up by the end of February and published by the end of April.
	19(3)	The annual accounts shall provide a true and fair view of Suomen Pankki's financial condition and on the composition of its profit or loss. The annual accounts are drawn up and signed by the Board of Suomen Pankki.
	19(4)	The Bank's balance sheet shall be published monthly during the financial year.
	20(1)	In respect of its accounting procedures, Suomen Pankki shall observe generally accepted accounting principles.
	20(2)	Provisions can be made in the annual accounts if necessary for safeguarding the real value of the Bank's funds or for smoothing out variations in profit or loss arising from changes in exchange rates or market values of securities.
	20(3)	Provisions necessary for covering the Bank's pension liability may be made in the annual accounts
France	Article R.144-1	An expenditure budget and a revenue forecast shall be drawn up for each financial year. They shall be communicated to the General Council's members, to the observer and to the observer's alternate at least two weeks before the meeting at which the General Council will consider them. Forecasts and amending budgets may, where necessary, be drawn up and decided during the course of the financial year, by following the same procedure.
	Article R.144-2	Investment expenditure may only be deducted from reserves that have already been established.
	Article R.144-3	The financial year shall commence on 1 January and end on 31 December. At the end of the financial year, the Governor shall adopt the annual accounts as well as a written report on the Banque de France's position and its activities during the financial year that has just ended. This report shall be submitted to the General Council's members, the observer, the observer's alternate and the auditors 15 days before the General Council meets pursuant to the following paragraph. The General Council shall meet within the four months after the financial year ends to consider and vote on the annual accounts for the previous financial year. After reading the Council's report, the Governor shall present the annual accounts to the General Council. The auditors shall record in their report that they have completed their work. The annual accounts and the auditors' report shall be sent to the national works council within three days after the General Council meeting at which the accounts are considered and voted on.
	Article R.144-4	Where necessary, deductions provided for in the agreement mentioned in the first paragraph of Article L. 141-2 shall first be applied to the net annual result. Subsequently a deduction of 5 % of the net result for the financial year shall be allocated to a specific reserve that will no be longer funded when it reaches an amount equal to the Banque de France's capital. Finally, the General Council shall decide on proposals relating to allocating the balance of the net result to any extraordinary or special reserves, relating to carrying over profits and relating to the dividend paid to the State. Such proposal shall be submitted for approval to the Minister for Economic Affairs.
	Article	Articles L. 123-12 to L. 123-14, the first paragraph of Article L.

Member State	Article	Text
	R.144-5	<p>123-15 and Articles L. 123-17 to L. 123-22 of the Commercial Code, as well as Article R. 123-181, the second paragraph of Article R. 123-186, the first paragraph of Article R. 123-187 and R.123-189 of the Commercial Code apply to the Banque de France, subject to the derogations in Articles R.143-6 and R. 143-7.</p> <p>An order by the Minister for Economic Affairs, adopted after consultation of the Governor, shall determine the classification of the on-balance-sheet items and the profit and loss account, as well as the entries to include in the annex mentioned in Article L. 123-13 of the Commercial Code.</p>
	Article R.144-6	<p>The compulsory accounting and valuation rules adopted for preparation of the consolidated balance sheet of the European System of Central Banks pursuant to Article 26 of the Protocol annexed to the Treaty establishing the European Community on the Statute of the European System of Central Banks and of the European Central Bank shall apply to the annual accounts prepared for the Banque de France in relation to transactions that fall within the tasks referred to in Article L. 141-1.</p> <p>The general accounting requirements established by the Accounting Regulation Committee pursuant to the first paragraph of Article 1 of Law No 98-261 of 6 April 1998 amending the accounting regulations and adapting the regime for land registration, as well as the accounting and valuation methods fixed by the Accounting Regulation Committee mentioned in I of Article 4 of the abovementioned Law, shall apply to the Banque de France for operations transaction than those entered in the accounts and valued in accordance with the rules referred to in the first paragraph of this Article.</p> <p>The General Council shall take a decision as to the presentation of the published financial statements. It may limit the detail of the information that is made public.</p> <p>In any event, the General Council may derogate from the second paragraph of this Article by applying the accounting and valuation rules recommended by the European Central Bank to the Banque de France.</p>
	Article R.144-7	<p>This subsection shall apply to the entering in the accounts of State foreign exchange reserves in gold and currency to the extent that it does not conflict with the rules in the agreement mentioned in the first paragraph of Article L. 141-2.</p>
Germany	26(1)	<p>The financial year of the Deutsche Bundesbank shall be the calendar year.</p>
	26(2)	<p>The accounting system of the Deutsche Bundesbank shall comply with generally accepted accounting principles. The annual accounts shall be drawn up with due regard to the tasks of the Deutsche Bundesbank, in particular those deriving from its being an integral part of the European System of Central Banks, and shall be published with appropriate notes thereon; the liability structure need not be disclosed. Unless the provisions of the second sentence above require otherwise, valuation shall be governed accordingly by the provisions of the Commercial Code (Handelsgesetzbuch) relating to corporations. In the course of establishing the profit or loss, the creation of liability items for general risks associated with domestic and foreign business, such as is considered warranted in the light of reasonable commercial judgement and after due consideration of the tasks of the Deutsche Bundesbank, shall remain unaffected.</p>
Greece	51	<p>The financial year of the Bank shall begin on January 1st and shall end on December 31st. At the end of the financial year, the</p>

Member State	Article	Text
		accounts of the Bank shall be submitted for auditing to the Auditors elected by the Annual General Meeting of Shareholders, as provided for in Article 44.
	52	The Bank shall draw up a statement of its assets and liabilities at the last day of each month, and shall publish it not later than a week.
	53	The Bank shall also publish, annually, and not later than one month prior to the date of the Annual General Meeting of Shareholders, its balance sheet and profit and loss account as at December 31st of the preceding year.
	54	The Bank shall publish said statements, balance sheet, profit and loss account, and other notifications in the Government Gazette and in such newspapers as the General Council may decide. A copy of all statements of accounts and notifications and of the annual report shall be sent to the Minister of Finance.
	54A	The accounts and reports of the Bank shall be drawn up on the basis of the accounting rules and techniques applicable each time to the ESCB as determined by the ECB.
Hungary	Article 17	<p>(1) The MNB shall allocate to the forint exchange rate equalisation reserve the exchangerate gain or loss incurred on its receivables and liabilities denominated in foreign currency, such gain or loss being calculated according to the revaluation based on the official exchange rate as at the last day of the year under review.</p> <p>(2) The MNB shall allocate to the foreign currency securities equalisation reserve the difference determined on the basis of the market valuation of receivables in foreign currency securities, following re-entry of the opening balance.</p> <p>(3) The forint exchange rate equalisation reserve and the foreign currency securities equalisation reserve described in Paragraphs (1) and (2) above shall form a part of the MNB's equity. The balances of the equalisation reserves may not be offset against one another.</p> <p>(4) In the event that, based on the available data, the balance of either of the equalisation reserves described in Paragraphs (1) or (2) above is negative, the central budget shall make a direct cash reimbursement to the appropriate equalisation reserve in the amount of the negative balance by 31 March of the year following the year under review. Such reimbursement shall be recorded in the balance sheet in the reporting year.</p> <p>(5) In the event that, based on the final data and with due consideration of the reimbursement described in Paragraph (4), the balance of either of the equalisation reserves described in Paragraphs (1) or (2) above is negative, the central budget shall make a direct cash reimbursement to the appropriate equalisation reserve within eight days of the Shareholder Resolution made pursuant to Point b) of Article 46/A hereof. In the event that the reimbursement described in Paragraph (4) exceeds the balance determined on the basis of the final data, the MNB shall reimburse the amount of overpayment to the central budget within eight days of the Shareholder Resolution made pursuant to Point b) of Article 46/A hereof, to the debit of the equalisation reserve. Such items shall be recorded in the balance sheet for the year in which the payments are effected.</p>
Ireland	6H(1)	The Bank shall keep all proper accounting records in respect of all of its transactions.
	6H(2)	Within 6 months after the end of each financial year, the Bank shall prepare and transmit to the Comptroller and Auditor General a statement of accounts for the year concerned. The

Member State	Article	Text
		statement must be in a form approved by the Minister after consulting the Bank. A form of statement approved under this subsection remains in force until superseded by another form of statement so approved.
	6H(3)	The Comptroller and Auditor General shall audit, certify and report on the statement of accounts and, as soon as practicable after completing the report, give the report and the statement to the Minister
	6H(4)	As soon as practicable after being given the report and statement of account, the Minister shall arrange for copies of those documents to be laid before each House of the Oireachtas.
	6H(5)	The accounts of the Bank may be audited in accordance with Article 27 of the ESCB Statute and, for that purpose, the Bank shall provide any auditors appointed in accordance with that Article with full information, books and records.
	6H(6)	The Bank shall keep its accounting records for at least 6 years.
Italy	18(1)	The Board of Directors shall be charged with the general administration, management supervision and internal control of the Bank.
	18(2)	<p>In conformity with legislative and regulatory provisions and, in the case of resolutions referred to in points 9) and 10), in compliance with the statute of the ESCB and the provisions adopted by the European Central Bank (ECB), the Board shall:</p> <ol style="list-style-type: none"> 1) examine and approve, acting on a proposal from the Directorate, the draft annual accounts and resolve to submit them to the Board of Auditors and the shareholders' meeting for final approval. After consulting the Board of Auditors, it shall decide on the dividend to be paid to shareholders; 2) approve the annual expenditure budget; 3) authorize contracts involving the disposal of real estate for a consideration exceeding €1 million and settlements, compositions with creditors and assignments in respect of claims exceeding €200,000, and express its opinion on all other contracts and legal actions which, because of their importance, the Governor considers should be submitted to it for approval; 4) approve the Bank's internal regulations; 5) determine the staffing levels, recruit and dismiss employees; 6) approve agreements negotiated with trade unions; 7) adopt resolutions regarding the geographical configuration and general organizational structure of the Bank; 8) appoint and remove from office regents at the main branches and councillors at the local branches and determine their number and which of them are to act as examiners; 9) appoint the Bank's foreign correspondents; 10) determine the rules and terms and conditions for the Bank's operations; 11) set the annual limit on donations to charity and contributions to initiatives of public interest; 12) decide upon all other matters concerning the general administration of the Bank not specifically entrusted to the shareholders' meeting which the Governor considers should be submitted to it.
	19(1)	The Board of Auditors shall consist of five auditors, including the chairman; there shall be two alternates. The members of the Board of Auditors shall remain in office for three years and may be re-elected not more than three times.
	19(2)	The Board of Auditors shall perform, directly at the Head Office and either directly or through examiners at the main branches and the local branches, checks on the administration of the Bank

Member State	Article	Text
		with regard to observance of the law, this statute and the Bank's general regulations. It shall carry out accounting checks, without prejudice to the activity of the external auditors referred to in Article 38, examine the annual accounts and express its opinion in the distribution of the annual dividend.
	19(3)	The members of the Board of Auditors shall attend the meetings of the Board of Directors.
	19(4)	Where necessary the Board of Auditors shall report its own observations and any received from the examiners to the Governor.
	19(5)	The members of the Board of Auditors shall be paid a fixed fee established by the shareholders' meeting, in addition to the reimbursement of expenses.
	29(3)	The board of regents shall ensure that the regulations and instructions of the Head Office are observed. It shall examine and approve the budget of the administrative expenses of the main branch.
	38(1)	A set of annual accounts and an inventory of the Bank's assets and liabilities must be prepared each year.
Latvia	15	The Bank of Latvia shall publish monthly and annual balance sheets in accordance with the standards used by the world's central banks.
	16	The fiscal year of the Bank of Latvia shall begin on January 1 and end on December 31.
	43(2)	The audit commission, whose members are approved by the State Auditors' Office of the Republic of Latvia, shall audit the economic activity and documents of the Bank of Latvia. After the audit results have been reviewed, the Council of the Bank of Latvia shall approve the Bank's annual report, and the report, together with the annual balance sheet, shall be published for the public knowledge.
Lithuania	11(1)(16)	The Board of the Bank of Lithuania shall: (...) establish the financial accounting policy, approve annual financial statements and the allocation of profit for the financial year;
	New 11(1)(16)	The Board of the Bank of Lithuania shall: (...) in compliance with the requirements of the legal acts of the European Central Bank, establish the financial accounting policy of the Bank of Lithuania, approve annual financial statements and the allocation of profit for the financial year, as established in Paragraph 3 of Article 23 of this Law;
	48	The financial year of the Bank of Lithuania shall begin on the first day of January and end on the thirty-first day of December
	49(1)	The Bank of Lithuania shall manage its financial accounting and prepare its annual financial statements following the recommendations of the European Central Bank for central banks participating in the European System of Central Banks.
	49(2)	The annual financial statements of the Bank of Lithuania shall include a balance-sheet, profit (loss) statement, and explanatory notes.
	49(3)	The Bank of Lithuania shall, within four months after the end of a financial year, submit its annual financial statements together with the opinion of an independent auditor to the Seimas and shall make it public.
	New 49(1)	The Bank of Lithuania shall manage its financial accounting and prepare its financial reports in accordance with the legal acts, guidelines and instructions of the European Central Bank regulating the accounting and reporting of operations undertaken by the national central banks.

Member State	Article	Text
Luxembourg	28	The financial year of the Central Bank shall be the calendar year.
Malta	21(1)	The financial year of the Bank shall begin on the first day of January and end on the thirty-first day of December.
The Netherlands	19(1) Articles of Association	The financial year shall be equal to the calendar year.
Poland	67	The NBP accounting principles should conform to the standards applied in the European System of Central Banks.
	68(1)	The annual accounts of the NBP shall consist of: 1) balance sheet, 2) profit and loss account, 3) supplementary information.
	68(2)	The calendar year shall be the accounting (fiscal) year at the NBP.
	68(3)	The NBP accounting principles, the terms of reference for balance sheets and for profit and loss accounts, and the contents of the supplementary information shall be specified by the Monetary Policy Council.
Portugal	63(1)	The Chart of Accounts of the Bank shall be approved by the Finance Minister, on a proposal from the Board of Directors after hearing the Board of Auditors.
Romania	37(1)	Banca Națională a României's financial statements shall be drawn up in accordance with the accounting principles and rules established by international accounting standards applicable to central banks and acknowledged by the European Central Bank and shall include the following: balance sheet, profit and loss account and the notes on the accounts.
	37(2)	Banca Națională a României's annual financial statements shall reflect accurately the financial standing and the financial performance for that financial year.
	37(3)	The models of annual financial statements shall be drawn up by Banca Națională a României, having regard to the consultative opinion of the Ministry of Public Finance.
	40(1)	Banca Națională a României shall issue its own regulations on organising and conducting its accounting, in compliance with the legislation in force, having regard to the consultative opinion of the Ministry of Public Finance.
	40(2)	Banca Națională a României shall record its economic and financial operations in compliance with its own chart of accounts, having regard to the consultative opinion of the Ministry of Public Finance.
Slovakia	38(1)	As of the euro introduction date the National Bank of Slovakia shall maintain accounts and prepare financial statements in accordance with the separate legal provisions applicable to the European System of Central Banks.
Slovenia	49(1)	Banka Slovenije's financial year corresponds to the calendar year.
	49(2)	Banka Slovenije shall prepare its financial statements in accordance with principles, standards and accounting guidelines adopted by the Governing Board of Banka Slovenije, taking into account the principles, standards and accounting guidelines adopted by the ECB.
	49(5)	The Governing Board of Banka Slovenije shall adopt the annual accounts for the preceding year by 31 March of every year.
	49(6)	Banka Slovenije shall notify the National Assembly of the annual accounts and financial plan. The annual financial statements are an integral part of the annual report and shall be published.

Member State	Article	Text
	63	The subscription of the capital, the transfer of a proportion of international reserves and other issues concerning cooperation with and integration in the ESCB and the ECB shall be carried out in accordance with the Statute of the ESCB and ECB and with decisions adopted on its basis by the ECB bodies.
	64	The allocation of a proportion of monetary income or expenditure of the ESCB established by the ECB in accordance with the Statute of the ESCB and ECB in implementing the common monetary policy shall be an integral part of Banka Slovenije's annual accounts specified in Article 49 of this Act.
Spain	N/A	
Sweden	Chapter 10 Article 2	The Riksbank's accounting year is the calendar year. Each year before the end of December, the Executive Board shall draft a budget for the Riksbank's administrative activities during the following accounting year. The Executive Board shall submit the budget to the Riksdag Committee on Finance and the Swedish National Audit Office as well as the General Council for information
	Chapter 10 Article 3	The Riksbank is required to keep accounts. This requirement shall be met in accordance with generally accepted accounting principles. In addition, the European Central Bank's guidelines on the legal framework for accounting and financial reporting within the European System of Central Banks shall be applied. Each year, before 15 February, the Executive Board shall submit an Annual Report of the Riksbank's activities during the preceding accounting year to the Riksdag, the Swedish National Audit Office and the General Council. The General Council shall make proposals to the Riksdag and the Swedish National Audit Office on the allocation of the profit of the Riksbank. The Annual Report shall comprise a Profit and Loss Account, a Balance Sheet, a Directors' Report and an account of foreign exchange and monetary policies and on how the Riksbank has promoted a safe and efficient payments system.
The United Kingdom	7(1)	The Bank shall keep proper accounts and records in relation to the accounts.
	7(2)	The Bank shall prepare for each of its financial years a statement of accounts consisting of – (a) a balance sheet as at the last day of the year, and (b) a profit and loss account.
	7(3)	In preparing accounts under subsection (2), the Bank shall be subject to requirements corresponding to the relevant Companies Act requirements, except insofar as the accounts relate to the Issue Department.
	7(4)	The Bank may disregard a requirement to which it is subject under subsection (3) to the extent that it considers it appropriate to do so having regard to its functions.
	7(5)	The Bank shall appoint an auditor or auditors to audit its accounts, including any statement under subsection (2).
	7(6)	As soon as practicable after receiving the report of its auditors on a statement prepared under subsection (2), the Bank shall send a copy of – (a) the report, and (b) the statement, to the Chancellor of the Exchequer.
	7(7)	The Treasury may by notice in writing to the Bank require it to

Member State	Article	Text
		publish in such manner as it thinks fit such additional information relating to its accounts as the Treasury may specify in the notice, including information which the Bank has excluded under subsection (4) from a statement under subsection (2).
	7(8)	The Treasury shall consult the Bank before giving a notice under subsection (7).
	7(9)	In subsection (3), the reference to the relevant Companies Act requirements is to the requirements to which the directors of a company which is a banking company for the purposes of the Companies Act 1985 are for the time being subject under that Act (except section 232) in relation to the preparation of accounts under section 226(1) of that Act.

Table 3-13 Auditing rules

Member State	Article	Text
Austria	14(1)	Within the last eight days prior to the ordinary General Meeting, the annual accounts for the preceding financial year shall be made available for examination at the head office of the Oesterreichische Nationalbank in Vienna.
	16(5)	The General Meeting shall be entitled: to appoint two Auditors and two alternate Auditors;
	37(1)	The General Meeting shall, in observance of Article 27 of the ESCB/ECB Statute, elect two Auditors and two alternate Auditors each year. The Auditors shall audit the annual accounts and shall submit a written report on the results of their audit.
	37(2)	The Auditors shall be entitled to ask the Governing Board for any information they require for the performance of their tasks, and in particular they shall have the right to inspect the books of the Bank.
	37(3)	The Auditors shall be obliged to carry out their audit conscientiously and impartially and to observe confidentiality.
	68(1)	No later than May 31 of the calendar year following the financial year in question, the Governing Board shall present to the General Council for approval a report on the preceding financial year as well as the annual accounts expanded by means of an appendix and audited by the Auditors.
	68(2)	After approval by the General Council, the report and the annual accounts shall be submitted to the General Meeting for adoption.
	68(3)	The provisions of Article 243 paragraphs 1 to 3 (with the exception of paragraph 2 last sentence and paragraph 3 items 2 and 5) of the <i>Handelsgesetzbuch</i> shall apply to the report.
Belgium	28(3) Articles of Association	[The Governor] shall present to the General Meeting the annual report on operations and the accounts approved by the Council of Regency.
	28(5) Articles of Association	The Governor shall send to the Chairmen of the Chamber of Representatives and the Senate the annual report referred to in Article 109 B(3) of the Treaty establishing the European Community. The Governor may be heard by the competent committees of the Chamber of Representatives and the Senate at the request of these committees or on his own initiative.
	21b 32a Articles of Association	1. Without prejudice to the responsibilities of the organs of the Bank and without prejudice to the execution of the tasks and transactions within the domain of the ESCB and their review by the statutory auditor, the audit committee shall, at least: a) monitor the financial reporting process;

Member State	Article	Text
		<p>b) monitor the effectiveness of the internal control and risk management systems, and of the Bank's internal audit;</p> <p>c) monitor the statutory audit of the annual accounts, including the compliance with the questions and recommendations formulated by the statutory auditor;</p> <p>d) review and monitor the independence of the statutory auditor, and in particular the provision of additional services to the Bank.</p> <p>2. Without prejudice to Article 27.1 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, and without prejudice to the competence of the Works Council with respect to the nomination, the proposal of the Board of Directors for the appointment of the statutory auditor shall be given on proposal of the audit committee. The Works Council shall be informed of this proposal. The audit committee shall also advise on the tender procedure for the appointment of the statutory auditor.</p> <p>3. Without prejudice to any reports and notices of the statutory auditor to the organs of the Bank, he shall report to the audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.</p> <p>4. The statutory auditor shall: a) confirm annually in writing to the audit committee his independence from the Bank; b) disclose annually to the audit committee any additional services provided to the Bank; c) discuss with the audit committee the threats to his independence and the safeguards applied to mitigate those threats and that have been documented by him in the audit working papers.</p> <p>5. The Internal Regulations shall specify the rules of procedure of the audit committee.</p>
Bulgaria	48(3)	The reports on the budgeted expenditure of the BNB shall be examined by the National Audit Office, which shall prepare a special report on its examination. The report on the budgeted expenditure of the BNB shall be sent to the National Assembly together with the annual report.
	49(3)	The consolidated financial statement of the BNB shall be certified by an external auditor and shall be published together with the auditor's report in accordance with the requirements of international accounting standards.
	49(4)	The external auditor shall be appointed by the Governing Council for a term of three years on the basis of a procedure complying with the Public Procurement Law.
	50	The BNB shall send the annual budget, adopted by the Governing Council, to the National Assembly, within thirty days after its adoption, and twice a year it shall send a report reviewing and assessing the BNB's activities during the previous period. This report shall be published.
	51	The BNB shall send its annual report on its activities, the consolidated financial statement, together with the auditor's report as referred to in Article 49, paragraph 3 and the budget report, to the National Assembly no later than 30 April of the following year.
Cyprus	60(1)(a)	The annual financial statements of the Bank shall be audited in accordance with Article 27 of the Statute and, to this end, the Bank shall provide the auditors appointed in accordance with the said Article with all the information, books and other records necessary for the fulfilment of their task.
	60(1)(b)	Without prejudice to Article 38 of the Statute, the Auditor

Member State	Article	Text
		<p>General of the Republic may carry out financial and management audit of the activities of the Bank that are not related to its tasks and competences [of the Bank] emanating from the European System of Central Banks, and under the condition that his reports and audit activities do not touch upon the Bank's independence.</p> <p>In order for the Auditor General to carry out the abovementioned task, the Bank provides to him all the necessary information, books and other records.</p> <p>For the purposes of this paragraph "management audit" shall mean the audit of the operational efficiency of the activities of the Bank that are not related to its tasks and competences [of the Bank] emanating from the European System of Central Banks and which does not touch upon its independence.</p>
	60(2)	The auditors shall submit their report to the Board after the pertinent audit, and address a copy to the Minister for information.
	61	The Board shall prepare and publish an annual report for the activities of the Bank in each financial year, which shall include the annual financial statements of the Bank.
The Czech Republic	48(2)	The annual accounts of the Czech National Bank shall be audited by one or more auditors appointed by agreement between the Bank Board and the Minister of Finance.
	48(3)	As soon as the annual accounts are approved and audited, the Bank Board shall submit them to the Chamber of Deputies and publish them.
Denmark	18	The accounts for the financial year shall be audited by 2 chartered accountants appointed by the Minister of Economic Affairs for 1 year at a time.
	35 By-laws	<p>The financial year of the Bank shall be the calendar year.</p> <p>The Board of Governors shall not later than the first day of February hand over the annual accounts to the Chartered Accountants appointed by the Royal Bank-Commissioner. When the Committee of Directors has made its report on the annual accounts and the negotiation with the Royal Bank-Commissioner has taken place, confer § 7, subsection 5, the annual accounts shall be submitted to the Board of Directors, but in no case later than the 20th March.</p>
	36 By-laws	<p>The daily audit of all the books of the Bank shall be made by officials appointed for that purpose. At a branch, however, the audit may, on the recommendation of the Board of Governors, be made by an auditor appointed by the Committee of Directors. This audit shall commence immediately at the beginning of the financial year and be continued daily, so that it always follows directly after the daily entries.</p> <p>The auditors shall keep a record. The auditors' record shall be submitted to the Board of Governors once a month and produced at the monthly meeting of the Committee of Directors. If the audit at a branch be made by an auditor specially appointed, a report on this audit based on information from this auditor shall be entered into the record.</p> <p>The auditors shall enter into their records all that may be of importance to the Board of Governors, Committee of Directors and Board of Directors to learn. In case the auditors discover essential irregularities the auditors shall, besides making entries thereof into the records, without delay notify the Board of Governors and the Chairman of the Committee of Directors.</p> <p>It shall be the duty of the auditors to call the attention of the Board of Governors and the Committee of Directors to</p>

Member State	Article	Text
		<p>deficiencies in audit and book-keeping if such might be found.</p> <p>37 By-laws</p> <p>The Minister of Economic Affairs shall appoint for one year at a time two Chartered Accountants to audit the annual accounts of the Bank.</p> <p>The Chartered Accountants shall be of age, not be deprived of the right to dispose of their estate, nor be in the service of the Bank, be members of the Board of Directors or Committee of Directors nor be attached to any member of the Board of Directors, Committee of Directors or Board of Governors, to accountant or cashier by being in their service, through marriage, relationship or affinity in lineal ascent and descent, or as brothers and sisters.</p> <p>During the audit, which shall be performed under careful consideration of existing values and obligations, the Chartered Accountants shall have admission to all books relating to the book-keeping of the Bank and to examine the cash in hand and the holdings of the cashiers of the Bank. The Committee of Directors and the Board of Governors shall be under the obligation to give the Chartered Accountants any information they might demand to ascertain the correctness of the accounts. When the Chartered Accountants have audited the accounts they shall enter a report on the audit into the Chartered Accountants' records. This shall be submitted at the first ensuing meeting of the Committee of Directors, and the members of the Committee present shall by their signature confirm that they have taken notice of the contents. Moreover the records shall be produced at the first ensuing meeting of the Board of Directors.</p> <p>The Chartered Accountants are under the obligation to keep secret what they learn through their activity.</p>
Estonia	9(2)(7 ¹)	<p>The following issues are within the exclusive competence of the Supervisory Board of Eesti Pank: appointment of the independent auditors of Eesti Pank pursuant to the procedure provided in subsection 31 (1) of this Act</p>
	9(2)(8)	<p>The following issues are within the exclusive competence of the Supervisory Board of Eesti Pank: approval of Eesti Pank's annual report on the proposal of the Governor;</p>
	31(1)	<p>For each financial year, the Supervisory Board of Eesti Pank shall appoint independent auditors recommended by the Governing Council of the European Central Bank and approved by the Council of the European Union to monitor Eesti Pank's activities during the financial year and to attest to the accuracy of the annual report prepared by Eesti Pank. Eesti Pank's activities may be examined further if the Riigikogu passes a corresponding resolution.</p>
	31(2)	<p>Eesti Pank's annual report shall be prepared pursuant to the rules established on the basis of Article 26.4 of the Statute of the European System of Central Banks and of the European Central Bank.</p>
	31(3)	<p>The annual report shall be approved and, together with the auditor's report, submitted to the Riigikogu by the Supervisory Board of Eesti Pank. The annual report of the Financial Supervision Authority approved by the Supervisory Board of the Financial Supervision Authority shall be submitted to the Riigikogu at the same time as Eesti Pank's annual report. The Riigikogu shall hear a presentation concerning Eesti Pank's annual report by the Governor of Eesti Pank.</p>
	31(4)	<p>The annual report shall be published in the <i>Riigi Teataja</i> and in Eesti Pank's Yearbook.</p>

Member State	Article	Text
Finland	18(1)	Parliament shall elect five auditors and a deputy for each of them, for the purpose of auditing Suomen Pankki's annual accounts and accounting system and management.
	18(2)	A minimum of two of the auditors and their respective deputies must be auditors approved by the Central Chamber of Commerce or must have passed the Chartered Public Finance Auditor's examination.
	18(3)	The auditors shall elect a chairman from among themselves and appoint as secretary a person who is an auditor approved by the Central Chamber of Commerce.
	22(1)	The auditors elected by Parliament shall audit the Bank's accounts annually by the end of March following the close of the financial year.
	22(2)	The audit shall be carried out according to generally accepted auditing principles.
	22(3)	Auditors shall have access to all documents and information that they consider necessary for the auditing task.
	22(4)	The powers of auditors approved by the Council of the European Union to examine the accounting system and accounts of Suomen Pankki and to obtain information on the Bank's transactions are laid down in the Statute.
	23	The auditors elected by Parliament shall submit a written report to the Parliamentary Supervisory Council, which shall include statements on the observance of the grounds confirmed by the Parliamentary Supervisory Council on the drawing up of annual accounts, on the confirmation of the profit and loss account and balance sheet and on the Board's proposal on measures to be taken concerning the Bank's profit or loss, as well as any comments that may affect confirmation of the profit and loss account or balance sheet.
France	L.142-2	<p>The General Council shall administer the Banque de France.</p> <p>It shall consider matters relating to the management of the Banque de France's activities other than those which are tasks of the European System of Central Banks.</p> <p>It shall discuss the staff regulations. The Banque de France's Governor shall submit these regulations for the approval of the relevant ministers.</p> <p>The General Council shall also: discuss the use of own funds; draw up, making sure to allocate the Banque de France the necessary means to carry out the tasks delegated to it as a consequence of its participation in the European System of Central Banks, the projected and amended expenditure budget; and approve the Banque de France's balance sheet and accounts, as well as the plans for allocating profits and fixing the dividend due to the State.</p> <p>The General Council shall appoint two auditors to audit the Banque de France's accounts. They shall be invited to attend the General Council meeting which approves the accounts for the previous financial year.</p>
	L.143-1 (3)	The Banque de France's accounts and the auditors' report shall be sent to the finance committees of the National Assembly and the Senate.
	R.144-8	The Banque de France's General Council shall nominate auditors on a recommendation by the Governing Council of the European Central Bank and after approval by the Council of the

Member State	Article	Text
		<p>European Union.</p> <p>The auditors shall check that the annual accounts are regular and honest and reliably reflect the result of transactions for the previous financial year as well as the Banque de France's financial situation and assets at the end of the financial year.</p>
Germany	26(3)	<p>The Executive Board shall draw up the annual accounts as soon as possible. The accounts shall be audited by one or more independent auditors appointed by the Executive Board in agreement with the Federal Court of Auditors (<i>Bundesrechnungshof</i>) and subsequently published. The auditors' report serves as the basis for the audit carried out by the Federal Court of Auditors.</p>
	26(5)	<p>The annual accounts, the standard cost account, the investment plan, the analysis of the budgeted figures compared with actual costs and investment, and the auditors' reports shall be forwarded to the Federal Ministry of Finance and the Federal Court of Auditors. The annual accounts, the analysis of the budgeted figures compared with actual costs and investment and the auditors' reports shall be presented to the Bundestag (the lower house of Parliament).</p>
	26(6)	<p>The Federal Court of Auditors shall report its findings under subsection (3) above to the Bundestag.</p>
Greece	19	<p>The Annual General Meeting of Shareholders shall be the only competent organ to deal with the following matters:</p> <ul style="list-style-type: none"> (a) approval of the annual report; (b) approval of the Balance Sheet following the report of the Auditors; (c) appropriations to reserve and other special funds; the fixing of dividends, and any other disposal of net profits; (d) election or removal of members of the General Council and of the Auditors and the fixing of their fees and travelling expenses; (e) discharge from all personal responsibility of members of the General Council and of the Auditors. The voting on this issue shall be conducted by show ballot and by roll-call;
	44(1)	<p>The first General Meeting of Shareholders and, subsequently, the Annual General Meeting shall elect three qualified persons and two substitutes as Auditors, to examine and report upon the balance sheet of the Bank to be presented at the next Annual General Meeting, and shall determine their fees. No Councillor or other officer of the Bank shall be eligible as Auditor during his term of office. Instead of the above mentioned natural persons, the General Meeting may elect as auditors a corporation or syndicate of Chartered Accountants.</p>
	44(2)	<p>The Auditors are entitled to obtain any explanation or information they may require from the Governors or Directors and to examine the Bank's books and documents.</p>
	44(3)	<p>The Auditors shall submit a report to the shareholders upon the annual balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a complete and accurate balance sheet containing all necessary particulars and properly drawn up so as to present a true and correct view of the state of the Bank's affairs, and, in case they have requested any explanation or information from the Governors or Directors, whether it has been given and whether it is satisfactory. Any such report submitted to the shareholders shall be read at the Annual General Meeting.</p>
	44(4)	<p>The Auditors may, at the expense of the Bank, employ accountants or other persons to assist them in investigating the</p>

Member State	Article	Text
		accounts of the Bank.
	44(5)	With the exception of information provided to the General Meeting of Shareholders, the Auditors and their assistants shall preserve strict secrecy in regard to the affairs of the Bank.
	44(6)	The aforementioned audit shall be carried out without prejudice to the audit by independent external auditors under Article 27 of the Statute of the European System of Central Banks.
Hungary	45(2)	The authority of the State Audit Office to audit the MNB is regulated by the act on the State Audit Office.
	45(3)	The Chairman of the State Audit Office shall be consulted before the MNB's Auditor is elected or his dismissal is proposed.
	46A	The Shareholder shall, in a Shareholder Resolution: (b) establish the balance sheet and the profit and loss statement; (c) appoint and dismiss the Auditor; and (d) establish the remuneration of the Auditor.
	52A(2)	The internal audit body of the MNB shall be under the control of the Supervisory Board, with the restrictions defined in Paragraph (3) of this Article, and it shall be under the control of the Governor in matters falling outside the competence of the Supervisory Board. [...]
	59	The auditor of the MNB may be appointed for a maximum term of five years. Following expiration of said term the same auditor may not be reappointed within five years.
Ireland	6H(2)	Within 6 months after the end of each financial year, the Bank shall prepare and transmit to the Comptroller and Auditor General a statement of accounts for the year concerned. The statement must be in a form approved by the Minister after consulting the Bank. A form of statement approved under this subsection remains in force until superseded by another form of statement so approved.
	6H(3)	The Comptroller and Auditor General shall audit, certify and report on the statement of accounts and, as soon as practicable after completing the report, give the report and the statement to the Minister.
	6H(4)	As soon as practicable after being given the report and statement of account, the Minister shall arrange for copies of those documents to be laid before each House of the Oireachtas.
	6H(5)	The accounts of the Bank may be audited in accordance with Article 27 of the ESCB Statute and, for that purpose, the Bank shall provide any auditors appointed in accordance with that Article with full information, books and records.
	6I(1)	Within 6 months after the end of each financial year, the Bank shall prepare a report of its operations during the year and present the report to the Minister.
	6I(2)	As soon as practicable after receiving such a report, the Minister is required to arrange for copies of the report to be laid before each House of the Oireachtas, together with any other reports required to be included in or attached to the report.
	6I(3)	The Bank shall give to the Minister for publication in <i>Iris Oifigiúil</i> such periodical returns concerning the transactions of the Bank as the Minister directs from time to time.
Italy	19(1)	The Board of Auditors shall consist of five auditors, including the chairman; there shall be two alternates. The members of the Board of Auditors shall remain in office for three years and may be re-elected not more than three times.
	19(2)	The Board of Auditors shall perform, directly at the Head Office and either directly or through examiners at the main branches and the local branches, checks on the administration of the Bank

Member State	Article	Text
		with regard to observance of the law, this statute and the Bank's general regulations. It shall carry out accounting checks, without prejudice to the activity of the external auditors referred to in Article 38, examine the annual accounts and express its opinion on the distribution of the annual dividend.
	19(3)	The members of the Board of Auditors shall attend the meetings of the Board of Directors.
	19(4)	Where necessary the Board of Auditors shall report its own observations and any received from the examiners to the Governor.
	19(5)	The members of the Board of Auditors shall be paid a fixed fee established by the shareholders' meeting, in addition to the reimbursement of expenses.
	38(2)	The annual accounts must be submitted to the Board of Auditors not later than 15 April of each year. The Board of Directors, after consulting the Board of Auditors, shall approve the allocation of the profits and the dividend to be distributed to shareholders and paid after approval of the annual accounts by the shareholders' meeting. ADD Article 19 collegio sindacale
	38(3)	The annual accounts of the Bank shall be audited by external auditors in accordance with Article 27 of the statute of the ESCB.
	41	The Bank of Italy shall submit a report to the Parliament and the Government on its activity as provided for by law.
Latvia	15	The Bank of Latvia shall publish monthly and annual balance sheets in accordance with the standards used by the world's central banks.
	43(2)	The audit commission, whose members are approved by the State Auditors' Office of the Republic of Latvia, shall audit the economic activity and documents of the Bank of Latvia. After the audit results have been reviewed, the Council of the Bank of Latvia shall approve the Bank's annual report, and the report, together with the annual balance sheet, shall be published for the public knowledge.
Lithuania	49(3)	The Bank of Lithuania shall, within four months after the end of a financial year, submit its annual financial statements together with the opinion of an independent auditor to the Seimas and shall make it public.
	50	The annual audit of the Bank of Lithuania shall be carried out by an audit company selected by the Bank of Lithuania.
	New 50	The audit of the annual financial statements of the Bank of Lithuania shall be carried out by independent external auditors selected by the Bank of Lithuania and approved by the Council of the European Union upon the recommendation of the European Central Bank.
	51	The Bank of Lithuania shall make its annual report public and issue it as a separate publication. The annual report shall provide information on basic tasks regarding monetary policy and their implementation, monetary policy operations, activities while supervising credit institutions and discharging other functions established by laws, as well as information on the national macroeconomic situation, such as analysis of the developments in the national economy and financial markets, and on the financial position of the Bank and the results of its activities.
	52	The Chairperson of the Board of the Bank of Lithuania shall twice a year present reports to the Seimas on the implementation of the primary objective of the Bank, performance of its functions and the situation of the banking

Member State	Article	Text
		system.
Luxembourg	6(f)	The competences of the Council of the Central Bank shall be: To propose to the Government the appointment of the Central Bank's auditor.
	15	The Government in Cabinet shall appoint an auditor on a proposal from the Council of the Central Bank. The auditor shall be qualified to exercise the profession of corporate auditor. The auditor shall be appointed for one financial year; the appointment is renewable. His fees shall be paid by the Central Bank.
	16	The auditor shall establish and certify that the accounts of the Central Bank are accurate and complete. He shall draw up, for submission to the Council, Government and Chamber of Deputies, a detailed report on the Central Bank accounts at the end of the financial year. He may be ordered by the Council to carry out specific investigations.
	29(1)	No later than 31 March of each year the Executive Board shall submit to the Council for approval the balance sheet and profit-and-loss account closed on 31 December of the previous year, together with the Board's report and the auditor's report.
	30	The budget, annual accounts and reports approved by the Council shall be sent to the Government and the Chamber of Deputies. The Government in Cabinet shall decide whether the Central Bank bodies be granted discharge. Such a decision is taken without prejudice to the provisions of Article 5 (2) and without calling into question the obligations of the Central Bank within the framework of the ESCB. The decision granting discharge to the bodies of the Central Bank shall be published together with the Central Bank's annual accounts in the Mémorial (Official Gazette).
Malta	20	In accordance with article 27 of the Statute, the accounts of the Bank shall be audited by independent external auditors appointed by the Board as recommended by the European Central Bank and approved by the Council of the European Union.
	21(2)	The Bank shall, as soon as may be but not later than three months after the close of each financial year of the Bank, transmit to the Minister - (a) a copy of the annual accounts certified by the auditors, (b) a statement of the Bank's investments; and (c) a report on its operations during that year, and shall publish the report referred to in paragraph (c).
	21(3)	The Minister shall, as soon as may be and, in respect of the requirement of paragraph (a) of this sub-article, not later than the first sitting of the House of Representatives after the seventh day of April - (a) cause a copy of the annual accounts, of the statement and of the report aforesaid to be laid before the House of Representatives; and (b) cause a copy of the annual accounts of the Bank to be published in the Gazette.
	21(4)	The Bank shall, as soon as may be after the last working day of each month, make up and publish a return of its assets and liabilities as at the close of business on that day. A copy of the return shall be transmitted to the Minister who shall cause it to be published in the Gazette.
	21(5)	The Bank shall observe the standard rules of accounting and reporting as may be established by the Governing Council of the European Central Bank under article 26(4) of the Statute.

Member State	Article	Text
The Netherlands	19(3) Articles of Association	Each year, within three months of the end of the financial year, the Governing Board shall compile the annual accounts and the annual report.
	19(5) Articles of Association	The annual accounts shall be presented to the Supervisory Board together with the annual report.
	19(6) Articles of Association	Without prejudice to the provisions of section 17 of the Bank Act 1998, the Supervisory Board shall adopt the annual accounts.
	19(7) Articles of Association	In evidence of this adoption, the annual accounts shall be signed by all members of the Governing Board and of the Supervisory Board. If the annual accounts are not signed by one or more of these members, the reason therefore shall be stated on the annual accounts.
	19(8) Articles of Association	The annual accounts thus adopted require the approval of the general meeting of shareholders.
	20(1) Articles of Association	The general meeting of shareholders shall, with due observance of Article 27.1 of the Statute of the European System of Central Banks, commission an expert as referred to in article 393 of Book 2 of the Dutch Civil Code to audit the annual accounts.
	20(2) Articles of Association	The expert shall present a report on his audit simultaneously to the Supervisory Board and the Governing Board. The expert shall in any event be present at the Supervisory Board meeting at which the report is discussed and a decision is taken to adopt the annual accounts. He shall receive the financial information underlying the interim financial reports and shall be given the opportunity to respond to all information.
	20(3) Articles of Association	The expert shall reflect the results of his audit in an auditor's opinion on the annual accounts. The general meeting of shareholders may question the expert regarding this opinion.
	20(4) Articles of Association	The annual accounts shall not be adopted or approved if the body of the company authorised to do so has been unable to take note of the auditor's opinion, as referred to in paragraph 3.
21 Articles of Association	The annual accounts shall not be adopted or approved if the body of the company authorised to do so has been unable to take note of the auditor's opinion, as referred to in paragraph 3.	
Poland	69(1)	The annual accounts of the NBP shall be subject to audit by an auditor appointed by the Monetary Policy Council.
	69(2)	The NBP shall bear the costs of the audit referred to in para. 1.
	69(3)	The President of the NBP shall submit, until April 30 of the year following the fiscal year, the annual accounts of the NBP to the Council of Ministers for approval.
	70	Within five months after the end of the budget year, the President of the NBP shall submit the annual report on the activity of the NBP to the Sejm.
Portugal	43(1)(c)	The Board of Auditors shall be responsible for issuing its opinion on the budget, the balance sheet, and the annual accounts.
	46	Without prejudice to the powers of the Board of Auditors, the accounts of the Bank shall also be audited by external auditors, pursuant to the provisions laid down in Article 27.1 of the ESCB/ECB Statute.
	48(a)	It shall be incumbent on the Advisory Board to issue its non-binding opinion on the annual report of the Bank, before its release.
	54(1)	Not later than March 31, the Bank shall submit the annual report,

Member State	Article	Text
		balance sheet, and accounts referred to the last day of the previous year for the Finance Minister's approval, after discussion and appraisal thereof by the Board of Directors, with the opinion of the Board of Auditors.
	54(2)	Unless a decision to the contrary is given by the Finance Minister, the report, balance sheet, and accounts shall be considered approved thirty days after the date of their receipt.
	54(3)	The report, balance sheet, and accounts shall be published in the Official Gazette within thirty days after their approval.
	54(4)	After the presentation of the report, balance sheet and annual accounts, the Governor shall inform the Parliament, through the Standing Committee on Economy, Finance and Planning, on the monetary and exchange rate policy stance and guidelines.
	54(5)	The Bank shall not be subject to the financial system governing the autonomous funds and services of the Public Sector.
	54(6)	The Bank shall not be subject to the prior control of the Court of Auditors, nor to its successive control in the issues relating to its participation in the performance of the tasks entrusted to the ESCB.
	54(7)	The provisions of the foregoing paragraph shall be applicable to the Funds operating at the Bank or in whose management the Bank participates.
	55	The Bank shall publish monthly and in accordance with the provisions laid down in subparagraph b) of paragraph 3 of Article 59 a synopsis of its assets and liabilities.
Romania	35(4)	On behalf of the Board, the Governor shall submit to the Parliament until 30 June of the following year Banca Națională a României's annual report on Banca Națională a României's activities, the annual financial statements and the auditor's report, subject to debate, but not voted, in the joint session of the two Chambers of Parliament.
	36(1)	Banca Națională a României's annual financial statements shall be audited by financial auditors that shall be legal entities authorised by the Financial Auditors Chamber in Romania and selected by Banca Națională a României's Board as a result of bidding.
	36(2)	The financial auditor's report and opinion shall be submitted to Banca Națională a României's Board and shall be published along with the annual financial statements.
	46	Subsequent to their adoption by the Board, Banca Națională a României's audited annual financial statements shall be published in Monitorul Oficial al României, along with the financial auditor's report.
Slovakia	38(2)	The financial statements of the National Bank of Slovakia shall be audited by an independent external auditor designated in accordance with the separate legal provisions applicable to the Eurosystem.
	38(3)	The National Bank of Slovakia shall prepare and publish its annual reports in accordance with the separate legal provisions applicable to the Eurosystem.
	38(4)	The National Bank of Slovakia shall process and provide for publication the balance sheet of the assets and liabilities of the National Bank of Slovakia.
	39(5)	The National Bank of Slovakia shall submit its annual report and financial results to the National Council of the Slovak Republic for discussion within three months after the end of the calendar year; besides the financial statements of the National Bank of Slovakia and the auditor's statement on the respective audit, this

Member State	Article	Text
		report shall separately include information on the operating costs of the National Bank of Slovakia. If so requested by the National Council of the Slovak Republic, the National Bank of Slovakia shall, in accordance with that request, have six weeks to provide the additional information or to submit an explanation in respect of the submitted annual report on the financial results of the National Bank of Slovakia.
Slovenia	32(1)(1)	The Governing Board of Banka Slovenije shall also decide on other matters concerning the operations of Banka Slovenije, and shall: propose the external auditor.
	49	(1) Banka Slovenije's financial year corresponds to the calendar year. (2) Banka Slovenije shall prepare its financial statements in accordance with principles, standards and accounting guidelines adopted by the Governing Board of Banka Slovenije, taking into account the principles, standards and accounting guidelines adopted by the European Central Bank (ECB). (3) Banka Slovenije shall plan its income and expenditure in a financial plan to be adopted by 31 December of the previous year. (4) Should the financial plan not have been adopted by 31 December of the previous year, financing shall be carried out pursuant to a decision on temporary financing adopted by the Governing Board of Banka Slovenije. (5) The Governing Board of Banka Slovenije shall adopt the annual accounts for the previous year by 31 March of every year. (6) Banka Slovenije shall notify the National Assembly of the annual accounts and financial plan. The annual financial statements are an integral part of the annual report and shall be published.
	52(1)	The independent international auditor selected in accordance with Article 27.1 of the Statute of the ESCB and ECB shall audit Banka Slovenije's financial statements for a three-year period.
	52(2)	After a preliminary public call for bids, at least six months before the expiry of the contract concluded with the auditor, the Governing Board of Banka Slovenije shall select and propose a candidate for the final selection procedure.
	64	Details of the allocation of a proportion of monetary income or expenditure of the ESCB established by the ECB in accordance with the ESCB and ECB Statute in implementing the common monetary policy shall be an integral part of Banka Slovenije's annual accounts specified in Article 49 of this Law.
	65	The selection of the auditors pursuant to Article 52 of this Act shall be based on the rules of the Statute of the ESCB and ECB.
	Spain	4(2)

Member State	Article	Text
		on the balance sheet, according to their characteristics. In particular, the Bank's contributions to the Deposit Guarantee Funds shall be detailed, as will any loans or other operations transacted for the benefit of any other institution or person not on an arm's-length basis, or which in any other way involve loss of profit or losses for the Bank. In such cases the amount of such loss of profit or losses shall be specified.
Sweden	Chapter 10 Article 5	The Riksbank shall annually report to the Riksdag what measures the Bank has taken in view of the Swedish National Audit Office's observations.
	Chapter 9, Article 2.	The Head Office shall have an Audit Unit and other units decided by the Riksbank. Operations of the Audit Unit are governed by the General Council. [...]
	Chapter 9, Article 2a	The activities of the Audit Unit shall concern independent examination of the Riksbank's internal governance and control and how the Riksbank meets its financial accounting obligations. The audit shall follow generally accepted principles for internal auditing. The Riksbank shall adopt an audit plan for its activities following consultation with the Swedish National Audit Office.
	Chapter 10, Article 2.	The Riksbank's accounting year is the calendar year. Each year before the end of December, the Executive Board shall draft a budget for the Riksbank's administrative activities during the following accounting year. The Executive Board shall submit the budget to the Riksdag Committee on Finance and the Swedish National Audit Office as well as the General Council for information.
	Chapter 10, Article 3	The Riksbank is required to keep accounts. This requirement shall be met in accordance with generally accepted accounting principles. In addition, the European Central Bank's guidelines on the legal framework for accounting and financial reporting within the European System of Central Banks shall be applied. Each year, before 15 February, the Executive Board shall submit an Annual Report of the Riksbank's activities during the preceding accounting year to the Riksdag, the Swedish National Audit Office and the General Council. The General Council shall make proposals to the Riksdag and the Swedish National Audit Office on the allocation of the profit of the Riksbank. The Annual Report shall comprise a Profit and Loss Account, a Balance Sheet, a Directors' Report and an account of foreign exchange and monetary policies and on how the Riksbank has promoted a safe and efficient payments system.
	Chapter 10, Article 4	The Riksbank's Profit and Loss Account and Balance Sheet are approved by the Riksdag, which also determines the allocation of the Riksbank's profit. If the value of the reserve fund has declined to less than SEK 500 million, at least ten per cent of the profit for the year shall be allocated to the reserve fund until it has retained a level of this amount. The Riksdag determines whether the General Council shall be discharged from liability for its activities and the Executive Board for its management of the Riksbank. Discharge from liability may only be denied if there are reasons to make claims of financial liability against a member of the General Council or the Executive Board, or if the member should be prosecuted for criminal actions in connection with his assignment or employment.
The United Kingdom	4(1)	As soon as practicable after the end of each of its financial years, the Bank shall make to the Chancellor of the Exchequer a report

Member State	Article	Text
		on its activities in that year
	4(2)	A report under this section shall, in particular, contain – (a) a report by the directors of the Bank on the matters for which the sub-committee constituted by section 3 is responsible, and (b) a copy of the statement for the year prepared under section 7(2) and the report of the Bank’s auditors on it.
	4(3)	The report mentioned in subsection (2)(a) shall, in particular, include a review of the Bank’s performance in relation to its objectives and strategy, as determined by the court of directors of the Bank, in the financial year to which the report under this section relates.
	4(4)	A report under this section shall also contain – (a) a statement of the rate or rates at which directors of the Bank have been remunerated in the financial year to which the report relates, and (b) a statement of the Bank’s objectives and strategy, as determined by the court of directors of the Bank, for the financial year in which the report is made.
	4(5)	The Bank shall publish every report under this section in such manner as it thinks appropriate.
	4(6)	The Chancellor of the Exchequer shall lay copies of every report under this section before Parliament.

Table 3-14 Distribution of NCB profits

Member State	Article	Text
Austria	16(3)	The General Meeting shall be entitled: to decide on profit appropriation and to fix the dividend to be distributed to shareholders;
	69(1)	From the total annual income of the Oesterreichische Nationalbank, derived in observance of the provisions of Articles 32 and 51 of the ESCB/ECB Statute and the provisions of Article 33 of the ESCB/ECB Statute on the allocation of net profits and losses of the ECB, the following sums shall, irrespective of the operating profit, be deducted and not recognized as profit: 1. The book value of exchange gains accrued over the year (i.e. the difference between the book value and the mid-rate of nondomestic assets), insofar as these gains are to be transferred directly, in accordance with paragraph 4, to a reserve fund which serves to cover any exchange risks connected with the holding of nondomestic assets; 2. the earnings from the assets in which the pension reserve, i.e. the reserve fund serving to meet the pension claims of the Bank’s employees, has been invested, and which shall be paid into that reserve fund; 3. the amounts of interest which, pursuant to the agreement between the Oesterreichische Nationalbank and the ERP Fund concluded in accordance with Article 3 paragraph 4 of the <i>ERP-Fonds-Gesetz</i> (ERP Fund Act) BGBl. No. 207/1962, were credited during the year to the temporary reserve account for ERP loans extended by the Oesterreichische Nationalbank; 4. the earnings from the assets in which the Fund for the Promotion of Scientific Research and Teaching set up by the Bank is invested, and which shall be appropriated to this Fund.
	69(2)	From the profit for the year in accordance with paragraph 1, up to 10% shall be transferred to the pension reserve. When the

Member State	Article	Text
		pension reserve has achieved a level which, according to actuarial calculations, provides the necessary capital coverage to meet the pensions claims of the staff of the Oesterreichische Nationalbank, no further contribution shall be made to this reserve.
	69(3)	Of the remaining profit, the <i>Bund</i> shall first receive 90%. Of the then remaining retained earnings, the shareholders shall, by decision of the General Meeting, receive a dividend of up to 10% of their share of the capital. The portion then remaining shall be appropriated as decided by the General Meeting.
	69(4)	The obligation to create and release the reserve referred to in paragraph 1 item 1 shall depend on the assessment of the risk associated with the nondomestic assets. Releases shall be accounted for in the profit and loss account.
Belgium	20(4) 30(8) Articles of Association	The Council [of Regency] shall approve the expenditure budget and the annual accounts submitted by the Board of Directors. It shall finally determine the distribution of profits proposed by the Board.
	30 54 Articles of Association	Any capital gain realised by the Bank through arbitrage transactions of gold assets against other external reserve components shall be entered in a special unavailable reserve account. This capital gain shall be exempt from all taxation. However, where some external reserve components have been arbitrated against gold, the difference between the purchase price of that gold and the average purchase price of the existing gold stock shall be deducted from the amount of that special account. The net income from the assets which form the counterpart to the capital gain referred to in the first paragraph shall be allocated to the State. External reserve components acquired as a result of the transactions referred to in the first paragraph shall be covered by the State guarantee as provided in Article 9(2) of this Act. The terms and conditions for application of the provisions contained in the preceding paragraphs shall be fixed by agreements to be concluded between the State and the Bank. These agreements shall be published in the Belgian Gazette (<i>Moniteur belge/Belgisch Staatsblad</i>).
	55 Articles of Association	Notwithstanding Article 54, the capital gain made from the transfer of assets in gold with regard to the issuing by the State of numismatic or commemorative coins, shall be allotted to the State to the extent of the unused balance of the 2.75% of the weight of gold which appeared in the Bank's assets on 1 January 1987, and which could be used by the State, particularly for issuing coins, by virtue of Article 20bis (2) of the Act of 24 August 1939 on the National Bank of Belgium.
	32 49 Articles of Association	The Annual profits shall be distributed as follows: 1. a first dividend of 6% of the capital shall be allocated to the shareholders; 2. from the excess, an amount proposed by the Board of Directors and established by the Council of Regency shall be independently allocated to the reserve fund or to the available reserves; 3. from the second excess, a second dividend forming a minimum of 50% of the net proceeds from assets forming the counterpart to the reserve fund and available reserves shall be allocated to the shareholders; 4. the balance shall be allocated to the State; it shall be exempt from company tax.

Member State	Article	Text
	31 46 Articles of Association	The reserve fund is intended for : <ol style="list-style-type: none"> 1. compensating for losses in capital stock; 2. supplementing any shortfall in the annual profit up to a dividend of six per cent of the capital. <p>Upon expiration of the Bank's right of issue, the State shall have a priority claim to one fifth of the reserve fund. The remaining four fifths shall be distributed among all the shareholders.</p>
	50 Articles of Association	The profit established for allocation to the shareholders for the financial year ended 31 December of each year shall be distributed in a oner within the month following the General Meeting, on a date fixed by the latter. <p>If the profit for distribution among the shareholders is less than 6% per annum, it shall be supplemented by drawing on the reserve fund.</p> <p>This drawing shall be refunded to the reserve if, the next year, this refund can be made without reducing the profit for distribution to below 6%.</p>
	47 Articles of Association	The amount retained, for building up the reserve, shall be 10% of the net profit in excess of 6% per annum.
	48 Articles of Association	The use made of the reserve shall be optional. <p>The proceeds shall form part of the Bank's general profit.</p>
Bulgaria	8(1)	To cover uncollectable and unsecured receivables, the BNB shall allocate provisions for an amount specified by the Governing Council which shall be an expense item in the accounts and an adjustment in the balance sheet assets.
	8(2)	The Reserve Fund shall be created by making deductions of 25 per cent of the annual surplus of the BNB's revenue over expenditure. The resources of this Fund shall be used to cover the BNB's losses.
	8(3)	Upon deduction of the amount for the Reserve Fund, the necessary amounts for special funds set up under decisions of the Governing Council shall be paid out of the annual surplus of the BNB's revenue over expenditure.
	8(4)	Each year, the state treasury account shall be credited with the remainder of the annual surplus of the BNB's revenue over expenditure within four months of the end of the fiscal year.
	9(1)	If the BNB's balance sheet indicates that the amount of its assets is less than the amount of its liabilities plus the statutory fund, the Minister of Finance shall replenish the statutory fund of the BNB by the amount necessary to cover the deficit.
	9(2)	The procedure set out in paragraph 1 for covering a balance sheet deficit shall only apply when the resources of the Reserve Fund and of the BNB's Special Reserve Account under Article 36, paragraph 1 have been exhausted.
	36(1)	Any unrealised profit of the BNB arising from changes in the valuation of the BNB's assets or liabilities in gold or denominated in gold or in foreign currencies, as a result of a change in the price of gold or of the exchange rates of foreign currencies against the lev, shall be assigned to a Special Reserve Account. Apart from the cases referred to in paragraph 2, the amounts on this account may be set against other losses incurred by the BNB.
	36(2)	Losses arising from any change referred to in paragraph 1 shall be covered by the funds of the Special Reserve Account and the Reserve Fund.
Cyprus	58(1)	The Bank shall have a reserve called the "General Reserve Fund", which is created by withholding net profits of the Bank,

Member State	Article	Text
		the amount of which shall be determined by the Board, with a view to ensuring the continuous and proper functioning of the Bank and the financial independence necessary for the achievement of the objectives of the Bank.
	58(2)	The General Reserve Fund, by a decision of the Board, may be used to: (a) issue new capital; (b) write-off accumulated losses; (c) meet extraordinary expenses related to the achievement of the objectives of the Bank.
	59	The net profit of the Bank shall be distributed as follows: (a) An amount equivalent to twenty per cent (20%) of the net profits of the corresponding financial year, shall be transferred to the General Reserve Fund; if the General Reserve Fund falls below the capital of the Bank, then the Board may transfer to the General Reserve Fund an amount not exceeding fifty per cent (50%) of the net profits until the General Reserve Fund equals the capital of the Bank. (b) the balance, after deducting the amount referred to in paragraph (a), shall be transferred into the Consolidated Fund of the General Government Account, unless the Board decides the further withholding of net profits, in case this is required in its opinion due to exceptional circumstances.
The Czech Republic	47(2)	The Czech National Bank shall defray the necessary costs of its operations from its income. The profit it generates shall be used to replenish its reserve fund and other funds created from profits and for other purposes in the budgeted amount. It shall transfer the remaining profit to the state budget.
Denmark	19	The profit earned by the Bank shall go to the Exchequer if it be not allocated to the Reserve Fund or to special guarantee funds. Out of the profit of the financial year the Exchequer shall prior to other payments receive Kr. 1 million. Thereafter 25 per centum of the remainder shall be allocated to the Reserve Fund if this fund be less than Kr. 25 millions. The rest of the profit shall be paid to the Exchequer under the observation of the following rules: If the rest of the profit does not exceed Kr. 4 millions, one half of the amount shall be paid to the Exchequer and the other half written off the General Capital Fund Certificate. In case the rest of the profit exceeds Kr. 4 millions, Kr. 2 millions shall be paid and the remainder written off the General Capital Fund Certificate. When this certificate has been redeemed in full the total rest of the profit goes to the Exchequer unless the Board of Directors with the approval of the Minister of Economic Affairs decides to allocate a part of the amount to reserves. In case the losses of preceding years might have entailed drawing on the General Capital Fund all payments to the Exchequer shall be suspended until the loss of the General Capital Fund has been recovered. In case the losses of preceding years might have reduced the Reserve Fund to less than the amount it constituted when the Bank commenced business, the payment under subsection 2 of this section shall be made, otherwise the whole profit shall be used to increase the Reserve Fund until it has regained the original size.
Estonia	30(1)	The profit (loss) of Eesti Pank is the difference between its revenue and its expenditure.
	30(2)	At least 25 per cent of annual profits shall be used to increase

Member State	Article	Text
		statutory capital up to the amount determined by the <i>Riigikogu</i> .
	30(3)	At least 25 per cent of annual profits shall be used to increase reserve capital pursuant to a decision of the Supervisory Board of Eesti Pank.
	30(4)	After the allocations specified in subsections (2) and (3) of this section are made, part of the profits may be used, pursuant to a decision of the Supervisory Board of Eesti Pank, to establish and augment the foundation capital and funds for specific purposes prescribed by the statute of Eesti Pank.
	30(5)	Any profits remaining after the allocations specified in subsections (2), (3) and (4) of this section are made shall be transferred to the state budget.
	30(6)	Any loss incurred by Eesti Pank shall be covered from reserve capital. If the reserve capital is insufficient, losses may be covered from statutory capital with the permission of the <i>Riigikogu</i> .
	30(7)	Eesti Pank, being the central bank of the state, does not pay income tax or any other taxes related to its economic activity into the state budget or local budgets, except taxes related to natural persons. The Government of the Republic has the right to release Eesti Pank from the payment of other state taxes in exceptional circumstances
Finland	11	As a body supervising the administration and activities of Suomen Pankki, the Parliamentary Supervisory Council shall perform the following tasks: [...] <p>2) decide, on the basis of the auditors' report, on the confirmation of the Bank's balance sheet and profit and loss account;</p> <p>3) decide, upon proposal of the Board, on measures concerning the Bank's profit or loss for the financial year; [...].</p>
	20(1)	In respect of its accounting procedures, Suomen Pankki shall observe generally accepted accounting principles.
	20(2)	Provisions can be made in the annual accounts if necessary for safeguarding the real value of the Bank's funds or for smoothing out variations in profit or loss arising from changes in exchange rates or market values of securities.
	20(3)	Provisions necessary for covering the Bank's pension liability may be made in the annual accounts.
	21(1)	The monetary income accruing within the European System of Central Banks in the performance of its monetary policy function shall be calculated and allocated between the national central banks in accordance with the provisions of the Statute and the decisions made by the Governing Council of the European Central Bank.
	21(2)	Half of the profit, following allocation of the monetary income that has accrued within the European System of Central Banks, shall be transferred to the reserve fund. The remaining profit shall be made available for use in accordance with the needs of the state. The Parliamentary Supervisory Council may decide on use of the profit for other purposes if this is justifiable because of the Bank's financial condition or the size of the reserve fund. Parliament shall decide on the disposal of the profit made available for use in accordance with the needs of the state.
	21(3)	If the Bank's annual accounts show a loss, the loss must be covered out of the reserve fund. If the reserve fund is insufficient to cover part of the loss, the uncovered part of the loss may be left temporarily uncovered. Any profits in subsequent years shall be used first to cover such uncovered

Member State	Article	Text
		losses.
France	L.142-2	The General Council shall also: discuss the use of own funds; draw up, making sure to allocate the Banque de France the necessary means to carry out the tasks delegated to it as a consequence of its participation in the European System of Central Banks, the projected and amended expenditure budget; and approve the Banque de France's balance sheet and accounts, as well as the plans for allocating profits and fixing the dividend due to the State.
	R 144-4	Where necessary, deductions provided for in the agreement mentioned in the first paragraph of Article L. 141-2 shall first be applied to the net annual result. Subsequently a deduction of 5 % of the net result for the financial year shall be allocated to a specific reserve that will no be longer funded when it reaches an amount equal to the Banque de France's capital. Finally, the General Council shall decide on proposals relating to allocating the balance of the net result to any extraordinary or special reserves, relating to carrying over profits and relating to the dividend paid to the State. Such proposal shall be submitted for approval to the Minister for Economic Affairs.
Germany	27	The net profit shall be distributed in the following order: 1. 20% of the profit, but at least 250 million euro, shall be transferred to the statutory reserves until they equal 2.5 billion euro; the statutory reserves may only be used to offset falls in value and to cover other losses; 2. the balance shall be paid over to the Federal Republic of Germany.
Greece	71(1)	After making provision for bad and doubtful debts, depreciation in assets, contributions to Personnel and Pension Funds, and such other contingencies as are usually provided for by bankers, and after repayment, out of the net profits of the Bank, of a dividend at the rate of 12 per cent per annum on the capital, one-half of the surplus shall be allocated to the regular reserve fund, until such reserve fund is equal to the capital, and the remaining one-half shall be paid to the Government. After the reserve fund has become equal to the capital, a percentage out of the net profits may be paid to the shareholders, as additional dividend, as from fiscal year 1973 onwards, pursuant to a decision of the 1974 General Meeting of Shareholders, and thereafter, to be taken after proposal made without fail by the General Council, such decision to be valid only for each respective year, and the balance thereof to be paid to the Government. [Such percentage, fixed pursuant to the above decision, shall never exceed that required so that the total amount of dividend received by the shareholders become equal to 12% on the overall net profits of that fiscal year.]
	71(2)	As capital in the preceding paragraph is understood to be the amount specified in Article 8 of the Statute, as fixed from time to time.
Hungary	65(1)	Based on a Shareholder Resolution, the MNB shall pay dividends either from its annual net profit in the reference year or from its accumulated profit reserve. This dividend payment obligation shall be discharged within 8 days of the Shareholder Resolution on the relevant annual financial statements pursuant to Article 46/A (b).
	65(2)	The MNB shall not pay interim dividend.

Member State	Article	Text
	65(3)	To the extent that the losses incurred in the year under review exceed the balance of the accumulated profit reserve, the difference shall be paid directly by the central budget to the credit of accumulated profit reserve within 8 days of the Shareholder Resolution on the relevant annual financial statements pursuant to Article 46/A (b).
Ireland	6G(1)	The Bank shall continue to keep and operate the fund called the general fund.
	6G(2)	The Bank shall pay into the general fund all money received by the Bank and shall pay from that fund all amounts that it is required to pay.
	6G(3)	The Bank shall pay its surplus income as and when determined under this section into the Exchequer in such manner as the Minister directs and may at any time pending such determination pay into the Exchequer such sums on account of surplus income as may be agreed on by the Minister and the Bank.
	6G(4)	The expenses incurred by the Bank in performing functions or exercising powers under this or any other Act or law are payable out of the general fund of the Bank, except where otherwise provided by or under this or any other Act.
	6G(5)	Any claims on or liabilities to the European Central Bank are to be treated as assets or liabilities of the general fund or any other fund established by order made by the Minister for that purpose.
	6G(6)	The Minister may, after consultation with the Bank, make regulations providing for the periodic determination of the Bank's surplus income and, in particular, such regulations may (a) enable provision to be made for reserves, depreciation and other similar matters before the (b) provide for any matter arising from the implementation of Chapters VI, VIII and IX of the ESCB Statute.
	6G(7)	In exercising the powers conferred by this section, the Minister is required to have regard to the functions imposed and the powers conferred on the Bank by or under the Rome Treaty and the ESCB Statute.
	6G(8)	Any regulations in force under section 23 of the Central Bank Act 1989, immediately before the commencement of this section are taken to have been made under section 61A(1), and may be amended or revoked accordingly.
Italy	39(1)	The Board of Directors shall determine the allocation to be made to the ordinary reserve, in an amount up to 20% of the net profit for the year. Shareholders shall be paid a dividend not exceeding 6% of the capital.
	39(2)	The balance, on a proposal from the Board of Directors, may be used to establish special provisions and extraordinary reserves by setting aside up to 20% of the total net profit and to pay an additional amount not exceeding 4% of the capital to the shareholders as a supplement to the dividend. The remaining sum shall be transferred to the State.
	39(3)	The ordinary reserve, if reduced to offset losses or for any other reason, must, except as provided for in Article 40, be reconstituted entirely as soon as possible.
	40(1)	The reserves shall be invested in the manner and forms established by the Board of Directors
	40(2)	The income arising from the investment of the reserves shall be used to increase the same.

Member State	Article	Text
	40(3)	On a proposal from the Board of Directors and with the approval of the ordinary shareholders' meeting, a sum not exceeding 4% of the amount of the reserves as shown in the annual accounts for the preceding year may be set aside from the annual income from the investment of the reserves and distributed to shareholders in addition to the amount provided for in Article 39.
Latvia	18 ¹	Within 15 days following the approval of the annual report by the Council of the Bank of Latvia, the Bank of Latvia shall transfer to a state general budget account indicated by the State Treasury: 1) a part of its profit earned during the reporting year, which shall be calculated by applying the tax rate established for residents by the Law "On Corporate Income Tax"; 2) payments for the usage of state capital in the amount of 50 percent of the profit earned during the reporting year.
	19	The profit remaining after making the deductions stipulated in Article 18 ¹ shall be transferred to the reserve capital. The reserve capital shall be formed to cover possible losses. Where the reserve capital is not sufficient to cover all losses, the remaining amount of losses shall be covered from the nominal capital.
Lithuania	22	The profit (loss) of the Bank of Lithuania for the financial year shall be calculated by deducting expenses from income.
	23(1)	Operations related to the coverage of the loss and allocation of the profit of the Bank of Lithuania shall be carried out following the approval of the annual financial statements.
	23(2)	The loss for the financial year shall be covered from the reserve capital of the Bank of Lithuania.
	23(3)	The profit for a financial year shall be allocated in the following way: 1) to cover the uncovered loss incurred during the previous financial years; 2) the contribution to the State budget shall be 70 per cent of the amount of the profit of the Bank of Lithuania for the financial year or a part thereof remaining after the allocation of the profit in accordance with the provisions of subparagraph 1 herein; 3) the part of the profit remaining after the allocations specified in subparagraphs 1 and 2 herein shall be transferred to the authorised and/or reserve capital in equal parts. If the amount required for the authorised capital to reach the amount specified in Article 20 of this Law is less than available, the required amount shall be allocated, and the residual amount shall be allocated to the reserve capital.
	24	The contribution of the Bank of Lithuania shall be paid to the state budget once a year not later than by the 1st of May of the following year.
Luxembourg	31	The profits of the Central Bank, as shown in the accounts approved at the end of the financial year, and after deduction of any loss carried forward from previous accounts, shall be paid to the Treasury. The Government in Cabinet may, when it is called on to grant discharge to the Central Bank bodies, decide on the basis of a reasoned proposal by the Central Bank to allocate all or part of the profits to the Central Bank's reserve fund. However, the allocation of the profit to the Central Bank's reserve fund shall be compulsory so long as the total of the capital and the reserve fund falls short of the total of the Central Bank's assets which do not yield freely-available

Member State	Article	Text
		income, after deduction of liabilities which form the direct counterpart of such assets.
Malta	22(1)	Subject to the following provisions of this article, the net profits of the Bank for each financial year shall be determined by the Bank after meeting all expenditure for that year and after making such provision as it thinks fit for bad and doubtful debts, depreciation in assets, contributions to staff and pension funds and all other reserves and contingencies.
	22(2)	After such allocations as may be determined by the Bank under the provisions of subarticle (1) have been made, the remainder of the net profits established as aforesaid shall be paid to the Government.
The Netherlands	19(4) Articles of Association	With the approval of the Minister and after consultation with the Supervisory Board, the Governing Board may, after determination of the profit, create reserves. Transfers to and from these reserves shall be made after consultation with the Supervisory Board and with the approval of the Minister.
	22(1) Articles of Association	The Governing Board shall only make disbursements to the shareholders insofar as the Bank's shareholders' equity exceeds the amount of the paid-up capital plus the reserves that must be held pursuant to the law.
	22(2) Articles of Association	The profit, as shown in the adopted annual accounts, shall be at the disposal of the general meeting of shareholders.
	22(3) Articles of Association	Subject to the prior consent of the Supervisory Board, the Governing Board may, insofar as this is permitted by the profit as evidenced by an interim balance sheet compiled with due observance of the provisions of article 105(4) of Book 2 of the Dutch Civil Code, disburse an interim dividend on the shares before the adoption of the annual accounts.
Poland	69(4)	Within a period of 14 days following the approval of the annual accounts of the NBP [by the Council of Ministers], a portion of the annual profit of the NBP (payment from the NBP profit) shall be remitted to State budget.
Portugal	53(1)	The result for the fiscal year shall be assessed by deducting from the total income and other profit attributable to the fiscal year, the amounts corresponding to the following costs: a) Annual operating and administrative costs; b) Annual appropriations for the building up of, or increase in, provisions for the coverage of asset depreciation risks, or emergence of other contingencies that must be handled, as well as for the building up of a special reserve related to gains in gold sale operations, under the terms defined by the Board of Directors; c) Special appropriations to the Pension Fund. d) Extraordinary profits and losses.
	53(2)	The profit for the fiscal year, assessed according to the foregoing paragraph, shall be distributed as follows: a) 10 per cent to the legal reserve; b) 10 per cent to other reserves to be decided by the Board of Directors; c) The remainder to the State, as dividends, or to other reserves proposed by the Board of Directors and approved by the Finance Minister
Romania	42(1)	Banca Națională a României shall assess periodically, and at least annually, the records entered in its financial statements.
	42(2)	The net differences resulting from the evaluation of assets and liabilities denominated in foreign currencies, special drawing rights, gold, silver and other precious metals, as well as of

Member State	Article	Text
		coins and other objects of gold, silver, other precious metals and gems, pursuant to a change in their value or a change in the leu exchange rate, shall be recorded separately in the special revaluation account.
	43(1)	Banca Națională a României shall transfer to the State budget a share of 80 percent of the net revenues left after deducting the following: a) expenses related to the financial year, including expenses for the provisions established under paragraph (3) hereof; b) the loss related to the previous financial years that remained uncovered after applying the provisions of Article 44.
	43(2)	The share referred to in paragraph (1) hereof shall be transferred monthly before the 25th of the following month inclusive, based on a special statement. This share shall represent revenue to the State budget. The adjustments related to the financial year shall be performed by the deadline for submission of the annual balance sheet according to the law, based on a rectifying special statement.
	43(3)	Banca Națională a României shall set up provisions for credit risk according to its own norms approved by Banca Națională a României's Board, having regard to the consultative opinion of the Ministry of Public Finance thereon.
	43(4)	The provisions set up by Banca Națională a României according to its own norms approved by the Board, other than those referred to in paragraph (3) hereof, shall be borne out of the profit remaining after applying the provisions of paragraph (1) hereof.
	43(5)	The profit remaining after applying the provisions of paragraphs (1) and (4) hereof shall be distributed and used in accordance with the following priority order: a) for statutory reserves – up to 60 percent; b) for setting up its own financing sources – up to 30 percent; c) for the employees' profit-sharing scheme – up to 10 percent; d) the amounts remaining after the distributions stipulated under points a), b) and c) hereof shall be used for the purposes established by Banca Națională a României's Board.
	44	In the event of a loss incurred by Banca Națională a României during a financial year, the loss shall be covered from the available sources in the following priority order: a) special revaluation account; b) statutory reserves.
Slovakia	6(2)(b)	Furthermore, the Bank Board shall in particular: approve the budget of the National Bank of Slovakia, financial statements of the National Bank of Slovakia, annual results of operations and annual reports of the National Bank of Slovakia, decide on the use of profits or settlement of losses of the National Bank of Slovakia, and set the types of funds of the National Bank of Slovakia, their level and application;
	39(3)	The assets and liabilities of the National Bank of Slovakia which fall under the Eurosystem shall be maintained and reported in accordance with the separate legal provisions applicable to the Eurosystem. The National Bank of Slovakia shall participate in the allocation of monetary income within the Eurosystem and in the allocation of the net profit and loss of the European Central Bank, to the extent and under the conditions laid down in accordance with the separate legal provisions applicable to the Eurosystem.
	39(4)	The financial result of the National Bank of Slovakia for an accounting period is the profit or loss it has generated. The

Member State	Article	Text
		National Bank of Slovakia shall use the generated profit for allocations to the reserve fund and other funds created from profit, or for covering accumulated losses from previous years. To cover the loss made in an accounting period, the National Bank of Slovakia may use the reserve fund or other funds. The remaining accumulated loss, the amount of which is decided by the Bank Board shall be carried over to the following accounting period.
Slovenia	49a(1)	After introduction of the euro as the Republic of Slovenia's currency, the Governing Board of Banka Slovenije may, with the intention of maintaining the real value of assets in the context of the annual accounts, take a decision to create provisions for anticipated exchange rate, interest rate and price risks.
	49a(2)	Provisions may not be created if they should, together with the unrealised exchange rate differences, securities' valuation effects and gold valuation effects, exceed 20% of established surplus of income over expenditure.
	50(1)	The surplus of income over expenditure shall be allocated to special reserves, general reserves and to the Republic of Slovenia's budget.
	50(2)	The unrealised income from exchange rate and price changes shall be allocated in its entirety to special reserves. It may only be used to cover a deficit deriving from unrealised expenditure from exchange rate and price changes.
	50(3)	Twenty-five per cent of the surplus of income over expenditure after the allocation of funds to special reserves shall be allocated to the Republic of Slovenia's budget, while the remainder shall be allocated to the general reserves.
	50(4)	Notwithstanding the previous paragraph of this Article, should the general reserves of Banka Slovenije in the preceding year exceed 5 per cent of Banka Slovenije's balance sheet total, Banka Slovenije and the minister in charge of finance may agree to allocate a larger share of the surplus specified in the previous paragraph of this Article to the Republic of Slovenia's budget.
	50(5)	Notwithstanding the third paragraph of this Article, should the general reserves of Banka Slovenije in the preceding year not reach of 1 per cent of Banka Slovenije balance sheet total, Banka Slovenije and the minister in charge of finance may agree to allocate a smaller share of the surplus specified in the third paragraph of this Article to the Republic of Slovenia's budget.
	50a(1)	After introduction of the euro as the Republic of Slovenia's currency, the unrealised income deriving from exchange rate and price changes shall be allocated in its entirety to the valuation accounts.
	50a(2)	Unrealised income specified in the previous paragraph, allocated to the valuation accounts, may only be used to cover unrealised expenditure deriving from exchange rate and price changes.
	50a(3)	After the allocation of the assets to the valuation accounts, the surplus of income over expenditure shall be allocated to the general reserves and to the Republic of Slovenia's budget.
	51(1)	Banka Slovenije shall cover a deficit of income over expenditure from the general reserves.
	51(2)	Funds for the coverage of deficit of income over expenditure that cannot be covered in the manner specified in the first paragraph of this Article shall be provided from the Republic

Member State	Article	Text
		of Slovenia's budget.
Spain	4(2)	<p>The Bank's draft budget for operating expenses and investments, once approved by its Governing Council according to article 21.1.g), shall be forwarded to the government, which will submit it to Parliament for approval. The budget shall be prospective in nature, and shall not be consolidated with other State public sector budgets.</p> <p>The government, upon proposal by the Economy and Finance Minister, shall have the authority to approve the annual balance sheet and accounts of the Bank, which will be sent to Parliament for informational purposes. Without prejudice to the terms of article 27 of the Statutes of the ESCB, the Bank shall be subject to external auditing by the «Tribunal de Cuentas», under the terms of Organic Law 2/1982, of May 12, on the Tribunal de Cuentas. The report accompanying the annual balance sheet and accounts shall give further detail on different operations or items on the balance sheet, according to their characteristics. In particular, the Bank's contributions to the Deposit Guarantee Funds shall be detailed, as will any loans or other operations transacted for the benefit of any other institution or person not on an arm's-length basis, or which in any other way involve loss of profit or losses for the Bank. In such cases the amount of such loss of profit or losses shall be specified.</p>
Sweden	Chapter 10 Article 4	<p>The Riksbank's Profit and Loss Account and Balance Sheet are approved by the Riksdag, which also determines the allocation of the Riksbank's profit. If the value of the reserve fund has declined to less than SEK 500 million, at least ten per cent of the profit for the year shall be allocated to the reserve fund until it has retained a level of this amount.</p> <p>The Riksdag determines whether the General Council shall be discharged from liability for its activities and the Executive Board for its management of the Riksbank. Discharge from liability may only be denied if there are reasons to make claims of financial liability against a member of the General Council or the Executive Board, or if the member should be prosecuted for criminal actions in connection with his assignment or employment.</p>
The United Kingdom	Section 8	<p>The Bank of England Act 1946, as amended by the Bank of England Act 1998, requires the Bank to pay to HM Treasury, in lieu of dividend on the Bank's capital, on the fifth day of April and October (or prior working day), a sum equal to 25% of the Bank's post-tax profit for the previous financial year or such other sum as the Bank and HM Treasury may agree. The overall effect is that the Bank and HM Treasury will normally share post-tax profits equally.</p>

Table 3-15 Financial liability for supervisory authorities

Member State	Article	Text
Austria	N/A	
Belgium	N/A	
Bulgaria	N/A	
Cyprus	N/A	
The Czech Republic	N/A	
Denmark	N/A	

Member State	Article	Text
Estonia	N/A	
Finland	N/A	
France	N/A	
Germany	N/A	
Greece	N/A	
Hungary	N/A	
Ireland	33B(1)	There is established by this section a body called “Údarás Rialála Seirbhísí Airgeadais na hÉireann” or in the English language the “Irish Financial Services Regulatory Authority”.
	33B(2)	The Regulatory Authority is a constituent part of the Bank.
	33B(3)	The Regulatory Authority is separate from its members and continues in existence despite any vacancy or change in its membership.
	33AJ(1)	This section applies to the following persons: (a) the Bank; (b) the members of the Board and of the Regulatory Authority; (c) the Registrar of Credit Unions; (d) the Registrar of the Appeals Tribunal; (e) employees of the Bank; (f) agents of the Bank or of any of its constituent parts.
	33AJ(2)	A person to whom this section applies is not liable for damages for anything done or omitted in the performance or purported performance or exercise of any of its functions or powers, unless it is proved that the act or omission was in bad faith.
	33AJ(3)	The fact that the Bank has authorised or revoked the authorisation, or regulates the activities, of a person, under any of its functions is not a warranty by the Bank as to the person’s solvency or performance.
	33AJ(4)	The fact that the Bank in performing any of its functions (a) has approved or revoked the approval, or regulates the affairs or activities, of a stock exchange or a financial futures and options exchange, or (b) has approved, amended, revoked or imposed rules, or has consented or refused to consent to amendments of rules, is not a warranty by the Bank as to the solvency or performance of the exchange or any member of the exchange.
	33AJ(5)	Neither the State nor the Bank is liable for losses incurred because of the insolvency, default or performance of a person or body referred to in subsection (3) or (4).
	33AJ(6)	Nothing in subsections (3) to (5) limits the effect of subsection (2).
33AJ(7)	In this section, “agent” includes a person appointed or authorised by the Bank, the Governor or the Chief Executive to perform any function or exercise a power under the Central Bank Acts or any other Act.	
Italy	N/A	
Latvia	N/A	
Lithuania	46 ¹ (1)	The damage caused by the illegal actions of the Bank of Lithuania or Bank of Lithuania staff in relation to the performance of the supervisory function of credit and payment institutions shall be reimbursed only in the case if the person to have suffered the damage proves the Bank of Lithuania or Bank of Lithuania staff guilty of such damage.
	46 ¹ (2)	The Bank of Lithuania shall pay a compensation to its current or former staff equal to their expenses incurred due to criminal or administrative actions brought against them or due to other actions taken by law enforcement institutions in relation to such acts or omissions, or due to civil actions brought against them in

Member State	Article	Text
		relation to their acts or omissions done in the performance of the professional duties related to the supervisory function. The reimbursement procedure shall be established by the Board of the Bank of Lithuania.
	46 ¹ (3)	A member or former member of the staff of the Bank of Lithuania must repay the compensation paid by the Bank of Lithuania as provided by paragraph 1 herein in the following cases: 1) when he or she, following the settlement of criminal or administrative actions against him or her, is found guilty of criminal act or violation of administrative law or is found guilty by the court of causing damage; 2) when the expenses incurred by him or her and the legal charges he or she is awarded are paid by the party ordered to pay the charges. The amount to be repaid shall be equal to the sum paid by the party ordered to pay the charges.
Luxembourg	N/A	
Malta	15(1)	The Bank, directors, officers or servants thereof, and any other person appointed to perform a function under this Act, or under any rules or regulations made thereunder, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, or any rules or regulations aforesaid, unless the act or omission is shown to have been done or omitted to be done in bad faith.
	15(2)	The provisions of subarticle (1) shall also apply to the Bank and to any director, officer or servant thereof and to any other person appointed by the Bank, in the performance or purported performance of any function assigned to the Bank or to any director, officer, servant or other person under any other law.
The Netherlands	N/A	
Poland	N/A	
Portugal	N/A	
Romania	25(3)	The members of Banca Națională a României's Board and Banca Națională a României employees charged with prudential supervision tasks shall not be subject to any civil or penal sanctions, as the case may be, if the Court finds that these persons fulfilled or failed to fulfil in good faith and with due care any action or fact related to the performance, under the conditions set out in the law, of prudential supervision tasks.
	25(4)	The costs associated with the judicial proceedings instituted against the persons under paragraph (3) hereof shall be borne by Banca Națională a României.
Slovakia	N/A	
Slovenia	N/A	
Spain	N/A	
Sweden	N/A	
The United Kingdom	N/A	

Table 3-16 Autonomy in staff matters

Member State	Article	Text
Austria	32(3)	The Governing Board shall recruit the employees of the Oesterreichische Nationalbank, insofar as this is not reserved to the Federal President. The Governing Board shall also be responsible for the retirement, notice or dismissal of employees recruited by it.
	38(1)	The Bank staff's employment status shall be governed by private

Member State	Article	Text
		law.
	38(2)	The conditions of employment, the duties and rights of office as well as the remuneration and pensions of the Bank employees shall be subject to the provisions laid down by the General Council. The emoluments payable under these provisions shall, for purposes of tax and social security legislation, be treated in the same way as emoluments paid in accordance with statutory regulations.
	38(3)	The employees of the Oesterreichische Nationalbank that are entitled to retirement and survivor's benefits (pensions) under the Bank's pension regulations shall be exempt from participating in the accident, disability and employees' insurance (pension insurance).
	39	The Governing Board shall be responsible for supervising the entire staff of the Bank and shall decide on taking disciplinary action against Bank employees. The method of conducting such disciplinary action shall be laid down in the conditions of employment adopted by the General Council.
Belgium	29(2) Articles of Association	The Board shall be responsible for the administration and management of the Bank and shall decide on the direction of its policy. It shall appoint and dismiss members of staff, fix their salaries and the allocation of the profit share assigned to the staff or to institutions in its favour. It shall have the right to make settlements and compromises.
Bulgaria	16, point 6	The Governing Council shall[...] adopt Rules of Procedure for the BNB's activities
	18 (1)	The Governor of the BNB shall organise, direct and supervise the activities of the Bank, other than those activities mandated by this or by some other law exclusively to the Deputy Governors, and shall represent the BNB in Bulgaria and abroad. The Governor may delegate some of his or her competences to other officials.
	19(2)	Other departments and offices may also be established by a decision of the Governing Council.
	21	In the Rules of Procedure, the Governing Council shall define the structures, specific functions and responsibilities of the departments and offices of the BNB, as well as the rules regulating the relationships between them and the competences of their managers.
	23(2)	The employees of the BNB shall not disclose any information concerning negotiations, contracts entered into, the amount of assets on customers' deposits and their operations, information received by the BNB, as well as any circumstances concerning the BNB's activities or its customers which constitute official (<i>служебна</i>), banking, commercial or other secrecy protected by law, even after the termination of their contracts of employment.
	23(3)	The remuneration of the BNB's employees shall be determined by the Governing Council, but it shall not be less than the average remuneration for employees with similar functions in other banks in the Bulgaria.
	54(1), point 1	The BNB may not acquire real estate and real property rights except for [...] acquiring premises for the performance of its tasks and housing for its employees;
Cyprus	16C	The Board may issue directives: on the recommendation of the Governor, for the organisation of the Bank, defining the schemes of service of all employees of the Bank and regulating their powers and duties, as well as matters of recruitments,

Member State	Article	Text
		promotions and the exercise of disciplinary control.
	23(1)	For the purpose of carrying out the tasks of the Bank under this Law, there shall be appointed, as in this Law provided, such employees as may be necessary.
	23(2)	The appointment of any employee of the Bank shall be remunerated and under such terms and conditions as may be provided in any directives or the schemes of service, issued in this respect by the Board under section 16 of this Law.
	23(3)	Subject to any directives, issued under this Law in this respect, no person shall hold any office in the Bank who, at the same time – (a) holds any office in any other banking or financial institution or their subsidiary operating in the Republic or controlled by an organisation operating in the Republic; (b) has any participation in the capital of such banking or financial institution or their subsidiary without disclosing this participation in advance and obtaining the permission of the Board: Provided that the Board shall by directive determine the terms and conditions under which employees of the Bank may participate in the capital of such banking or financial institutions or their subsidiary.
The Czech Republic	5(2)	..., the Bank Board shall, in particular: ... e) execute the rights and duties arising from labour-law relations in respect of the staff of the Czech National Bank. The Bank Board may delegate these activities to other members of staff; f) grant its consent to the entrepreneurial activities of the staff of the CNB; g) fix the salary and other emoluments of the Governor; the salaries and other emoluments of Vice-Governors and other members of the Bank Board shall be fixed by the Governor; ...
Denmark	26	The Board of Directors shall on the recommendation of the Committee of Directors and subject to confirmation by the Minister of Economic Affairs draw up the By-laws of the National Bank of Denmark, by which rules shall be laid down governing the functions and the management of the Bank and the salaries and old age pensions for the Board of Governors and the Staff etc. and the duties of the Auditors. The By-laws may be amended by the Board of Directors subject to confirmation by the Minister of Economic Affairs. The amendments shall be valid when passed by a simple majority of the whole Board of Directors.
	14 By-laws	The regulations for the salaries and old age pensions of the Governors and other members of the staff of the National Bank in Copenhagen shall remain in force for the Governors and staff of this Bank until they be altered in conformity with the rules laid down. The Board of Directors shall fix the number of the officials of the Bank with a higher charge than that of senior clerk.
Estonia	13	Management Board is responsible for management and administration of the Bank.
	33	The Bank may hold deposits of its employees and pay interest that does not exceed the average payable interest. The Bank may grant loan to its employees upon conditions set by the Supervisory Board of the Bank.
Finland	11(2)	In respect of the Bank's administration, the Parliamentary Supervisory Council shall:

Member State	Article	Text
		<p>1) make proposals to the Council of State on the filling of the position of Chairman of the Board;</p> <p>2) decide on the principles for determining salaries, leaves of absence and annual leaves of members of the Board as well as on the execution of their duties during leaves of absence exceeding one week;</p> <p>3) decide on the issuance of warnings to members of the Board and settle other issues related to their service;</p> <p>4) appoint, upon proposal of the Board, directors of Suomen Pankki</p> <p>5) appoint the Deputy Chairman of the Board;</p> <p>6) confirm Suomen Pankki's Pension and Survivors' Pension Regulations and issue regulations concerning the management of the Bank's pension liability, upon proposal of the Board, and</p> <p>7) issue, upon proposal of the Board, regulations concerning the language skills required of officials of Suomen Pankki</p>
	14(1)	The Board shall be responsible for the administration of Suomen Pankki and for ensuring that all tasks assigned to the Bank are duly executed, except for statutory tasks of the Parliamentary Supervisory Council and matters that are otherwise provided for in the Act on the Financial Supervision Authority.
	14(3)	The Board has the right to issue more detailed regulations on the tasks and powers of the Bank's units and employees.
France	L 142-2	<p>The General Council shall administer the Banque de France.</p> <p>It shall consider matters relating to the management of the Banque de France's activities other than those which are tasks of the European System of Central Banks.</p> <p>It shall discuss the staff regulations. The Banque de France's Governor shall submit these regulations for the approval of the relevant ministers.</p> <p>The General Council shall also: discuss the use of own funds; draw up, making sure to allocate the Banque de France the necessary means to carry out the tasks delegated to it as a consequence of its participation in the European System of Central Banks, the projected and amended expenditure budget; and approve the Banque de France's balance sheet and accounts, as well as the plans for allocating profits and fixing the dividend due to the State.</p> <p>The General Council shall appoint two auditors to audit the Banque de France's accounts. They shall be invited to attend the General Council meeting which approves the accounts for the previous financial year.</p>
	L 142-8 (5)	The Governor shall appoint all the Banque de France's staff members, subject to Article L 142-3. The Governor shall adopt the measures that are necessary to implement the European Central Bank's guidelines.
	L 142-9	<p>Banque de France staff shall be bound by professional secrecy</p> <p>Banque de France staff shall be prohibited from taking or accepting an equity share in, or any interest in or remuneration for, working for or advising a public or private industrial, commercial or financial undertaking, unless the Governor grants a derogation. This rule shall not apply to the production of scientific, literary or artistic works.</p>

Member State	Article	Text
		<p>The General Council shall determine, in accordance with the conditions laid down in the third paragraph of Article L. 142-2, the rules applicable to Banque de France staff in areas where the provisions of the Employment Code are incompatible with the status of or the public service tasks entrusted to the Banque de France.</p> <p>The third to eighth paragraphs of Article L. 432-1 of the Employment Code and Articles L. 432-5 and L. 432-9 of that Code shall not apply to the Banque de France.</p> <p>The provisions of Chapter II of Title III of Part III of Book IV of the Employment Code, other than those referred to in the foregoing paragraph, shall only apply to the Banque de France in relation to the tasks and other activities which fall within the General Council's powers pursuant to Article L. 142-2 of this Code.</p> <p>The national works council and, if applicable, the local works councils of the Banque de France may only appeal to the expert referred to in the first paragraph of Article L. 434-6 of the Employment Code after the procedure laid down in Article L. 321-3 of that Code has been initiated.</p> <p>A Conseil d'Etat decree shall specify the conditions under which Article L. 432-8 of the Employment Code shall apply to the Banque de France.</p>
	R 142-21-1	<p>In application of the final paragraph of Article L. 142-9 of this Code, the Banque de France's General Council shall establish the budget allocated each year for social and cultural expenditure. The total contribution by the Banque de France to this expenditure may not be less than 2,5 % of the gross wage bill. The third paragraph of Article R. 432-11 of the Employment Code shall not apply. The allocation of this aggregate contribution may be decided by means of an organisation-level agreement.</p>
Germany	31(1)	<p>The Deutsche Bundesbank shall employ civil servants (<i>Beamte</i>), other salaried staff (<i>Angestellte</i>) and wage earners (<i>Arbeiter</i>).</p>
	31(2)	<p>The President of the Deutsche Bundesbank shall appoint the Bank's civil servants. He is the supreme institutional authority (<i>oberste Dienstbehörde</i>) and in this capacity shall represent the Bank in and out of court. As the supreme institutional authority, he shall have full disciplinary powers; he shall impose disciplinary measures, unless their imposition is the remit of the relevant courts. The President may delegate his powers provided for in this subsection to a member of the Executive Board, who may then delegate them further.</p>
	31(3)	<p>The civil servants of the Deutsche Bundesbank shall be indirect Federal civil servants.</p> <p>Except as otherwise provided by this Act, the regulations generally applicable to Federal civil servants shall apply to them. The entry into force of this Act shall supersede the entry into force of the Federal Civil Servants Act (<i>Bundesbeamtengesetz</i>).</p>
	31(4)	<p>Subject to the approval of the Federal Government, the Executive Board may regulate the legal relationships of the civil servants and other salaried staff of the Deutsche Bundesbank through staff regulations if this is required to ensure orderly and efficient banking operations.</p> <p>The staff regulations may provide only</p>

Member State	Article	Text
		<p>1. that for civil servants of the Bank, the following provisions of the legislation relating to Federal civil servants be departed from:</p> <p>a) section 21, second sentence, section 24, third sentence, section 26 (1), section 30 (2), section 66 (1), number 1 (c) and number 3, of the Federal Civil Servants Act and section 11, number 3 (a), of the Civil Servants' Benefits Act (<i>Beamtenversorgungsgesetz</i>);</p> <p>b) sections 42 to 50a of the Federal Civil Servants' Pay Act (<i>Bundesbesoldungsgesetz</i>) as amended, insofar as a revocable, non-pensionable bank allowance is granted which does not exceed 9% of the basic salary for staff at the Central Office and 5% for staff at the Regional Offices, and a bonus for exceptional performance is granted as an allowance and/or a one-off payment at the Central Office, the Regional Offices and the branches;</p> <p>c) the provisions on the granting of maintenance allowances to civil servants undergoing preparatory training;</p> <p>2. that, insofar as the bank allowance pursuant to number 1 (b) has been abolished or cut with effect from 1 August 2006 by means of the Act Accompanying the 2006 Federal Budget, a compensatory allowance shall be paid in the amount of the difference between the former and the new bank allowance or, in the event of abolition, the full amount of the former bank allowance. The basis for the compensatory allowance shall be the amount of the bank allowance granted on 31 July 2006. For staff on leave of absence on this date, the basis for the compensatory allowance shall be the bank allowance to which they would have been entitled had they not been on leave on this date. The compensatory allowance shall be paid insofar as and for as long as the former entitlement criteria remain fulfilled. With each pay increase within the meaning of section 13 (4) of the Federal Civil Servants' Pay Act, the compensatory allowance shall decrease by half the amount of the increase; this does not apply to increases to adjust remuneration to remuneration paid in the previous Federal territory (ie Federal territory before reunification on 3 October 1990);</p> <p>3. that the other salaried staff of the Bank</p> <p>a) shall require prior permission to engage in any of the secondary occupations specified in section 66 (1), number 1 (c) and number 3, of the Federal Civil Servants Act,</p> <p>b) receive the payments specified under number 1 (b) and the compensatory allowance pursuant to number 2 above;</p> <p>4. that the wage earners shall receive the bonus for exceptional performance specified under number 1 (b) above.</p>
	31(5)	<p>The aggregated bonuses for exceptional performance specified in subsection (4), second sentence, number 1 (b) above may not exceed one-twentieth of the expenditure on the remuneration of the civil servants, other salaried staff and wage earners of the Deutsche Bundesbank. From 1 August 2006, the Bank allowance will not be adjusted in line with general increases in pay.</p>
	31(6)	<p>Subject to the approval of the Federal Government, the Executive Board shall issue regulations on the educational background and careers of civil servants of the Deutsche Bundesbank; in agreement with the Federal Ministry of the Interior (<i>Bundesministerium des Innern</i>), it shall issue regulations for specific career paths (regulations governing career paths, training and examination). The Executive Board may depart from the provisions of the legislation relating to</p>

Member State	Article	Text
		Federal civil servants with respect to the duration of the preparatory training, the duration of the probationary period and the duration of the proficiency period for achieving promotion in the Upper Intermediate Service and for qualifying for admission to the Higher Service.
Greece	33	The staff of the Bank, with the exception of Directors, shall be appointed and may be dismissed by the Governor on the proposal of the Management Council, in accordance with Article 38.
	38(1)	The staff of the Bank, with the exception of the Directors, shall be appointed and may be dismissed by the Governor on the proposal of the Management Council. Employees shall be appointed only to positions created by a decision of the General Council. The number of employees on the Bank's staff, of any rank or category whatsoever, shall be determined by the General Council taking into account the relevant needs. No employee shall be appointed, up to the rank of assistant accountant inclusive, without having passed an examination, details of which shall, on each occasion, be specified by regulations. For the auxiliary personnel (collectors etc.), a test of qualifications of each, compared with the qualifications of the other candidates, shall be sufficient. Special technical personnel may be appointed for either a specific period of time or not, by a decision of the General Council, determining their salary. Said employees may be appointed to permanent posts by a decision of the General Council, following an examination
	38(3)	The Directors and employees of the Bank shall receive their salaries, pensions, or any other remuneration, on terms laid down by the General Council. Their remuneration cannot take any form of commission (tantieme) or share in the profits of the Bank.
	39	The Directors and all other officials or employees of the Bank shall not be entitled to engage in business for their own account. No bills or notes signed by them shall be accepted for discount or as guaranty for an advance granted by the Bank.
Hungary	56	The provisions of the Labour Code shall apply to the employees of the MNB, with the exceptions set forth in this Act.
	50 (1)	The head of the MNB shall be the Governor. The Governor shall be liable for the implementation of the decisions of the Monetary Council and for the governance of the operation of the MNB. The Governor shall: c) exercise the employer's rights over the employees of the MNB (excluding the members of the Monetary Council pursuant to Point c) of Paragraph (4) of Article 49), with the exception of the powers concerning the appointment and dismissal of Deputy Governors; d) take any decisions related to the governance of the operation of the MNB and outside the competence of the Monetary Council.
Ireland	6D(1)	Subject to this section, the Board shall appoint a Secretary to the Bank and such other employees of the Bank as it considers necessary for the effective performance and exercise of the functions and powers of the Bank and each of its constituent parts.
	6D(3)	Except as regards the appointment of a Secretary to the Bank and the Secretary to the Regulatory Authority— (a) the Governor has the same power to appoint employees of

Member State	Article	Text
		<p>the Bank as the Board has under subsection (1), but that power is only exercisable in respect of responsibilities specified in section 19A(1)(a) and (b) and (2),</p> <p>(b) the Chief Executive has the same power to appoint employees of the Bank as the Board has under subsection (1), but that power is only exercisable with the agreement of the Regulatory Authority.</p>
	6D(5)	<p>The employees of the Bank are to be employed on such conditions (including conditions as to remuneration and allowances) as the Board fixes from time to time. However, in fixing the conditions of employment of the Secretary to the Regulatory Authority and employees appointed by the Chief Executive under subsection (3), the Board shall obtain the concurrence of the Regulatory Authority or Chief Executive (as the case requires) with respect to those conditions of employment.</p>
	6D(6)	<p>Subject to subsection (8), an appointment under this section is to be made by competition to be conducted in accordance with rules made by the Board.</p>
	6D(7)	<p>The Board may, in relation to a particular competition, impose conditions of entry, limitations and safeguards. If the competition relates to an appointment to be made under subsection (2) or (3), the Board may impose such conditions only with the concurrence of the Regulatory Authority or the Chief Executive, as the case requires.</p>
	6D(8)	<p>Subsection (6) does not apply to an appointment to a position if the Board, or, in relation to appointments under subsection (2) or (3), if the Regulatory Authority or Chief Executive (as the case requires), decides that appointment to the position by competition would be inappropriate.</p>
	6D(9)	<p>The Board shall establish and operate a policy under which provision is made for employees of the Bank to be given opportunities for training and experience in various activities, and in different constituent parts, of the Bank.</p>
	6E	<p>The Board shall arrange for employees of the Bank to be assigned to the Regulatory Authority and to any divisions, branches or offices established under section 6C. However, any assignment of an employee to or from the Regulatory Authority shall take place only with the agreement of the Chief Executive.</p>

Member State	Article	Text
Italy	18	<p>The Board of Directors shall be charged with the general administration, management supervision and internal control of the Bank.</p> <p>In conformity with legislative and regulatory provisions and, in the case of resolutions referred to in points 9) and 10), in compliance with the statute of the ESCB and the provisions adopted by the European Central Bank (ECB), the Board shall:</p> <p>[...]</p> <p>5) determine the staffing levels, recruit and dismiss employees;</p> <p>6) approve agreements negotiated with trade unions;</p> <p>7) adopt resolutions regarding the geographical configuration and general organizational structure of the Bank;</p> <p>8) appoint and remove from office regents at the main branches and councillors at the local branches and determine their number and which of them are to act as examiners;</p> <p>9) appoint the Bank's foreign correspondents;</p> <p>[...]</p> <p>The Board shall be informed by the Governor of the material facts regarding the administration of the Bank, and in particular:</p> <p>[...]</p> <p>- of the investment of liquid balances, reserves set up under this statute and provisions for supplementary staff pensions.</p>
Latvia	28(2)	The Governor of the Bank shall approve the Bank of Latvia's structure, and shall have the power to hire and fire Bank of Latvia employees.
	30	The remuneration of the Governor of the Bank of Latvia, members of the Council of the Bank of Latvia and the Board, as well as Bank employees shall be determined by the Council of the Bank of Latvia. The Council also approves the staff numbers, positions, and salaries.
Lithuania	17(1)(3)	The Chairperson of the Board of the Bank of Lithuania shall: (...) conclude employment contracts with staff members and heads of the branches, representative offices, institutions and enterprises of the Bank of Lithuania, provide incentives for distinguished employees and impose disciplinary penalties;
	18(1)	The staff of the Bank of Lithuania shall perform the functions of the Bank of Lithuania laid down in this Law by implementing resolutions of the Board of the Bank of Lithuania and orders of the Chairperson, and by observing the regulations of a relevant structural division and employment contracts.
	18(2)	Laws regulating labour relations shall be applicable to the staff of the Bank of Lithuania.
	18(3)	The staff of the Bank of Lithuania may only be employed at the Bank of Lithuania. Upon the consent of the Board of the Bank of Lithuania, they may also be employed elsewhere.
	18(4)	The Board of the Bank of Lithuania shall have the right to delegate a staff member for temporary work at the European Union and international institutions and bodies or institutions or bodies of another state at the request of the staff member and at its own initiative, subject to the consent of such staff member, without cancelling the employment contract and suspending the counting of the period of employment at the Bank of Lithuania, without changing the terms of remuneration set in the employment contract or by changing said terms by mutual agreement between the parties of the employment contract. At the request of the staff member and subject to the consent of the Board of the Bank of Lithuania, such staff member may take up employment for a certain period of time at the institutions and

Member State	Article	Text
		bodies mentioned herein by requesting for a leave of absence, without suspending the counting of the period of employment at the Bank of Lithuania.
	18(5)	The staff of the Bank of Lithuania may be granted financial services pursuant to the procedure and terms established by the Board of the Bank of Lithuania.
	18(6)	The Bank of Lithuania shall disclose information concerning a staff member only in the cases and pursuant to the procedure provided for by law.
	18 ¹ (1)	The Staff of the Bank of Lithuania must avoid engaging in the activities that would cause a conflict of public and private interests
	18 ¹ (2)	The Board of the Bank of Lithuania, in ensuring the lawful interests of the Bank of Lithuania and in order to ascertain that the staff of the Bank of Lithuania avoid a conflict of public and private interests and do not use or allow the use by third parties of the information constituting a state, official and bank secret in their own or the third parties' interests, may establish the kinds of information on personal and family financial operations to be disclosed by the Bank of Lithuania staff to the Bank of Lithuania, and may establish restrictions on entering into certain financial transactions or engaging in certain activities.
Luxembourg	14(1)	The Central Bank's Executive Board shall be assisted in its task by staff members recruited and appointed by the Board and placed under its authority.
	14(2)	Prior to taking up their duties, each Central Bank staff member shall swear the following oath before a member of the Executive Board: "I swear loyalty to the Grand Duke, obedience to the Constitution and to the laws of the State. I promise to fulfill my duties with integrity, thoroughness and impartiality and not to disclose information which comes to my knowledge in the course of my duties."
	14(3)(a)	Central Bank staff members who occupy the posts specified in the organisation chart referred to in Article 29 (2), and involving, either directly or indirectly, the exercise of public power and tasks safeguarding the general interests of the State or other public authorities, have a public law status consisting in the application, if necessary by analogy, of the provisions relating to officials and probationer officials, save as otherwise provided in a Grand-Ducal Regulation to be adopted in the interests of the proper functioning of the Central Bank.
	14(3)(b)	For posts other than those specified in Paragraph 3 (a), Central Bank staff members may include, within the framework of the organisation chart referred to in Article 29 (2): <ul style="list-style-type: none"> • employees who satisfy all the conditions required to be employed by the State and whose status is treated as equivalent to the arrangements for state employees pursuant to Article 13 of the law of 27 January 1972 establishing rules for state employees; also applicable to them, if necessary by analogy, are the provisions of Article 1, paragraph 5, of the law of 16 April 1979 as amended, together with the laws and regulations establishing rules governing state employees; • employees who fail to satisfy all the conditions for state employment and whose situation is governed by the law of 24 May 1989 on contracts of employment; • workers whose situation is governed by the collective agreement in force for state workers.
	14(3)(c)	Statutory staff members and those equivalent to probationers employed at the Central Bank at the time of the entry into force

Member State	Article	Text
		of this law, and until such time as the Grand-Ducal regulation referred to in (a) above comes into force, shall, whatever post they occupy, be subject to the status defined in subparagraph (3) (a) above and shall continue to benefit from the application of the Grand-Ducal regulation of 21 June 1984 establishing service regulations for staff members of the Luxembourg Monetary Institute. The new Grand-Ducal regulation shall not make their situation less favourable. Staff members of the Central Bank who satisfy the requisite conditions at the time of the entry into force of this law shall have the status of state employees.
	14(4)(a)	The remuneration of Central Bank staff members shall be paid by the Central Bank. The Executive Board may grant non-pensionable additional remuneration to staff members referred to in paragraph (3) (a) and the first indent of paragraph 3 (b) above, by virtue of their duties or qualifications.
	14(4)(b)	The statutory pension rights of each Central Bank staff member are those corresponding to his legal status, according to the categories defined in paragraph (3). The pensions of the Central Bank's staff members shall be paid by the Bank. This charge shall be financed by a Central Bank pension fund. The pension fund shall be financed on the one hand by statutory deductions from staff members' salaries in accordance with the rules governing the pension scheme corresponding to their status, and on the other hand by contributions made by the Central Bank itself. For the practical implementation of the BCL's agents' pension rights, the BCL may have recourse to the decision-making bodies and services of the Luxembourg pension agencies. This recent amendment of the BCL organic law (October 2008) has to be read in conjunction with the simultaneous amendment of the law of 28 July 2000 on the coordination of the legal pension regime, that organises the financial transfers to be operated between the pension fund of the BCL and the other pension agencies, in case of transfer of a State or private agent from (or to) the BCL.
Malta	14	The appointment of officials and other employees of the Bank shall be made by the Board and on such terms and conditions as may be established by the Board.
The Netherlands	N/A	
Poland	11(1)	The President of the NBP shall be the superior of all NBP staff. The rights and obligations of NBP staff shall be governed by the Labour Code and professional rules set out in separate legislation.
	66(2)	The rules of remunerating the NBP staff shall be determined by the NBP Management Board.
Portugal	56(1)	The staff of the Bank shall be subject to the legal regulations of the individual labour contract.
	56(2)	The Bank may sign collective labour regulation instruments, under the terms of the general law, for whose purpose its legitimate representatives shall be the members of the board of directors or the holders of a written mandate, expressly entrusted with contracting powers.
	56(3)	The staff of the Bank shall benefit from the social security scheme and from the other social benefits, established in the collective labour regulation instruments of the banking sector.
	57(1)	The Board of Directors, bearing in mind the specific nature of the functions entrusted to the Bank, shall define the personnel policy after hearing the institutional bodies of representation of the workers.
	57(2)	The Board shall provide for the instruments required for the

Member State	Article	Text
		proper execution and disclosure of the personnel policy, defined under the foregoing paragraph.
	58(1)	Within the scope of the Bank's social action, there exists a welfare fund with the appropriations which the Board of Directors decides to allot thereto so as to ensure the achievement of its purpose.
	58(2)	The welfare fund shall be governed by the regulations approved by the Board of Directors and shall be managed by a committee appointed by the said Board, with delegated powers for the purpose, and which will include representatives of the workers' committee of the Bank.
Romania	33(1)	Under the conditions set out in the law, Banca Națională a României's Board decides on: ... c) the guidelines for managing the operations and the responsibilities incumbent on Banca Națională a României's staff; d) the internal organisational structure, indemnities, salaries and other pecuniary rights granted to the staff; ...
	35(2)	The Governor shall appoint the staff of Banca Națională a României's headquarters and the managers of the branches and agencies.
	52(1)	Members of the Board and employees of Banca Națională a României shall observe the professional secrecy of any information not intended for disclosure acquired in the performance of their duties and shall not use this information for their personal benefit, any infringement being punished by law. Members of the Board and employees of Banca Națională a României shall further be bound by professional secrecy requirements even after their duties have ceased, any infringement being punished by law. The provisions of this paragraph shall also apply to the financial auditors authorised to perform supervisory actions under the conditions set out in Law No 58/1998 on banking activity [repealed by Government Emergency Ordinance No 99 of 6 December 2006 on credit institutions and capital adequacy], as subsequently amended and supplemented.
Slovakia	6(2)(f)	Furthermore, the Bank Board shall in particular: set the salary and other emoluments of the Governor, Vice-Governors and other Bank Board members;
	43	The provisions of separate legal provisions (that is the Labour Code) shall apply to employees of the National Bank of Slovakia. Employees of the National Bank of Slovakia shall be subject, as appropriate, to the provisions of Article 7(5) to (7). The Governor and other members of the Bank Board are subject to separate mandate agreements in accordance with Article 7(11) concluded under the conditions of the Commercial Code (Articles 566 to 576 of the Commercial Code). However, in compliance with article 7(2) they are considered to be employees of the NBS.
Slovenia	32(1)	(1) The Governing Board of Banka Slovenije shall also decide on other matters concerning the operations of Banka Slovenije, and shall: [...] 2. regulate rights and obligations of members of the Governing Board of Banka Slovenije arising from employment relationships, [...] 4. rule on internal administrative issues of Banka Slovenije.
	38(1)	Members of the Governing Board of Banka Slovenije shall carry out their functions on the basis of full-time employment at

Member State	Article	Text
		Banka Slovenije.
	40	(1) The organisation and operations of Banka Slovenije shall be regulated by internal acts adopted by the Governor of Banka Slovenije. (2) A Banka Slovenije internal act shall also determine the tasks of employees with special authorisations, their rights and obligations, and the procedure by which and term for which they are appointed. (3) The Governing Board of Banka Slovenije shall decide on the appointment of employees specified in the previous paragraph on a proposal by the Governor of Banka Slovenije.
	42(1)	The rights, obligations and responsibilities of the staff employed by Banka Slovenije shall be laid down in an internal act adopted by the Governing Board of Banka Slovenije in accordance with the law governing employment relationships.
	42(2)	The rights, obligations and responsibilities of the Governor and Vice-Governors which arise from employment relationships shall be laid down in an internal act adopted by the Governing Board of Banka Slovenije in accordance with the law governing employment relationships.
	42(3)	The rights, obligations and responsibilities of staff with special authorisations pursuant to Article 40 of this Act deriving from employment relationships shall be laid down in an internal act in accordance with the law governing employment relationships. The Governing Board of Banka Slovenije shall adopt the internal act on a proposal by the Governor of Banka Slovenije.
	42(4)	The internal acts pursuant to the first, second and third paragraphs of this Article shall be published in the Official Gazette of the Republic of Slovenia.
Spain	6 bis	Employment law shall govern the relations between the Banco de España and its members of staff. Banco de España members of staff who may have access to confidential information shall report, in accordance with the applicable internal rule approved by the Executive Commission, securities market operations they carry out, whether directly or through an intermediary. This internal rule shall determine the restrictions applying to these members of staff concerning the purchase, sale or availability of these securities, in addition to the reporting obligations and restrictions applying to financial operations carried out by these members of staff with entities subject to the Banco de España's supervision, whether by themselves or by an intermediary. Infringement of the provisions of this paragraph shall be subject to the sanctions laid down in the Banco de España's internal rules. Data provided under these reporting obligations shall be kept for a maximum of five years.
Sweden	Chapter 4, Article 5.	Stipulations governing the remuneration to members and deputy members of the General Council are contained in the Act (1989:185) on Fees, etc. for Assignments within the Riksdag, its Authorities and Bodies. Salaries and other employment benefits for members of the Executive Board are established by the General Council.
	Chapter 9, Article 4	The General Council decides the Rules of Procedure for the Riksbank. In addition, the Riksbank makes decisions on an individual basis in matters concerning personnel and persons appointed for specific assignments at the Riksbank, to the extent that such matters are not governed by legislation or decisions of the Riksdag or the Riksdag Administration.

Member State	Article	Text
The United Kingdom	N/A	

Table 3-17 Accountability

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
Austria	32(5)	The Governor and the Vice Governor shall report to the Finance Committee of the Nationalrat at least twice a year on the measures taken in the field of monetary policy, while observing the obligation of professional secrecy laid down in Article 38 of the ESCB/ECB Statute.		Yes
Belgium	22(1) 41(1) Articles of Association	Except as regards the tasks and transactions within the domain of the ESCB, the Minister of Finance, through his representative, shall have the right to supervise the Bank's transactions and to oppose the implementation of any measure which is contrary to the law, the Statutes or the interests of the State.	Yes	
	22(2) 41(2) Articles of Association	The representative of the Minister of Finance shall, ex officio, attend the meetings of the Council of Regency and the Board of Censors. Except as regards the functions and transactions within the domain of the ESCB, he shall supervise the Bank's transactions and suspend and bring to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State. If the Minister of Finance has not given a decision within eight days on the suspension, the decision may be implemented.	Yes	
	22(3) 41(3) Articles of Association	The salary of the representative of the Minister of Finance shall be fixed by the Minister of Finance in consultation with the management of the Bank and shall be borne by the latter. The representative of the Minister shall report to the Minister of Finance each year on the performance of his task	Yes	
	28(5) Articles of Association	The Governor shall send to the Chairmen of the Chamber of Representatives and the Senate the annual report referred to in Article 109 B(3) of the Treaty establishing the European Community. The Governor may be heard by the competent committees of the Chamber of Representatives and the Senate at the request of these committees or on his own initiative.		Yes
	42 Articles	Except as regards the transactions within the domain of the	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
	of Association	ESCB, the representative of the Minister of Finance shall have the right to take cognisance at any time of the state of business and to check the accounts and the cash holdings. The Bank's administration shall be required to provide him, whenever he so requests, with a certified true copy of the Bank's financial statement. He shall attend the General Meetings when he deems fit.		
Bulgaria	3	In the formulation of the general outlines of the monetary policy, the Bulgarian National Bank and the Council of Ministers shall inform each other.	Yes	
	50	The Bulgarian National Bank shall address the annual budget approved by the Governing Council to the National Assembly within a thirty-day period, and twice a year a report which reviews and assesses the Bank's activities during the previous period. This report shall be published.		Yes
	51	The Bulgarian National Bank shall address its annual report on the Bank's activity, the consolidated financial statement, together with the auditor's report under Article 49, para. 3, and the budget report thereof to the National Assembly no later than 30 April of the following year.		Yes
Cyprus	53(1)	The Bank may render advice to the Government and to the Minister on any matter which in its opinion is likely to affect the attainment of the objectives of the Bank as defined in section 5.	Yes	
	53(2)	The Government and the Minister may request from the Bank to provide them with data on the prevailing economic conditions or advice on any particular measures which may be taken and information on the general conditions of money and the banking system.	Yes	
	54(1)	Without prejudice to section 7, the Governor may be invited and may attend meetings of the Council of Ministers or competent committees of the Council of Ministers whenever the issues discussed pertain to the objectives and tasks of the Bank.	Yes	
	55(1)	Subject to paragraph 5 of Article 119 of the Constitution, the		Yes

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		Bank shall lay before the President of the Republic and the House of Representatives an annual report on the monetary policy of the previous and the current year.		
	55(2)	Subject to the provisions of Article 108 of the Treaty and Articles 10.4 and 38 of the Statute, the Governor, when duly asked in this respect, shall appear before the committees of the House of Representatives to report on matters relating to the fields of competence of the Bank.		Yes
	60(2)	The auditors shall submit their report to the Board after the pertinent audit, and address a copy to the Minister for information.	Yes	
The Czech Republic	3(1)	The Czech National Bank shall submit a report on monetary development to the Chamber of Deputies of Parliament at least twice a year for review. If the Chamber of Deputies so resolves, the Czech National Bank shall submit an extraordinary report on monetary development within thirty days. The resolution of the Chamber of Deputies must state what the extraordinary report should contain.		Yes
	3(2)	The report on monetary development shall be submitted to the Chamber of Deputies by the Governor of the Czech National Bank, who in such an event shall be entitled to attend the session of the Chamber of Deputies and must be called upon to speak		Yes
	3(3)	The Chamber of Deputies shall acknowledge the report on monetary development or shall ask for a revised report.		Yes
	3(4)	If the Chamber of Deputies asks for a revised report, the Czech National Bank shall within six weeks submit a revised report that complies with the requirements of the Chamber of Deputies.		Yes
	3(5)	The Czech National Bank shall inform the public on monetary development at least once every three months.		Yes
	3a	The Czech National Bank shall submit a financial stability report to the Chamber of Deputies for information at least once a year.		Yes
	45d(1)	The Czech National Bank shall each year compile and submit for information to the Chamber of Deputies, the Senate and the		Yes

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		Government a report on the performance of financial market supervision. This report shall be submitted by 30 June of the following year.		
	45d(2)	Before the report on the performance of financial market supervision is submitted, its content shall be discussed by the Committee, which shall be entitled to append its opinion to the report.		Yes
	47(3)	Within three months of the end of the calendar year, the Czech National Bank shall submit its annual financial report to the Chamber of Deputies for review. This report shall include information on the salaries of the members of the Bank Board of the Czech National Bank.		Yes
	47(4)	The Chamber of Deputies may either: a) approve, b) acknowledge, or c) reject the financial report of the Czech National Bank.		Yes
	47(5)	If the Chamber of Deputies rejects the financial report of the Czech National Bank, the Czech National Bank shall within six weeks submit a revised report that complies with the requirements of the Chamber of Deputies		Yes
	48(3)	As soon as the annual accounts are approved and audited, the Bank Board shall submit them to the Chamber of Deputies and publish them.		Yes
Denmark	N/A			
Estonia	4(2)	Eesti Pank shall advise the Government of the Republic in matters relating to economic policy. The Government of the Republic shall not take any important economic policy decisions without hearing the opinion of Eesti Pank	Yes	
	4(4)	Eesti Pank shall, within the limits of its authority, support the economic policy of the Government of the Republic provided that this policy is not in conflict with the objectives and functions of Eesti Pank provided by § 2 of this Act and does not	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		prevent Eesti Pank from performing them		
	31(3)	The annual report shall be approved and, together with the auditor's report, submitted to the Riigikogu by the Supervisory Board of Eesti Pank. The annual report of the Financial Supervision Authority approved by the Supervisory Board of the Financial Supervision Authority shall be submitted to the Riigikogu at the same time as Eesti Pank's annual report. The Riigikogu shall hear a presentation concerning Eesti Pank's annual report by the Governor of Eesti Pank		Yes
Finland	4(2)	The Bank of Finland shall cooperate as necessary with the Council of State and other authorities.	Yes	
	27	The Bank of Finland shall be obliged to provide any concerned committee of Parliament with all information that is necessary for the performance of the Committee's tasks.		Yes
France	L 143-1	At least once a year, the Banque de France's Governor shall send the President of the Republic and the Parliament a report on the Banque de France's transactions, on the monetary policy it implements within the framework of the European System of Central Banks and on its forecasts. In accordance with Article 108 of the Treaty establishing the European Community and the European Central Bank's confidentiality rules, the Banque de France's Governor is asked to appear before the finance committees of the two chambers of Parliament and the Governor may ask to appear before them. The Banque de France's accounts and the auditors' report shall be sent to the finance committees of the National Assembly and the Senate.	Yes	Yes
Germany	13(1)	The Deutsche Bundesbank shall advise the Federal Government on monetary policy issues of major importance and shall furnish it with information on request.	Yes	
	13(2)	The Federal Government should invite the President of the	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		Deutsche Bundesbank to attend its deliberations on important monetary policy issues.		
	26(5)	The annual accounts, the standard cost account, the investment plan, the analysis of the budgeted figures compared with actual costs and investment, and the auditors' reports shall be forwarded to the Federal Ministry of Finance and the Federal Court of Auditors. The annual accounts, the analysis of the budgeted figures compared with actual costs and investment and the auditors' reports shall be presented to the Bundestag (the lower house of Parliament).	Yes	Yes
	26(6)	The Federal Court of Auditors shall report its findings under subsection (3) above to the Bundestag.		Yes
Greece	5B(1)	The Bank of Greece shall submit to the Parliament and to the Council of Ministers an annual report on the monetary policy of the previous and the current year. During the year, the Bank shall submit a supplementary report on monetary developments and monetary policy. As from the establishment of the ESCB, the Bank of Greece shall assist the ECB in fulfilling its reporting commitments, as laid down in Article 109B, paragraph 3 of the Treaty establishing the European Community and Article 15 of the Statute of the ESCB.	Yes	Yes
	5B(2)	The Governor of the Bank of Greece, when asked, shall appear before the competent parliamentary committee to report on matters relating to the Bank's fields of competence. For the same reason, the Governor may ask the Speaker of the Greek Parliament to invite him to appear before the committee.		Yes
	5B(3)	Without prejudice to the previous article, the Governor of the Bank of Greece shall be invited and may attend meetings of the Council of Ministers or of competent committees thereof whenever the issues discussed pertain to the objectives and tasks of the Bank of Greece.	Yes	
	5B(4)	The Bank of Greece shall be consulted on any draft legislative provision concerning the tasks referred to in Article 2 hereof.	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		The Bank of Greece may submit proposals to the government on matters in the fields of competence of the Bank.		
Hungary	2	The Governor of the MNB shall report to the Parliament.		Yes
	35	The Governor of the MNB shall report to the Parliament in respect of the activities and monetary policy of the MNB on an annual basis. The Parliament may also request information on an ad hoc basis.		Yes
	36	The MNB shall be consulted regarding the drafts of decisions and legislative provisions related to the tasks of the MNB and the operation of the financial system.	Yes	
	37	The Minister shall provide the MNB with preliminary information regarding the budget proposal. The MNB may express its opinion on the budget proposal to the Government and to the competent parliamentary committee following submission of the budget draft to the Parliament	Yes	
	28(2)	The MNB shall publish all important information related to the operation of the credit institution system and to the financial situation of the country, and shall regularly provide detailed data on such information to the Parliament, the Government and the ministries (bodies of central state administration).	Yes	Yes
	41(2)	Upon request, the MNB shall provide information to the Government and the ministries on an ad hoc basis in respect of monetary developments and other important issues related to its basic tasks.	Yes	
	41(3)	The Governor of the MNB shall notify the Minister of his decisions relating to the management of the operation of the MNB and of high priority in respect of the operations of the MNB, made under his powers pursuant to Paragraph (1) of Article 50 after such decisions have been taken. The MNB shall report to the Minister on the foreign exchange transactions performed as well as on the gold and foreign exchange reserves on a weekly basis. Each year, the Minister and the Governor of the MNB shall agree in writing on the scope of additional	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		information to be made available by the MNB.		
	42	The Government and the ministries (bodies of central state administration) shall, at the request of the MNB, provide the MNB with information related to their activities.	Yes	
Ireland	6A(3)	The Minister may, from time to time, request the Governor, the Board or the Regulatory Authority to consult with the Minister, in relation to their respective functions, as regards the performance by the Bank of any function of the Bank (other than one imposed on it by the Rome Treaty or the ESCB Statute).	Yes	
	6A(4)	The Minister may, from time to time, request the Governor to inform the Minister with respect to the pursuit of the primary objective of the Bank.	Yes	
	6A(5)	The Governor, or the Board, shall comply with a request made to the Governor or the Board under this section in so far as the request is consistent with the Rome Treaty, the ESCB Statute or any law of the State.	Yes	
	6I(1)	Within 6 months after the end of each financial year, the Bank shall prepare a report of its operations during the year and present the report to the Minister.	Yes	
	6I(2)	As soon as practicable after receiving such a report, the Minister is required to arrange for copies of the report to be laid before each House of the Oireachtas, together with any other reports required to be included in or attached to the report.	Yes	Yes
	6I(3)	The Bank shall give to the Minister for publication in <i>Iris Oifigiúil</i> such periodical returns concerning the transactions of the Bank as the Minister directs from time to time.	Yes	
	Italy	41	The Bank of Italy shall submit a report to the Parliament and the Government on its activity as provided for by law.	Yes
Latvia	6(1)	The Bank of Latvia shall advise the Saeima and the Cabinet of Ministers on monetary policy and other matters pertaining to the execution of its tasks.	Yes	Yes
	28(4)	The Governor of the Bank of Latvia shall be entitled to participate in meetings of the Government of the Republic of	Yes	Yes

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		Latvia.		
	43(1)	The Saeima of the Republic of Latvia shall supervise the Bank of Latvia.		Yes
Lithuania	41	The Bank of Lithuania may consult and give proposals to the Government on the issues related to financial markets and State Treasury policy.	Yes	
	52	The Chairperson of the Board of the Bank of Lithuania shall twice a year present reports to the Seimas on the implementation of the primary objective of the Bank, performance of its functions and the situation of the banking system.		Yes
Luxembourg	11(2)	[The Executive Board] shall prepare the measures and take the decisions required for the fulfillment of the tasks of the Central Bank. The Central Bank shall submit an annual report to the Government and to the Chamber of Deputies on its activities and on the monetary policy of the previous year and the current year.		Yes
	30	The budget, annual accounts and reports approved by the Council shall be sent to the Government and the Chamber of Deputies. The Government in Cabinet shall decide whether the Central Bank bodies be granted discharge. Such a decision is taken without prejudice to the provisions of Article 5 (2) and without calling into question the obligations of the Central Bank within the framework of the ESCB. The decision granting discharge to the bodies of the Central Bank shall be published together with the Central Bank's annual accounts in the Mémorial (Official Gazette).	Yes	Yes
Malta	21(2)	The Bank shall, as soon as may be but not later than three months after the close of each financial year of the Bank, transmit to the Minister - (a) a copy of the annual accounts certified by the auditors, (b) a statement of the Bank's investments; and (c) a report on its operations during that year, and shall publish the report referred to in paragraph (c).	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
	21(3)	The Minister shall, as soon as may be and, in respect of the requirement of paragraph (a) of this sub-article, not later than the first sitting of the House of Representatives after the seventh day of April - (a) cause a copy of the annual accounts, of the statement and of the report aforesaid to be laid before the House of Representatives; and (b) cause a copy of the annual accounts of the Bank to be published in the Gazette.	Yes	Yes
	25	The Bank shall advise the Government generally on financial and economic matters	Yes	
	29	The Bank shall keep the Minister informed of the policy of the Bank: Provided that: (a) this does not result in interference with the independence of the members of the Bank's decision making bodies; (b) the special status of the Governor in his capacity as member of the Governing Council and General Council of the European Central Bank is fully respected; and (c) confidentiality requirements resulting from the Statute are observed	Yes	
The Netherlands	14(1) 12(1) Articles of Association	On behalf of Our Minister, the person appointed to the Supervisory Board pursuant to the provisions of section 13(2) may, at the request of Our Minister or on his own initiative, and with due observance of Article 107 of the Treaty, obtain from the Governing Board of the Bank data and information about the manner in which the Bank performs its tasks. At the request of Our Minister or on his own initiative, and with due observance of Article 107(1) of the Treaty, he may communicate his findings to Our Minister.	Yes	
	14(2) 12(2) Articles of Association	The Governing Board of the Bank shall be obliged at all times to provide the person referred to in subsection (1) at his request with all such data and information as he may deem necessary for	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
	Association	the proper performance of his task as referred to in subsection (1), with the exception of data and information which, pursuant to the Treaty or the statutory regulations referred to in section 4, are secret.		
	18(1)	Our Minister is authorized, with due observance of Article 107 of the Treaty, to request the Bank to provide such data or information, in connection with the tasks and activities performed in order to achieve the objective referred to in section 2(1), as he deems necessary for the purpose of determining the Government's financial and economic policy.	Yes	
	18(2)	The Bank is obliged, with due observance of Articles 10.4 and 38 of the Statute of the European System of Central Banks, to provide Our Minister with the data and information referred to in subsection (1).	Yes	
	19	With regard to the tasks and activities performed in order to achieve the objective referred to in section 2(1), the President of the Bank may, with due observance of Article 107(1) of the Treaty and Articles 10.4 and 38 of the Statute of the European System of Central Banks, be heard by the First or the Second Chamber of Parliament at their request		Yes
Poland	21	In performing its tasks, the NBP shall collaborate with the competent State bodies in developing and implementing national economic policy, in so doing striving to ensure the proper performance of monetary policy guidelines, and in particular shall: 1) submit the monetary policy guidelines as well as reports on the performance of monetary policy and on the situation within the banking system to State bodies, 2) collaborate with the Minister of Finance in developing financial plans of the State, 3) present its opinion on draft legislation relating to economic policy, 4) present its opinion on draft legislation concerning the activity	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		of banks and having significance to the banking system.		
	22(1)	The President of the NBP may attend the sessions of the Sejm.		Yes
	22(2)	The President of the NBP and other representatives of NBP bodies referred to in Article 6 are required to submit information and provide explanations on monetary policies and activity of the NBP to the Sejm and the Senate, as well as to their commissions.		
	23(1)	Acting on behalf of the Council, the President of the NBP shall: 1) submit to the Sejm and Council of Ministers: a) quarterly reports on the balance of payments, b) annual survey of the international investment position, 2) forward to the Council of Ministers and Minister of Finance draft monetary policy guidelines, opinions on the draft law on budget, balance of payments forecasts and the rulings of the Council, 3) draw up periodic reports on transfers of (payments from) profit.	Yes	Yes
	70	Within five months after the end of the budget year, the President of the NBP shall submit the annual report on the activity of the NBP to the Sejm.		Yes
Portugal	54(1)	Not later than March 31, the Bank shall submit the annual report, balance sheet, and accounts referred to the last day of the previous year for the Finance Minister's approval, after discussion and appraisal thereof by the Board of Directors, with the opinion of the Board of Auditors.	Yes	
	54(2)	Unless a decision to the contrary is given by the Finance Minister, the report, balance sheet, and accounts shall be considered approved thirty days after the date of their receipt.		
	54(4)	After the presentation of the report, balance sheet and annual accounts, the Governor shall inform the Parliament, through the Standing Committee on Economy, Finance and Planning, on the monetary and exchange rate policy stance and guidelines.		Yes
Romania	3(2)	Any draft legal act adopted by the central public authorities on	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		matters related to Banca Națională a României tasks shall be adopted after previously having sought the Banca Națională a României's opinion. The opinion shall be submitted within 30 days at most from the date on which it was sought.		
	3(3)	Banca Națională a României shall cooperate with the Ministry of Public Finance in setting the macroeconomic indicators based on which the annual draft budget shall be drawn up.	Yes	
	35(4)	On behalf of the Board, the Governor shall submit to the Parliament until 30 June of the following year Banca Națională a României's annual report on Banca Națională a României's activities, the annual financial statements and the auditor's report, subject to debate, but not voted, in the joint session of the two Chambers of Parliament.		Yes
Slovakia	12(2)	The Governor or a member of the Bank Board delegated by the Governor shall inform the Government of the conclusions from meetings of the Bank Board and on the adopted decisions.	Yes	
	13(1)	The National Bank of Slovakia shall take position on such proposals submitted for consideration to the Government that concern the scope of authority of the National Bank of Slovakia, and which have not been submitted by the National Bank of Slovakia; this shall be without prejudice to the duty to consult the European Central Bank in matters of its competence under a separate legal provision.	Yes	
	13(2)	The National Bank of Slovakia shall perform advisory functions vis-à-vis the Government in areas falling within the scope of its authority.	Yes	
	13(3)	The Governor of the National Bank of Slovakia or, during his absence, a Vice- Governor delegated by him, shall have the right to participate in meetings of the Government	Yes	
Slovenia	26(1)	Notwithstanding other laws, Banka Slovenije shall report on its work exclusively to the National Assembly of the Republic of Slovenia. Banka Slovenije shall report on its work at least bi-annually.		Yes

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
	27	Banka Slovenije and the ministry in charge of finance shall by virtue of an agreement set out the type, scope, conditions and manner of conducting of operations that Banka Slovenije performs for the Republic of Slovenia on the basis of points 3, 4 and 7 of Article 12(1) of this Act.	Yes	
	49(6)	Banka Slovenije shall notify the National Assembly of the annual accounts and financial plan. The annual financial statements are an integral part of the annual report and shall be published.		Yes
Spain	10(1)	The Bank shall regularly inform Parliament and the government of the objectives and the implementation of monetary policy, without prejudice to the terms of article 107 of the Treaty (11) and the ECB rules on professional secrecy. To this end, the Governor of the Bank may be asked to appear, in accordance with Parliamentary regulations, before any Congress or Senate committee or joint committee of both chambers, or be asked to attend for this purpose cabinet meetings or meetings of its Commission for Economic Affairs.	Yes	Yes
	10(2)	In addition, the Governor of the Bank may be asked to attend the meetings of the «Consejo de Política Fiscal y Financiera de las Comunidades Autónomas» referred to in article 3 of Organic Law 8/1980, of September 22, on Financing of Comunidades Autónomas and to report on issues within the scope of the Bank's authority, with a view to facilitating the tasks of financial coordination of the above-mentioned Consejo.		
Sweden	Chapter 1 Article 1	The Riksbank (the Swedish Central Bank), which pursuant to Chapter 9, Article 13 of the Instrument of Government is the country's central bank and a public authority under the Riksdag (the Swedish Parliament), may only conduct, or participate in, such activities for which it has been authorised by Swedish law.		Yes
	Chapter 4 Article 1	If the Riksbank's activities give rise to a question of statutory amendment or any other governmental measure, the General Council or the Executive Board may within their respective area	Yes	Yes

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		of competence make a proposal concerning the matter to the Riksdag, in accordance with the supplementary rule 3.8.3 in the Riksdag Act or to the Government. Before making a proposal to the Riksdag or the Government, the General Council and the Executive Board shall consult one another.		
	Chapter 4 Article 2	Communications issued by the General Council or the Executive Board to the Riksdag or the Government must include information detailing the members who have taken part in the decision and the person who has submitted the facts of the matter. If a dissenting vote is given in the matter, this shall be indicated in the communication or be evident from an appended extract from the minutes of the meeting.	Yes	Yes
	Chapter 6 Article 3	Prior to the Riksbank making a monetary policy decision of major importance, the minister appointed by the Government shall be informed.	Yes	
	Chapter 6 Article 4	The Riksbank shall submit a written report on monetary policy to the Riksdag Committee on Finance at least twice a year. The Riksbank shall make public statistical data concerning foreign exchange and credit conditions on a continual basis.		Yes
	Chapter 10 Article 3	The Riksbank is required to keep accounts. This requirement shall be met in accordance with generally accepted accounting principles. In addition, the European Central Bank's guidelines on the legal framework for accounting and financial reporting within the European System of Central Banks shall be applied. Each year, before 15 February, the Executive Board shall submit an Annual Report of the Riksbank's activities during the preceding accounting year to the Riksdag, the Swedish National Audit Office and the General Council. The General Council shall make proposals to the Riksdag and the Swedish National Audit Office on the allocation of the profit of the Riksbank. The Annual Report shall comprise a Profit and Loss Account, a Balance Sheet, a Directors' Report and an account of foreign		Yes

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		exchange and monetary policies and on how the Riksbank has promoted a safe and efficient payments system.		
	Chapter 10 Article 4	The Riksbank's Profit and Loss Account and Balance Sheet are approved by the Riksdag, which also determines the allocation of the Riksbank's profit. If the value of the reserve fund has declined to less than SEK 500 million, at least ten per cent of the profit for the year shall be allocated to the reserve fund until it has retained a level of this amount. The Riksdag determines whether the General Council shall be discharged from liability for its activities and the Executive Board for its management of the Riksbank. Discharge from liability may only be denied if there are reasons to make claims of financial liability against a member of the General Council or the Executive Board, or if the member should be prosecuted for criminal actions in connection with his assignment or employment.		Yes
	Chapter 10 Article 5	The Riksbank shall annually report to the Riksdag what measures the Bank has taken in view of the Swedish National Audit Office's observations.		Yes
The United Kingdom	4(1)	As soon as practicable after the end of each of its financial years, the Bank shall make to the Chancellor of the Exchequer a report on its activities in that year.	Yes	
	4(2)	A report under this section shall, in particular, contain – (a) a report by the directors of the Bank on the matters for which the sub-committee constituted by section 3 is responsible, and (b) a copy of the statement for the year prepared under section 7(2) and the report of the Bank's auditors on it.	Yes	
	4(3)	The report mentioned in subsection (2)(a) shall, in particular, include a review of the Bank's performance in relation to its objectives and strategy, as determined by the court of directors of the Bank, in the financial year to which the report under this section relates.	Yes	
	4(4)	A report under this section shall also contain –	Yes	

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		(a) a statement of the rate or rates at which directors of the Bank have been remunerated in the financial year to which the report relates, and (b) a statement of the Bank's objectives and strategy, as determined by the court of directors of the Bank, for the financial year in which the report is made.		
	4(5)	The Bank shall publish every report under this section in such manner as it thinks appropriate.	Yes	
	4(6)	The Chancellor of the Exchequer shall lay copies of every report under this section before Parliament.		Yes
	12(1)	The Treasury may by notice in writing to the Bank specify for the purposes of section 11 – (a) what price stability is to be taken to consist of, or (b) what the economic policy of Her Majesty's Government is to be taken to be.	Yes	
	12(2)	The Treasury shall specify under subsection (1) both of the matters mentioned there – (a) before the end of the period of 7 days beginning with the day on which this Act comes into force, and (b) at least once in every period of 12 months beginning on the anniversary of the day on which this Act comes into force.		
	12(3)	Where the Treasury give notice under this section they shall – (a) publish the notice in such manner as they think fit, and (b) lay a copy of it before Parliament		Yes
	19	(1) The Treasury, after consultation with the Governor of the Bank, may by order give the Bank directions with respect to monetary policy if they are satisfied that the directions are required in the public interest and by extreme economic circumstances.	Yes	
	19(2)	An order under this section may include such consequential modifications of the provisions of this Part relating to the Monetary Policy Committee as the Treasury think fit.	Yes	
	19(3)	A statutory instrument containing an order under this section		Yes

Member State	Article	Text	Accountability to the executive	Accountability to the parliament
		shall be laid before Parliament after being made.		
	19(4)	Unless an order under this section is approved by resolution of each House of Parliament before the end of the period of 28 days beginning with the day on which it is made, it shall cease to have effect at the end of that period.		
	19(5)	In reckoning the period of 28 days for the purposes of subsection (4), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.		
	19(6)	An order under this section which does not cease to have effect before the end of the period of 3 months beginning with the day on which it is made shall cease to have effect at the end of that period.		
	19(7)	While an order under this section has effect, section 11 shall not have effect.		

Table 3-18 Transparency

Member State	Article	Text
Austria	N/A	
Belgium	N/A	
Bulgaria	49(1)	The Bulgarian National Bank shall: 1. publish weekly the balance sheet of the Issue Department, which shall show the position of its basic assets and liabilities, inclusive of the gross international reserves as per Article 28, para. 3 and the total amount of the Bank's monetary liabilities as per Article 28, para. 2; 2. publish in the Darjaven Vestnik the position of its basic assets and liabilities at the end of each month, presenting separate balance sheets of the Issue and Banking Departments, an annual financial statement and the profit and loss account of the Bank.
Cyprus	43	All measures of general application prescribed by the Bank under the provisions of sections 40 and 41, shall be duly published and announced with their effective dates, in such manner as the Bank may determine and any directives, issued under these provisions, shall be published in the Official Gazette of the Republic.
	57(3)	The Bank shall prepare and publish, by the end of each month a summary balance sheet of the Bank as at the end of the preceding month.
	61	The Board shall prepare and publish an annual report for the activities of the Bank in each financial year, which shall include the annual financial statements of the Bank.
The Czech Republic	48(4)	The Czech National Bank shall publish an annual report containing basic information on monetary development.
	48(5)	The Czech National Bank shall produce and publish every ten days a report on its financial position
	49b(6)	The Czech National Bank shall issue official information documents of the Czech National Bank, in which it shall provide information, for example, on the Bank Board's interest rate decisions, interpretative opinions of the Czech National Bank, the conditions for the transactions of the Czech National Bank and facts important to persons operating on the financial market. The official information documents shall be signed by a Bank Board member and issued in the Bulletin.
	49b(7)	The Bulletin shall be issued in sequentially numbered Volumes marked with serial numbers, with the series terminating at the end of each calendar year.
	49b(8)	The Czech National Bank shall publish a copy of the Bulletin in a manner enabling remote access. However, this copy shall not be deemed the Bulletin under paragraph 3 and it shall not be possible to refer to its wording in administrative or other proceedings.
Denmark	N/A	
Estonia	2(8)	Eesti Pank shall compile the balance of payments of Estonia. In order to perform its functions, Eesti Pank shall collect information to compile and publish monetary, financial and balance of payments statistics on the bases and pursuant to the procedure provided for in the Official Statistics Act
	New 2(7)	The functions of Eesti Pank are: to collect and publish statistics necessary for the performance of its functions
	9(9)	Decisions of the Supervisory Board of Eesti Pank which are of a regulatory nature shall be published in the Riigi Teataja.
	11(6)	The regulations of the Governor of Eesti Pank shall be published in the Riigi Teataja
	21(5)	Eesti Pank shall periodically publish information concerning its

Member State	Article	Text
		activities and the economy of Estonia and the European Union
	31(4)	The annual report shall be published in the Riigi Teataja and in Eesti Pank's Yearbook
Finland	19(2)	The Bank of Finland's annual accounts, which comprise the balance sheet, profit and loss account, notes to the financial statements and the annual report, shall be drawn up by the end of February and published by the end of April.
	19(4)	The Bank's balance sheet shall be published monthly during the financial year.
France	N/A	
Germany	18	In order to fulfil its tasks, the Deutsche Bundesbank shall be entitled to order and collect statistics in the fields of banking and the monetary system from all credit institutions, investment management companies and investment stock corporations. Sections 9, 15 and 16 of the Federal Statistics Act (Bundesstatistikgesetz) shall apply as appropriate. The Deutsche Bundesbank may publish these statistics for general purposes. Data relating to individual persons or institutions may not be disclosed in such publications. Persons entitled to information under section 13 (1) above may be supplied with data on individual persons or institutions only if, and insofar as, this is provided for in the order under which the statistics are collected.
	33	The Deutsche Bundesbank shall publish announcements intended for the general public, particularly the recall of banknotes and the ordering of statistics, in the Federal Gazette.
Greece	52	The Bank shall draw up a statement of its assets and liabilities as at the last day of each month, and shall publish it not later than a week
	53	The Bank shall also publish, annually, and not later than one month prior to the date of the Annual General Meeting of Shareholders, its balance sheet and profit and loss account as at December 31st of the preceding year
	54	The Bank shall publish said statements, balance sheet, profit and loss account, and other notifications in the Government Gazette and in such newspapers as the General Council may decide. A copy of all statements of accounts and notifications and of the annual report shall be sent to the Minister of Finance.
Hungary	4(6)	The MNB shall collect and publish the statistical information required for carrying out its tasks.
	11(1)	The MNB shall quote and publish official exchange rates for the conversion of foreign currencies into forints and for the conversion of forints into foreign currencies.
	12	The MNB shall establish the central bank base rate as the key interest rate. The MNB shall publish the central bank base rate in the Official Gazette.
	28(2)	The MNB shall publish all important information related to the operation of the credit institution system and to the financial situation of the country, and shall regularly provide detailed data on such information to the Parliament, the Government and the ministries (bodies of central state administration).
	41(1)	The MNB shall prepare and publish a report on monetary developments and other important issues related to its basic tasks, at least on a quarterly basis. The MNB shall publish an announcement regarding the method and frequency of providing such information.
Ireland	5A(1)(g)	The Bank has the following functions: to provide for the collection and study of data that deal with monetary and credit problems and to publish information about

Member State	Article	Text
		that data;
	33D(3)	Guidelines issued by the Governor or the Board under this section shall be in writing and the Governor or the Board, as the case may be, shall cause them to be published in Iris Oifigiúil as soon as practicable after they are issued.
Italy	N/A	
Latvia	15	The Bank of Latvia shall publish monthly and annual balance sheets in accordance with the standards used by the world's central banks.
	38(2)	The mandatory reserve requirement shall be set by the Council of the Bank of Latvia, and shall be published in the press. Amendments to the reserve requirement shall take effect within the deadline established by the Bank of Latvia, however not earlier than three days after they have been published in the press.
	42	Regulations and regulatory directives on the requirements regulating the activities of credit institutions, procedures for calculating credit institution performance indicators and preparing commercial companies business reports approved by the Bank of Latvia shall be published in the government journal "Latvijas Vestnesis" and shall take effect on the day after publication unless a different term for their becoming effective has been established.
	43(2)	The audit commission, whose members are approved by the State Auditors' Office of the Republic of Latvia, shall audit the economic activity and documents of the Bank of Latvia. After the audit results have been reviewed, the Council of the Bank of Latvia shall approve the Bank's annual report, and the report, together with the annual balance sheet, shall be published for the public knowledge.
Lithuania	51	The Bank of Lithuania shall make its annual report public and issue it as a separate publication. The annual report shall provide information on basic tasks regarding monetary policy and their implementation, monetary policy operations, activities while supervising credit institutions and discharging other functions established by laws, as well as information on the national macroeconomic situation, such as analysis of the developments in the national economy and financial markets, and on the financial position of the Bank and the results of its activities.
	55	The Bank of Lithuania shall at least once a month issue information bulletins on the situation in the money and financial markets
	new 55	The Bank of Lithuania shall at least once a month publish statistical and other information.
Luxembourg	30	The budget, annual accounts and reports approved by the Council shall be sent to the Government and the Chamber of Deputies. The Government in Cabinet shall decide whether the Central Bank bodies be granted discharge. Such a decision is taken without prejudice to the provisions of Article 5 (2) and without calling into question the obligations of the Central Bank within the framework of the ESCB. The decision granting discharge to the bodies of the Central Bank shall be published together with the Central Bank's annual accounts in the Mémorial (Official Gazette).
	32(3)	The Central Bank is, however, authorised to publish the statistics that it has compiled provided that the publication neither contains nor permits the inference of individual data and that it complies with the provisions of professional secrecy applicable to the ESCB
Malta	5(1)(h)	In accordance with the Treaty and the Statute, the tasks of the Bank shall include the following:

Member State	Article	Text
		to compile and publish statistics as may be necessary to carry out its tasks
	21(2)	The Bank shall, as soon as may be but not later than three months after the close of each financial year of the Bank, transmit to the Minister - (a) a copy of the annual accounts certified by the auditors, (b) a statement of the Bank's investments; and (c) a report on its operations during that year, and shall publish the report referred to in paragraph (c).
	21(3)	The Minister shall, as soon as may be and, in respect of the requirement of paragraph (a) of this sub-article, not later than the first sitting of the House of Representatives after the seventh day of April - (a) cause a copy of the annual accounts, of the statement and of the report aforesaid to be laid before the House of Representatives; and (b) cause a copy of the annual accounts of the Bank to be published in the Gazette.
	21(4)	The Bank shall, as soon as may be after the last working day of each month, make up and publish a return of its assets and liabilities as at the close of business on that day. A copy of the return shall be transmitted to the Minister who shall cause it to be published in the Gazette.
	24(3)	When it deems it necessary in the carrying out of its functions under this Act, the Bank shall prepare and publish statements, consolidating and, or, aggregating statistical information so furnished under this article and, where necessary, under article 36(1).
The Netherlands	N/A	
Poland	53	The monetary policy guidelines, the report on the performance of monetary policy guidelines and normative acts issued by the NBP bodies and Commission – with the exception of those referred to in Art. 54, para. 1 subpara. 1 and para. 2 – shall be published in the Official Gazette of the Republic of Poland “Monitor Polski”
	54(1)	The President of the NBP shall publish the Official Gazette of Narodowy Bank Polski [Dziennik Urzędowy Narodowego Banku Polskiego], in which the following shall be published: 1) acts of the NBP bodies and Commission concerning the functioning of banks, 2) balance sheet and profit and loss account of the NBP, 3) announcements regarding the establishment, liquidation and bankruptcy of banks, as well as the takeover of a bank by another bank.
	54(2)	The President of the NBP may also order the publication of legal acts and announcements different from those referred to in para. 1 above.
	54a(1)	The title and graphic design of the first page of the Official Gazette of Narodowy Bank Polski may not be used by entities other than the NBP for profit-gaining purposes in publications, editions or other forms of dissemination of legal acts.
	54a(2)	The provisions of Article 3, Article 4, Article 6, Article 7, Articles 15-20 and Article 27 of the Act of July 20, 2000 on publication of normative acts and some other legal acts (Dz. U. no. 62, item 718, as amended) shall apply accordingly to the publication of the Official Gazette of Narodowy Bank Polski and the publication of legal acts therein.
	59	The NBP may initiate and organise academic research, as well as undertake publishing and promotional activity.

Member State	Article	Text
Portugal	54(3)	The report, balance sheet, and accounts shall be published in the Official Gazette within thirty days after their approval.
	55	The Bank shall publish monthly and in accordance with the provisions laid down in subparagraph b) of paragraph 3 of Article 59 a synopsis of its assets and liabilities.
Romania	3(4)	Banca Națională a României shall draw up, for its own needs, surveys and research studies on money, exchange rate, credit, as well as operations of the payment systems and credit institutions.
	36(2)	The financial auditor's report and opinion shall be submitted to Banca Națională a României's Board and shall be published along with the annual financial statements.
	46	Subsequent to their adoption by the Board, Banca Națională a României's audited annual financial statements shall be published in Monitorul Oficial al României, along with the financial auditor's report.
	56(1)	All the regulations adopted by Banca Națională a României shall be published in Part One of Monitorul Oficial al României.
	56(2)	Banca Națională a României shall keep a public register comprising its regulations published in Part One of Monitorul Oficial al României.
	56(3)	The objective of communication is to provide the general public, the domestic and international business communities, public administration and the academic community, with a clear image of the policies and the measures adopted by Banca Națională a României in fulfilling its tasks.
	56(4)	Banca Națională a României shall publish periodically the annual report, reports on Romania's balance of payments and international investment position, inflation report, bulletins and press releases concerning money and credit developments, studies and other papers supplying information to the general public.
Slovakia	3(1)	The National Bank of Slovakia shall publish information and reports of the European Central Bank on the activities of the European System of Central Banks and on the common European monetary policy, and in doing so it shall proceed in accordance with the rules applicable to the European System of Central Banks.
	3(2)	The National Bank of Slovakia shall submit and publish reports on the condition and development of the financial market in accordance with a separate legal provision.
	8(4)	Bank Board meetings shall not be open to the public. Apart from its members, Bank Board meetings may be attended by a Government member authorized by the Government, persons designated in the Bank Board's rules of procedure, and other persons invited by the Bank Board. The Bank Board may decide to publish the conclusions and materials from its meetings; however, information about approved documents of meetings of the Bank Board or other body of the National Bank of Slovakia shall be published as required by this Law.
	17h(1)	The National Bank of Slovakia shall publish the denominations, appearance, technical parameters, principal security features, and other particulars of euro banknotes and euro coins issued and intended for circulation in the euro area and in participating third countries, including the appearance of all the national sides of euro coins and commemorative euro coins, as well as the denominations, appearance, technical parameters and other particulars of collector euro coins issued by the National Bank of Slovakia; this shall be done in the scope necessary to inform the general public in the Slovak Republic about euro banknotes and euro coins and to create the conditions for distinguishing

Member State	Article	Text
		authentic euro banknotes and authentic euro coins from other similar objects, in particular, counterfeit banknotes and coins and from reproduction banknotes and coins. Such public notices on euro banknotes and euro coins shall be published by the National Bank of Slovakia under a separate legal provision in the Gazette of the National Bank of Slovakia (Article 44) and on the internet site of the National Bank of Slovakia.
	28(2)	The National Bank of Slovakia may set and publish the foreign exchange reference rates of the euro to foreign currencies which are actively traded or otherwise used in the Slovak Republic and whose foreign exchange reference rates are not set and published by the European Central Bank.
	38(3)	The National Bank of Slovakia shall prepare and publish its annual reports in accordance with the separate legal provisions applicable to the Eurosystem
	38(4)	The National Bank of Slovakia shall process and provide for publication the balance sheet of the assets and liabilities of the National Bank of Slovakia
	44	The National Bank of Slovakia shall issue the Gazette of National Bank of Slovakia [Vestník Národnej banky Slovenska](hereinafter referred to as „Gazette“), in which it shall publish in particular: a) decrees of the National Bank of Slovakia issued to implement this Law or a separate law, which are promulgated in the Collection of Laws; b) decisions of the Bank Board on setting for each calendar year the amount of the annual contributions of supervised entities of the financial market, c) the pronouncement of an enforceable decision or the substantiation of a decision of the National Bank of Slovakia or of their part, if they are determined for publication in the Gazette pursuant to this Law or a separate law; d) methodical instructions and recommendations explaining the application of this Law, separate laws ¹⁾ and other generally binding regulations relating to supervised entities or to their activities, if they are determined for publication in the Gazette; e) other matters of fact stipulated in a separate legal provision; f) other important notifications of the National Bank of Slovakia.
Slovenia	34	Banka Slovenije shall publish general legal acts adopted by the Governing Board of Banka Slovenije in the Official Gazette of the Republic of Slovenia.
	49(6)	Banka Slovenije shall notify the National Assembly of the annual accounts and financial plan. The annual financial statements are an integral part of the annual report and shall be published.
Spain	3(2)	Both types of regulations shall be published in the «Boletín Oficial del Estado» and will enter into force as determined in the first point of article 2 of the Civil Code. Previously, the Bank should request any technical and legal reports needed from its internal services, and any other reports or advice that it deems necessary. The terms of article 24 of Law 50/1997, of November 27, will not be applicable, although in the case of the «Circulares» the affected parties should receive a hearing. Any regulations adopted by the Bank may be appealed directly to the «Sala de lo Contencioso administrativo » of the «Audiencia Nacional».
	5f	Compile and publish statistics related to its functions and assist the ECB in the compilation of the statistical information needed for the fulfilment of the ESCB's functions
Sweden	Chapter 6	The Riksbank shall submit a written report on monetary policy to

Member State	Article	Text
	Article 4	the Riksdag Committee on Finance at least twice a year. The Riksbank shall make public statistical data concerning foreign exchange and credit conditions on a continual basis.
The United Kingdom	14	<p>(1) As soon as practicable after each meeting of the Monetary Policy Committee, the Bank shall publish a statement as to whether it was decided at the meeting that the Bank should take any action, other than action by way of intervening in financial markets, for the purpose of meeting its objectives under section 11 and, if it was, what the action is.</p> <p>(2) If, at any meeting, the Committee decides that the Bank should intervene in financial markets, it shall also consider at the meeting whether immediate publication of the decision would be likely to impede or frustrate the achievement of the intervention's purpose.</p> <p>(3) If the Committee decides under subsection (2) that immediate publication of a decision would not have the effect mentioned there, the Bank shall, when it publishes a statement under subsection (1) about the meeting, publish a statement as to what action by way of intervening in financial markets the Committee has decided the Bank should take.</p> <p>(4) If the Committee decides under subsection (2) that immediate publication of a decision would have the effect mentioned there, it shall keep under consideration the question of whether publication of the decision would still have that effect.</p> <p>(5) As soon as practicable after the Committee has decided that publication of a decision which has not been the subject of a statement under subsection (3) would no longer have the effect mentioned in subsection (2), the Bank shall publish a statement as to what action by way of intervening in financial markets the Committee decided the Bank should take and when the decision was made.</p> <p>(6) Publication under this section shall be in such manner as the Bank thinks fit.</p>
	15	<p>(1) After each meeting of the Monetary Policy Committee, the Bank shall publish minutes of the meeting before the end of the period of 6 weeks beginning with the day of the meeting.</p> <p>(2) Subsection (1) shall not apply to minutes of any proceedings relating to –</p> <p>(a) a decision to intervene in financial markets, or</p> <p>(b) a decision about the publication of a decision to intervene in financial markets, unless the Committee has decided that publication of the decision to intervene would not be likely, or would no longer be likely, to impede or frustrate the achievement of the intervention's purpose.</p> <p>(3) Minutes of proceedings relating to –</p> <p>(a) a decision to intervene in financial markets, or</p> <p>(b) a decision about the publication of a decision to intervene in financial markets, shall, if not required to be published before the end of the period of 6 weeks beginning with the day of the meeting be published by the Bank before the end of the period of 6 weeks beginning with the day on which a statement about the decision to intervene is published under section 14(5).</p> <p>(4) Minutes published under this section shall record, in relation to any decision of the Committee, the voting preference of the members who took part in the vote on the decision.</p> <p>(5) Publication under this section shall be in such manner as the Bank thinks fit.</p>
	18	(1) The Bank shall prepare and publish reports in accordance with the provisions of this section.

Member State	Article	Text
		<p>(2) A report under this section shall contain –</p> <p>(a) a review of the monetary policy decisions published by the Bank in the period to which the report relates,</p> <p>(b) an assessment of the developments in inflation in the economy of the United Kingdom in the period to which the report relates, and</p> <p>(c) an indication of the expected approach to meeting the Bank’s objectives under section 11.</p> <p>(3) A report under this section shall relate to –</p> <p>(a) a period of 3 months, or</p> <p>(b) such other period as the Treasury and the Monetary Policy Committee may agree.</p> <p>(4) Periods to which reports under this section relate shall be successive, the first such period commencing on such day within the period of 3 months ending with the day on which this Act comes into force as the Treasury shall, after consultation with the Bank, specify in writing to it.</p> <p>(5) No report under this section shall be published without the approval of the Monetary Policy Committee.</p> <p>(6) A report under this section shall be published as soon as practicable after the end of the period to which it relates and in such manner as the Bank thinks fit.</p>

Table 3-19 Professional secrecy

Member State	Article	Text	Duration	Exceptions	Sanctions
Austria	45	The Oesterreichische Nationalbank, its shareholders, the members of its decision-making bodies, its employees, other persons acting for the Oesterreichische Nationalbank as well as the State Commissioner and his deputy shall be obliged to observe confidentiality with regard to all confidential facts which become known to them as a direct consequence of their service or function. This shall apply unless information about such facts is to be provided as a consequence of an obligation to provide information within the framework of the ESCB or as a consequence of the existence of circumstances as set out in Article 38 paragraph 2 of the Bankwesengesetz (Banking Act) BGBl. No. 532/1993. This confidentiality obligation shall continue to exist after the transfer of shares, after leaving office in one of the decision-making bodies of the OeNB, after the end of an employment relationship with the Oesterreichische Nationalbank or after the end of any other service or function.	Indefinite	ESCB exchange, statutory grounds	
Belgium	35; 56 Articles of Association	Except when called upon to give evidence in court in a criminal case, members of the Bank's organs and members of its staff shall be subject to professional secrecy and may not divulge : 1° to any person or authority whatsoever not qualified to have knowledge thereof, the confidential information which has to be communicated to the Bank by virtue of statutory provisions or regulations, or similar information received from foreign authorities; 2° to any person or authority whatsoever, the confidential information which is communicated to the Bank by the European Monetary Institute, the ECB, other central banks or monetary institutions, other public authorities entrusted with the oversight of payment systems as well as Belgian or foreign authorities responsible for the supervision of credit institutions,		Criminal proceedings, statutory grounds	

Member State	Article	Text	Duration	Exceptions	Sanctions
		<p>investment firms, undertakings for collective investment in transferable securities, insurance companies and financial markets.</p> <p>The members of the Bank's organs and its members of staff shall be exempt from the obligation contained in Article 29 of the Code of Criminal Procedure if the information received by the Bank originates from authorities or institutions which are themselves not subject to or exempt from this obligation.</p> <p>Paragraph 1 shall not preclude the communication of such information :</p> <ol style="list-style-type: none"> 1. to the European Monetary Institute, the ECB, other central banks or monetary institutions when such communication is necessary for their function as monetary authorities, including the oversight of payment systems; 2. to the authorities responsible for supervising credit institutions, investment firms, undertakings for collective investment in transferable securities and insurance enterprises when such information is necessary for their supervisory function; 3. to the authorities responsible for supervising financial markets when such information is necessary to take a decision concerning the application of sanctions to participants on the market in question; 4. to other public authorities charged with the oversight of payment systems, in so far as the recipients of the information are subject to an equivalent obligation to maintain professional secrecy <p>Contraventions of this article shall incur the penalties laid down by Article 458 of the Penal Code.</p> <p>The provisions of Book I of the Penal Code, including Chapter VII and Article 85, shall be applicable to contraventions of this article. The first and the second paragraph do not at all prevent the observance, by the members of the bodies of the Bank and its staff, of more restrictive provisions as to professional</p>			

Member State	Article	Text	Duration	Exceptions	Sanctions
		secrecy when the Bank, pursuant to article 12, is charged with collecting statistical information.			
Bulgaria	4(2)	The Bulgarian National Bank shall not disclose or pass to third parties any information obtained which is of confidential bank or commercial nature for banks and the other participants in the money turnover and credit relations, except in the cases provided for by the Law on Protection of Classified Information.			
	13(1)	Upon entering into office, the Governor, the Deputy Governors and the other three members of the Governing Council shall swear to abide by the law, to contribute to the performance of the tasks entrusted to the BNB, and to keep confidential all official, banking, commercial and other secrets protected by law, even after their duties have ceased.			
	23(1)	Official (<i>служебна</i>) secrecy means: the information relating to preparations for the production of Bulgarian banknotes and coins; the technical parameters of the sensors for reading the security features of Bulgarian banknotes and coins; the physical protection systems and information security management systems of the BNB and its subsidiaries; the information relating to the transport and protection of valuables; as well as other facts and circumstances, the unauthorised access to which might adversely affect the interests of the state or another interests protected by law, specified by the BNB's Governor pursuant to Article 26, para. 3 of the Law on Protection of Classified Information.			
	23(2)	The employees of the Bulgarian National Bank shall observe secrecy concerning negotiations, deals contracted, the amount of assets on customers' deposits and their operations, the information received by the Bank, as well as any circumstances concerning the Bank's and its customers' activities which constitute professional, bank or commercial secrecy even after termination of their labour contract	Indefinite		
Cyprus	25(1)	Any director and employee of the Bank shall be bound to	Indefinite	Criminal	

Member State	Article	Text	Duration	Exceptions	Sanctions
		<p>professional secrecy even after they cease to exercise their duties, and shall, for the purposes of the Criminal Code, from time to time in force be deemed to be employed in the public service and the provisions of the Public Officers Protection Law shall apply to them as if they were public officers:</p> <p>Provided that, persons who were members of the Monetary Policy Committee, which was established by and operated under the Central Bank of Cyprus Law of 2002, shall continue to have the obligation to maintain professional secrecy even after the termination of their employment and/or the Committee has been abolished</p>		proceedings	
	25(2)	<p>(a) Secrecy shall not apply against a Court of the Republic, Commission of Inquiry appointed and acting under the Commission of Inquiry Law, penal investigator carrying out an investigation under article 4 of the Criminal Procedure Law, the Unit for Combating Money Laundering under the Prevention and Suppression of Money Laundering Activities Law and Parliamentary Committee under the Submission of Data and Information to the House of Representatives and the Parliamentary Committees Law, provided that this section shall not be interpreted as adding any powers.</p> <p>(b) The obligation to maintain professional secrecy shall not apply to the provision of information to the European Central Bank in compliance with the provisions of the Treaty or the Statute.</p>		ESCB exchange	
The Czech Republic	49	All banking operations of the Czech National Bank, including balances on the accounts it keeps, shall be subject to banking secrecy.			
	50(1)	The staff of the Czech National Bank shall maintain confidentiality in the performance of their duties. This obligation shall remain in effect even after the termination of their employment or any similar relation to the Czech National Bank. The obligation of confidentiality in matters encountered	Indefinite		

Member State	Article	Text	Duration	Exceptions	Sanctions
		in the performance of their duties shall also apply to the members of advisory bodies and to auditors.			
	50(2)	The staff of the Czech National Bank and the members of advisory bodies may be exempted from this obligation by the Governor on the grounds of the public interest.		Public interest	
Denmark	15 By-laws	A member of the Board of Directors or the Committee of Directors shall have no vote in cases concerning agreements between the Bank and such member or relating to actions brought against such member nor in case of agreements with or actions brought against third party in so far as such member has a considerable interest therein, which may be in conflict with that of the Bank. The Directors are under the obligation to keep secret what they learn through their work in the Bank. A Governor shall not make nor take part in decisions which concern himself in a similar manner.	During office		
Estonia	21(1)	Eesti Pank shall ensure the confidentiality of information which contains banking secrets.			
	21(1 ¹)	Eesti Pank classifies information the disclosure of which would damage price stability or financial stability and information to which restrictions on access are established by the European System of Central Banks as information intended for internal use.		ESCB exchange	
	35(1)	Members of the Supervisory Board of Eesti Pank and persons employed by Eesti Pank are required to maintain the confidentiality of information pertaining to Eesti Pank, all credit institutions and other legal persons if the disclosure of such information could result in damage to the Estonian economy or to the economic interests of credit institutions or their clients.			
	35(2)	The obligation to maintain confidentiality applies to information which has become known to employees of Eesti Pank solely in connection with their employment at Eesti Pank. The obligation to maintain confidentiality applies even after the	Indefinite		

Member State	Article	Text	Duration	Exceptions	Sanctions
		persons have left the employment of Eesti Pank.			
	35(3)	If a professional secret is disclosed, the persons at fault shall be punished under disciplinary or criminal procedure pursuant to law.			Disciplinary or criminal sanctions
Finland	26(1)	Other provisions on the secrecy obligation notwithstanding, Suomen Pankki shall have the right to obtain from the authorities and credit and financial institutions and other financial market participants any notifications, reports and other information necessary for carrying out the Bank's statutory tasks.			
	26(2)	Provisions on the secrecy obligation notwithstanding, Suomen Pankki shall be obliged to provide information to the authority supervising the financial markets and information other than that obtained for statistical purposes to other authorities that are entitled under the law to obtain such information. Suomen Pankki shall be entitled to provide information obtained for statistical purposes to other authorities for statistical purposes, if such authorities are entitled under the law to obtain such information.		Statutory grounds	
	26(3)	Rights to obtain and provide information on the tasks of the European System of Central Banks are also laid down in the legislation of the European Community.		ESCB exchange	
	27	Suomen Pankki shall be obliged to provide any concerned committee of Parliament with all information that is necessary for the performance of the Committee's tasks.		Reporting to Parliament	
France	L 142-9	Banque de France staff shall be bound by professional secrecy.	During office		
Germany	32	All persons in the service of the Deutsche Bundesbank shall be pledged to secrecy about the affairs and facilities of the Bank, as well as its business operations. Without permission, they may not testify or make statements in or out of court about such matters of which they have become aware in the course of their work, even after they have left the service of the Bank. Where the interests of the Bank are involved, such permission shall be granted to members of the Executive Board by that Board, and	During office	Criminal proceedings upon permission	

Member State	Article	Text	Duration	Exceptions	Sanctions
		to other members of the Bank's staff by the President who may delegate this power to a member of the Executive Board, who may delegate it further; in respect of a court hearing, permission may be refused only if this is necessary for the good of the Federal Republic of Germany or in the public interest.			
Greece	35A(5)	Members of the Monetary Policy Council shall not disclose, even after their duties have ceased, any information acquired during the performance of their duties and which is covered by the obligation of professional secrecy.	Indefinite		
	38(2)	The Directors and employees of the Bank shall be pledged to secrecy with regard to all transactions and business of the Bank.			
	44(5)	With the exception of information provided to the General Meeting of Shareholders, the Auditors and their assistants shall preserve strict secrecy in regard to the affairs of the Bank.		Statutory grounds	
	48	No representative of the Government shall have access to the books of either the Head Office, or the branches of the Bank, except in the case of the purposes of the preceding Article, where the Government Commissioner may require the Administration of the Bank to furnish him with whatever evidence may be necessary to enable him to form his opinions. The Government Commissioner shall observe strict secrecy in regard to the affairs of the Bank.			
	55C(1)	Without prejudice to the statistical reporting requirements of the European Central Bank under Article 5 of the Statute of the European System of Central Banks and complementary European Union legislation adopted in application thereof, credit and financial institutions, natural persons, legal entities of other market participants shall be required, without being entitled to invoke banking or other secrecy, to report to the Bank of Greece all the data and information in their possession, which are necessary for the performance of its tasks, in accordance with Article 2 thereof. ² The same requirement shall also apply to government departments and services		ESCB exchange	
	55C(4)	All individuals acting of having previously acted on behalf of	Indefinite		

Member State	Article	Text	Duration	Exceptions	Sanctions
		the Bank of Greece are forbidden to disclose to any natural person or legal entity and to any public authority the information or data reported in accordance with the above provisions, without prejudice to the exceptions stipulated by law. This prohibition shall not apply to the disclosure in aggregate form, of the above-mentioned information and data, provided that the identity of the entities or persons to which the data refer is not revealed			
	55C(5)	Persons acting of having previously acted on behalf of the Bank of Greece shall be penalised under Article 371 of the Penal Code if they violate the secrecy mentioned in the present paragraph. All other persons disclosing data submitted to the Bank of Greece shall be penalised under the same article, irrespective of how they may have acquired knowledge of these data.			Penal code
	55C(6)	In the event of non-compliance with the requirements of this Article, the Bank may, by virtue of an Act of its Governor or of an organ empowered by the Governor to that effect, impose on the persons referred to in the first sentence of the first paragraph of this Article, as well as on their legal representatives and managers, in the case of persons and entities subject to supervision by the Bank, the sanctions laid down in Article 55A, and, in the case of any other person required to report data, a fine in favour of the Greek State in an amount of up to GRD 100,000,000 (one hundred million drachmae) and, in case of repetition, up to 200,000,000 (two hundred million drachmae). These amounts may be adjusted by virtue of a similar Act			Penal code
	55C(7)	As from the adoption of the euro as the currency of Greece, the provisions of the present Article shall be applicable in the context of the tasks performed by the Bank under Article 14.4 of the ESCB Statute			Penal code
Hungary	54(1)	Employees of the MNB and members of the Supervisory Board shall be required not to disclose any state secrets, bank secrets,	Indefinite		

Member State	Article	Text	Duration	Exceptions	Sanctions
		payment secrets, securities secrets and business secrets of which they gain knowledge in the course of discharging their duties at the MNB. Such an obligation to maintain secrecy shall remain even after their duties have ceased.			
	54(2)	The provisions of the relevant laws shall be authoritative for the concepts of bank secrets, payment secrets, securities secrets and business secrets and for the obligation of maintaining such.			
Ireland	33AK(1)	<p>(a) This subsection applies to the following persons:</p> <p>(i) the Governor and every former Governor;</p> <p>(ii) every Director and every former Director;</p> <p>(iii) every member, member's deputy appointed under paragraph 4 of Schedule 3, former member and former member's deputy who had been so appointed, of the Regulatory Authority;</p> <p>(iv) the Chief Executive and every former Chief Executive;</p> <p>(v) the Consumer Director and every former Consumer Director;</p> <p>(vi) the Registrar of Credit Unions and every former Registrar of Credit Unions;</p> <p>(vii) every other officer or employee and every other former officer or employee of the Bank;</p> <p>(viii) every person who is or was formerly employed as a consultant, auditor or in any other capacity by the Bank or any constituent part of the Bank.</p> <p>(b) A person to whom this subsection applies shall not disclose confidential information concerning</p> <p>(i) the business of any person or body whether corporate or incorporate that has come to the person's knowledge through the person's office or employment with the Bank, or (ii) any matter arising in connection with the performance of the functions of the Bank or the exercise of its powers, if such disclosure is prohibited by the Rome Treaty, the ESCB Statute or the Supervisory Directives.</p>	Indefinite		
Italy	45	Persons referred to in Articles 42 and 44 shall observe the	During office		

Member State	Article	Text	Duration	Exceptions	Sanctions
		utmost secrecy in every matter pertaining to the Bank and its dealings with third parties.			
Latvia	33	The Bank of Latvia's Governor, Deputy Governor, members of the Council of the Bank of Latvia and the Board, and employees shall have no right to disclose confidential information that has become known to them as a consequence of their service or function to any person not qualified to have knowledge thereof. This confidentiality obligation shall be in effect also after the expiry of the term of office or the termination of employment relationship.	Indefinite		
Lithuania	19(1)	The staff of the Bank of Lithuania as well as other persons, who have been granted the right of access to the information constituting state, official and bank secrets or who have come into possession of such information without such a right, shall protect the information constituting state, official and bank secrets. This obligation shall continue to exist after the end of an employment relationship with the Bank of Lithuania or after the end of any other service or function related to the Bank of Lithuania.	Indefinite		
	19(2)	A secret of the Bank shall be information used in the activities of the Bank of Lithuania that does not constitute a state or official secret with respect to its significance, the illegal disclosure or loss of which could have negative consequences on the functioning of the Bank of Lithuania and its activities, and could harm legitimate interests of other persons.			
	19(3)	Detailed lists of information constituting state, official and bank secrets shall be approved by the Chairperson of the Board of the Bank of Lithuania. Detailed lists of information constituting state and official secrets shall be approved and amended pursuant to the procedure laid down in the Republic of Lithuania Law on State and Official Secrets.			
	19(4)	Access and usage procedures in relation to information constituting a bank secret shall be approved by the Chairperson of the Board of the Bank of Lithuania.			

Member State	Article	Text	Duration	Exceptions	Sanctions
	19(5)	Protection of information constituting a bank secret in court proceedings shall be subject to the provisions of the laws of the Republic of Lithuania ensuring protection of commercial secrets.			
	New 19(2)	A secret of the Bank shall be any non-public information related to the European System of Central Banks and any other information used in the activities of the Bank of Lithuania that does not constitute a state or official secret with respect to its significance, the illegal disclosure or loss of which could nevertheless have negative consequences on the functioning of the Bank of Lithuania and its activities, and could harm legitimate interests of other persons.			
	New 19(3)	The Chairperson of the Board of the Bank of Lithuania shall be approve detailed lists of information constituting state and official secrets. Detailed lists of information constituting state and official secrets shall be approved and amended in accordance with the procedure laid down by the Republic of Lithuania Law on State and Official Secrets.			
	New 19(4)	Usage procedures in relation to information constituting a bank secret shall be approved by the Chairperson of the Board of the Bank of Lithuania.			
	46(2)	The information received by the Bank of Lithuania for the purposes of supervision of credit and payment institutions may not be disclosed publicly, released to anyone or made public in any other way, except in the cases specified by the laws regulating the activities of credit and payment institutions.		Statutory grounds	
Luxembourg	10	Apart from official communications issued by the Council, members of the Council shall not disclose its deliberations.			
	33(1)	Any member of the bodies of the Central Bank, its auditor and staff members who, even after the termination of their functions, disclose information acquired in the course of those duties, shall be liable to the penalties provided for in Article 458 of the Criminal Code.	Indefinite		Penal code
	33(2)	Without prejudice to the rules of professional secrecy		ESCB exchange,	

Member State	Article	Text	Duration	Exceptions	Sanctions
		applicable to the ESCB, the foregoing paragraph shall not preclude exchanges of information required in the context of the ESCB or prevent the Central Bank from exchanging information, to the extent necessary for the performance of its tasks and subject to reciprocity, with the Commission de surveillance du secteur financier (Commission for Supervision of the Financial Sector), the Commissariat aux assurances (Insurance Commission) and the Service central de la statistique et des études économiques (Central Service for Statistics and Economic Studies (STATEC)).		statutory grounds	
	33(3)	Paragraph (1) shall not apply where the persons concerned are called upon to give evidence in judicial proceedings or where the law authorises or requires them to disclose certain facts. Art. 23 of the Code of Criminal Procedure shall apply to Board members and Central Bank staff members.		Criminal proceedings	
Malta	41(1)	The Bank may, on the basis of international agreements or upon reciprocity agreements, or otherwise in order to fulfil its international obligations including in situations of instability in the financial system, disclose information in its possession to international and other bodies, authorities and, or organisations, when this is required to carry out its duties under the law or to fulfil its international obligations including in situations of instability in the financial system:		Statutory grounds	
	41(2)	Provided that the bodies, authorities and, or institutions receiving the information are obliged to use such information solely for such purposes as may be specifically agreed upon with the Bank:			
	41(3)	Provided further that the bodies, authorities and, or institutions to which information is disclosed are subject to obligations of professional secrecy.			
The Netherlands	20	To the extent that this Act provides for the performance of the acts to achieve the objective referred to in section 2(I), anyone who, by virtue of the application of this Act or provisions based on it, performs any duty, shall be prohibited from using or	During the office		

Member State	Article	Text	Duration	Exceptions	Sanctions
		divulging data or information obtained in the performance of that duty in any way beyond or other than that required for the performance of that duty or required by this Act.			
	23(1) Articles of Association	Without prejudice to the provisions of the law, anyone who, by virtue of the Bank Act 1998 or of decrees, orders or decisions taken in pursuance of that Act performs any duty shall not use or disclose data or information in any way beyond or other than that required for the performance of his task or by the law.			
	23(2) Articles of Association	The Governing Board shall ensure that, without prejudice to the provisions of the law, anyone who, under any title whatever, performs activities for the Bank shall be bound towards the Bank by rules of secrecy.			
	23(3) Articles of Association	The rules referred to in paragraph 2 shall be made generally available.			
Poland	55	Staff of the NBP and members of the Council and consultative and advisory bodies at the NBP Management Board, shall be bound by an obligation not to disclose to unauthorised persons any information which they have learned carrying out their duties, including information that constitutes a banking secret according to the Law of 29 August 1997 on banking, information subject to protection according to the provisions on protection of confidential information, as well as other information protected by statute. This obligation shall continue after termination of their employment or of their membership in Council or the above-mentioned bodies.	Indefinite		
Portugal	60	The members of the Board of Directors, Board of Auditors, and Advisory Board, as well as all the staff of the Bank are bound to secrecy under the terms of the law.	During the office		
Romania	3(6)	To implement the provisions of banking legislation on cooperation with the competent authorities of the European Union Member States, hereinafter referred to as Member States, Banca Națională a României shall ensure the conditions required to perform the exchange of information with these		Statutory grounds	

Member State	Article	Text	Duration	Exceptions	Sanctions
		authorities. The information provided to the competent authorities of Member States shall be subject to the professional secrecy requirements defined in Article 52(1).			
	3(7)	Banca Națională a României may also conclude cooperation agreements, referring to the exchange of information, with the competent authorities of third countries or with other authorities or bodies of third countries as defined in paragraph (8) hereof, provided the information disclosed is subject to professional secrecy requirements, according to Article 52. The exchange of information shall be performed solely for the purpose of exercising the supervisory duties of the authorities and bodies concerned. Where the information is received from a Member State, it may not be disclosed without the express consent of the competent authority which has disclosed it, and solely for the purposes for which that authority gave its consent.		Statutory grounds	
	3(14)	In order to ensure the smooth operation of the payment systems, Banca Națională a României may communicate information covered by professional secrecy to clearing houses or other similar bodies legally established, with a view to providing clearing and settlement services for any market in Romania or in a Member State.		Statutory grounds	
	3(15)	The information Banca Națională a României receives from the competent authorities of Member States may not be disclosed to clearing houses or to other similar structures without the express consent of the competent authorities which disclosed it.		Statutory grounds	
	52(1)	Members of the Board and employees of Banca Națională a României shall observe the professional secrecy of any information not intended for disclosure acquired in the performance of their duties and shall not use this information for their personal benefit, any infringement being punished by law. Members of the Board and employees of Banca Națională a României shall further be bound by professional secrecy requirements even after their duties have ceased, any infringement being punished by law. The provisions of this	Indefinite	Statutory grounds	

Member State	Article	Text	Duration	Exceptions	Sanctions
		paragraph shall also apply to the financial auditors authorised to perform supervisory actions under Law No 58/1998 on banking activity, as subsequently amended and supplemented.			
	52(2)	Information mentioned under paragraph (1) hereof may be supplied on being signed by Banca Națională a României's Governor or by the authorised persons, in the following situations: a) during judicial proceedings, at the written request of competent judicial authorities, or of criminal investigation authorities on approval of the public prosecutor, as the case may be; b) during negotiations or when carrying out international agreements to which Romania or Banca Națională a României is part; c) within the framework of cooperation agreements with other authorities or at Banca Națională a României's initiative with a view to ensuring the fulfilment of the specific tasks of supervision and control of compliance with the legal provisions; d) during civil or commercial proceedings related to the bankruptcy of a credit institution or to its winding-up, following authorisation withdrawal, except for information concerning third parties attempting to restore to viability the credit institution in question.		Upon authorisation in judicial proceedings or carrying out duties	
	52(3)	Persons entitled to require and receive information considered as banking professional secrecy shall be bound to confidentiality and may use such information only for the purpose for which the information was required or supplied by law or in accordance with the concluded agreements, any infringement being punished by law.			Penal code
	52(4)	When exercising its tasks in the field of authorisation, regulation and prudential supervision of credit institutions, Banca Națională a României may use the information received under the conditions of professional secrecy only in the			

Member State	Article	Text	Duration	Exceptions	Sanctions
		<p>following situations:</p> <p>a) to check that the conditions governing the establishment of credit institutions are met;</p> <p>b) to supervise, on an unconsolidated basis and on a consolidated basis, the activity of credit institutions, especially with regard to their liquidity, solvency, large exposures, administrative and accounting procedures and internal control mechanisms;</p> <p>c) to impose sanctions;</p> <p>d) appeal filed by credit institutions against administrative acts adopted by Banca Națională a României;</p> <p>e) court proceedings initiated pursuant to Article 83 of Law No 58/1998 on banking activity, as subsequently amended and supplemented.</p>			
	52(5)	Where the information originates in another State, it may not be disclosed without the express consent of the authority that has disclosed it and, where appropriate, solely for the purpose for which that authority has given its consent.			
Slovakia	40	Banking secrecy shall apply to all banking operations of the National Bank of Slovakia, including balances of the accounts it keeps. In providing information on matters relating to a National Bank of Slovakia client without his consent, which is subject to banking secrecy, the National Bank of Slovakia shall proceed pursuant to a separate law			
	41	Members of the Bank Board and other employees of the National Bank of Slovakia and engaged persons shall be obligated to observe confidentiality with regard to matters of their office. This obligation shall remain in effect even after termination of employment or other similar relationship. In pursuance of a public cause, members of the Bank Board may be released from this obligation by the Bank Board, and other employees of the National Bank of Slovakia and engaged persons may be released from it by the Governor. Deemed as public shall be causes specified in a separate law, where the	Indefinite	ESCB exchange, statutory grounds,	

Member State	Article	Text	Duration	Exceptions	Sanctions
		information is provided pursuant to Article 40, the exchange of information pursuant to Article 34a, paragraph 2, and, to the extent necessary for the performance of supervision by the National Bank of Slovakia, also the exchange of information between the National Bank of Slovakia and other bodies of public administration in the Slovak Republic in charge of supervision pursuant to separate laws and foreign supervisory authorities in the area of the financial market. It shall not be possible to release one from the secrecy obligation and to disclose information on matters related to the participation of the National Bank of Slovakia in the European System of Central Banks, should this be in contradiction with the tasks and obligations of the National Bank of Slovakia ensuing from its participation in the European System of Central Banks			
Slovenia	47(1)	Members of the Governing Board of Banka Slovenije, Banka Slovenije's employees, and other persons shall protect confidential data of which they have learnt in connection with performance of their function or work, even after they have ceased to perform their function or work.	Indefinite	ESCB exchange	
	47(2)	Banka Slovenije may send confidential data under the conditions set out by the law and the Statute of the ESCB and ECB. Banka Slovenije may also send confidential data within the framework of cooperation pursuant to Article 48 of this Act, provided that the relevant obligation to protect confidential data applies to the recipients of the data.			
	47(3)	Banka Slovenije shall prescribe the criteria for defining confidential data and the procedures for handling confidential data concerning the performance of Banka Slovenije's tasks pursuant to this Act or any other law or concerning the activities of Banka Slovenije in the European System of Central Banks.			
Spain	6(1)	The members of its governing bodies and the personnel of the Bank shall keep secret, even after their duties have ceased, any confidential information which they might receive in the	Indefinite		Internal bank rules

Member State	Article	Text	Duration	Exceptions	Sanctions
		exercise of their responsibilities. Any breach of this obligation shall be sanctioned according to internal Bank rules, in the case of Bank personnel, and under the terms of article 29, in the case of members of its governing bodies.			
	6(2)	The secrecy obligation shall be without prejudice to the reporting requirements on monetary policy imposed on the Bank by article 10 of this law, and the terms of specific provisions which, in keeping with European Community directives on credit institutions, regulate the secrecy obligation of supervisory authorities.		Statutory grounds	
	6(3)	Parliamentary access to information falling under the secrecy obligation must be channelled through the Governor of the Bank, under the conditions laid down in parliamentary regulations. To this end, the Governor may request that the appropriate parliamentary body hold a secret session or use the appropriate procedures for access to classified material.		Reporting to Parliament	
Sweden	Chapter 11, Article 4	The Riksbank shall, without prejudice to the stipulations laid down in Chapter 31, Article 1, first paragraph of the Law on public access and secrecy (2009:400), notify the police or the public prosecution authority if information emerges in its activities, as referred to in these stipulations, that gives cause to assume that a crime has been committed. In special circumstances, the Riksbank may refrain from submitting such information.	N/A	Criminal proceedings	
The United Kingdom	Schedule 7 1(1)	Subject to sub-paragraph (2), information is restricted information for the purposes of this paragraph if (a) it is obtained by the Bank by virtue of the power conferred by section 17(1) or paragraph 9 of Schedule 2 (whether or not it was obtained pursuant to a notice under that provision), and (b) it relates to the business or other affairs of any person.			
	Schedule 7 1(2)	Information is not restricted information for the purposes of this paragraph if (a) it has been made available to the public from other sources, or			

Member State	Article	Text	Duration	Exceptions	Sanctions
		(b) it is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.			
	Schedule 7 1(3)	Except as permitted by the following provisions of this Schedule, restricted information shall not be disclosed by (a) the Bank or any officer or servant of the Bank, or (b) any person obtaining the information directly or indirectly from the Bank, without the consent of the person from whom the Bank obtained the information and, if different, the person to whom the information relates.		Upon consent from the person concerned	
	Schedule 7 1(4)	Any person who discloses information in contravention of this paragraph shall be guilty of an offence and liable (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; (b) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the statutory maximum, or to both.			Penal code

Table 4-1 Comparison of national financial stability provisions

Question 1: Whether there is there explicit reference to financial stability in the NCB Statute?

Question 2: Whether the NCB’s status as a prudential supervisory authority has been reflected in its Statutes?

Question 3: Whether the principle of lending based on adequate collateral has been stated in the NCB Statute?

Member State	Article	Text	1	2	3
Austria	44b (1)	In the public interest, Oesterreichische Nationalbank shall monitor all circumstances that may have an impact on safeguarding financial stability in Austria.	YES		
	44b (2)	The FMA shall make available to the Oesterreichische Nationalbank, on the latter’s demand, data relating to all financial firms (Article 2 no. 7 Finanzkonglomeratengesetz – Financial Conglomerates Act, BGBl. Part I No. 70/2004) and pension funds which the Oesterreichische Nationalbank needs in order to fulfill its tasks specified in paragraph (1). The Oesterreichische Nationalbank must record those data in the database specified in Article 79 paragraph 4 a Bankwesengesetz (Banking Act) and may process the data. Insofar as this is appropriate, the FMA may input those data directly into the database. Should the FMA not have available data requested by the Oesterreichische Nationalbank, the FMA shall compile the data, record them in the database specified in Article 79 paragraph 4 a Bankwesengesetz, and inform the OeNB accordingly. Required data that the FMA does not have available may also be compiled from credit institutions by the OeNB directly; again, these data must be recorded in the database specified in Article 79 paragraph 4 a Bankwesengesetz.			
	44b (3)	The Oesterreichische Nationalbank shall, in the field of financial stability, report observations and findings of a fundamental nature or of special significance to the Federal Minister of Finance and to the FMA, and upon request it shall provide any factual explanations which appear necessary as well as relevant documents and opinions.			
	47(2)	In order to achieve the objectives and carry out the tasks of the ESCB, the Oesterreichische Nationalbank shall be empowered, in accordance with the general principles established by the ECB, 2. to conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.			YES
Belgium	5(1)	In order to achieve the objectives of the ESCB and to carry out its tasks, the Bank may :			YES

Member State	Article	Text	1	2	3
	16(1) Articles of Association	- conduct credit operations with credit institutions and other money market or capital market participants, with lending being based on adequate collateral.			
	9 20 Articles of Association	Without prejudice to the powers of the institutions and organs of the European Communities, the Bank shall implement the international monetary cooperation agreements by which Belgium is bound in accordance with the procedures laid down by agreements concluded between the Minister of Finance and the Bank. It shall provide and receive the means of payment and credits required for the implementation of these agreements. The State shall guarantee the Bank against any loss and shall guarantee the repayment of any credit granted by the Bank as a result of the implementation of agreements or as a result of its participation in international monetary cooperation agreements or transactions to which, subject to approval by the Council of Ministers, the Bank is a party. <u>The State shall also guarantee the Bank the repayment of any credit granted in the context of its contribution to the stability of the financial system and guarantee the Bank against any loss incurred as a result of any transaction necessary in this regard.</u>			
	12 23 Articles of Association	The Bank shall contribute to the stability of the financial system. For all decisions and transactions made in the context of its contribution to the stability of the financial system, the Bank shall enjoy the same degree of independence as that determined by Article 108 of the Treaty establishing the European Community. The Bank may further be charged with the gathering of statistical information or with the international cooperation relating to any task referred to in Article 21.	YES		
Bulgaria	2(6)	The Bulgarian National Bank shall regulate and supervise other banks' activities in this country for the purpose of ensuring the stability of the banking system and protecting depositors' interests.	YES ⁸³⁶	YES	
	20(3)	Supervision over the banking system shall be exercised by the Deputy Governor heading the Banking Supervision Department, in accordance with the rules provided for by law and the regulations for its enactment. In exercising his supervisory powers, he shall apply, separately and at his own discretion, the actions and penalties as provided for by law.		YES	
	32	The Bulgarian National Bank shall have the right to carry on: 1. credit operations against collateral;			YES
Cyprus	5A(2)	The Bank shall contribute, as an integral part of the European System of Central Banks, to the performance of the tasks and the	YES ⁸³⁷		

⁸³⁶ References to the stability of the banking system and the protection of depositors' interests can be regarded as reference to financial stability.

⁸³⁷ Financial stability is referred to in Article 127(5) TFEU, replicated in Article 3.3 of the Statute.

Member State	Article	Text	1	2	3
		exercise of the competences entrusted to or conferred upon the latter in accordance with the provisions of the Treaty or of the Statute.			
	6(2) (d) and (e)	Without prejudice to the generality of subsection (1) and to the obligations resulting from the participation of the Bank to the European System of Central Banks, the main tasks of the Bank shall be the following: (d) the supervision of banks, without prejudice to the provisions of the Banking Law; (e) ensuring the stability of the financial system;	YES	YES	
	39(2)(b)	In order to achieve its objectives and carry out its tasks, the Bank may – (b) engage in lending and borrowing operations with credit institutions and other market participants with lending or other relevant financing operations being based on adequate collateral.			YES
The Czech Republic	2(2)	In accordance with its primary objective, the Czech National Bank shall: d) supervise the activities of entities operating on the financial market, analyse the evolution of the financial system, see to the sound operation and development of the financial market in the Czech Republic, and contribute to the stability of its financial system as a whole;	YES	YES	
	3a	The Czech National Bank shall submit a financial stability report to the Chamber of Deputies for information at least once a year.	YES		
	29(1)	The Czech National Bank may grant to banks for a maximum of three months credits guaranteed by the securities referred to in Article 28 or by government bonds or other securities underwritten by the Government, or by stock lists of bulk goods fully insured against loss and damage, or by other assets.			YES
	44(1)	The Czech National Bank shall perform supervision of: a) banks, foreign bank branches, credit unions, electronic money institutions, branches of foreign electronic money institutions and other entities issuing electronic money pursuant to special legal rules, and of the sound operation of the banking system; b) investment firms, securities issuers, the central depository, other entities keeping a register of investment instruments, investment companies, investment funds, settlement system operators, organisers of investment instrument markets and other persons specified in special legal rules governing capital market undertakings; c) insurance corporations, reinsurance corporations, pension funds and other entities active in insurance and private pension schemes pursuant to special legal rules; d) the safe, sound and efficient operation of payment systems pursuant to a special legal rule; e) the activities of other entities that have a licence pursuant to special legal rules.		YES	
	44(2)	Supervision shall include:		YES	

Member State	Article	Text	1	2	3
		a) decisions on licence and permit applications and prior approvals pursuant to special legal rules; b) inspection of adherence to the conditions stipulated in licences and permits; c) inspection of adherence to laws, insofar as the Czech National Bank has the power to conduct such inspections under this Act or special legal rules, and inspection of adherence to the decrees and provisions issued by the Czech National Bank; d) collection of the information needed to perform supervision pursuant to special legal rules and its enforcement, and verification of whether it is true, complete and up-to-date; e) the imposition of remedial measures and penalties pursuant to this Act or a special legal rule; f) proceedings regarding administrative offences.			
	44(3)	The Czech National Bank shall also perform supervision of the entities specified in paragraph 1 on a consolidated or group basis as well as supplementary supervision of such entities in financial conglomerates to the extent set forth in special legal rules.		YES	
	44a(1)	The Czech National Bank shall perform supervision of compliance with the obligations set out in the Civil Code as regards the remote conclusion of financial services agreements and supervision of observance of the prohibition of unfair business practices by persons referred to in Article 44(1), save for persons that issue electronic money under a licence pursuant to a special legal rule.		YES	
	44a(2)	In the case of cross-border co-operation, the Czech National Bank shall perform supervision under paragraph 1, proceeding in accordance with the relevant legal rule of the European Communities.		YES	
	44a(3)	If the Czech National Bank detects an infringement of an obligation or reasonably suspects that the collective interests of consumers may be infringed by a person supervised under paragraph 1 which has committed unlawful conduct in a Member State of the European Communities or another state of the European Economic Area, it shall prohibit that person from carrying on the unlawful conduct.		YES	
	45(1)	[Procedural issues regarding prudential supervision omitted]			
	45(2)				
	45a(1)				
	45a(2)				
	45a(3)				
	45a(4)				
	45b(1)				
	45b(2)				
	45b(3)				
	45b(4)				
	45b(5)				

Member State	Article	Text	1	2	3
	45c(1)				
	45c(2)				
	45c(3)				
	45d(1)	The Czech National Bank shall each year compile and submit for information to the Chamber of Deputies, the Senate and the Government a report on the performance of financial market supervision This report shall be submitted by 30 June of the following year.			
	45d(2)	[Procedural issues regarding prudential supervision omitted]			
	46 – 46f	[Administrative offences omitted]			
Denmark	N/A				
Estonia	2(5)	Eesti Pank shall co-operate with the Financial Supervision Authority in order to ensure financial stability. Eesti Pank has the right to obtain information from the Financial Supervision Authority which is necessary for the performance of its functions.	YES	YES ⁸³⁸	
	New 2(3)(3)	The functions of Eesti Pank are: to promote the smooth operation of the payment systems and the stability of the financial system;	YES		
	14	Eesti Pank has the right to apply primarily the following measures in order to regulate currency circulation: 5) grant of loans to credit institutions if they provide sufficient collateral;			YES
	New 14(1)	In order to perform its duties, Eesti Pank has the right to: 1) take and grant loans against adequate collateral;			YES
Finland	3(2)(3)	The Bank of Finland shall also: participate in maintaining the reliability and efficiency of the payment system and overall financial system and participate their development;	YES ⁸³⁹		
	7(1)	The Bank of Finland shall hold adequate collateral in connection with the granting of credit.			YES
France	N/A				
Germany	3	The Deutsche Bundesbank, being the central bank of the Federal Republic of Germany, is an integral part of the European System of Central Banks (ESCB). It shall participate in the performance of the ESCB's tasks with the primary objective of maintaining price stability, shall hold and manage the foreign reserves of the Federal Republic of Germany, shall arrange for the execution of domestic and cross-border payments and shall contribute to the stability of payment	YES ⁸⁴⁰		

⁸³⁸ The Financial Supervision Authority forms part of the NCB.

⁸³⁹ Although the wording is not the same as in Article 127(5) TFEU, replicated in Article 3.3 of the Statute, the aim of the provision is sufficiently clear.

⁸⁴⁰ Financial stability is referred to in Article 127(5) TFEU, replicated in Article 3.3 of the Statute.

Member State	Article	Text	1	2	3
		and clearing systems. In addition, it shall fulfil the tasks assigned to it under this Act or other legislation.			
	19	Without prejudice to Chapter IV of the Statute of the European System of Central Banks and of the European Central Bank (Federal Law Gazette 1992 II pages 1251, 1297), the Deutsche Bundesbank shall be entitled to conduct the following transactions with credit institutions and other market participants: <ul style="list-style-type: none"> 1. grant loans backed by collateral and trade in the open market by buying and selling claims, marketable securities and precious metals outright (spot or forward) or under repurchase agreements; when the debt falls due, the Bank is entitled to sell pledged assets by auction through one of its employees or through a person authorised to sell by auction or, if the pledged asset has a stock market or market price, to sell it at the current price through one of the aforementioned persons or through a broker and to indemnify itself for expenses, interest and principal out of the proceeds or to acquire the pledged asset, in which case the claims of the Bank in the amount of the stock market or market price lapse; the Bank also has these rights relative to other creditors, relative to the estate of an insolvent debtor and in the event of a previous protective measure taken in respect of the debtor; this also applies if the Bank is acting on behalf of another member of the European System of Central Banks; 			YES
Greece	2(1)(d)	The main tasks of the Bank of Greece shall be to: supervise credit institutions, as well as other enterprises and institutions of the financial sector, in accordance with Article 55A hereof.		YES	
	55(10)	The business of the Bank shall be restricted to the following operations. The Bank, acting in accordance with the provisions applicable each time in the ESCB legal framework, may: conduct lending or borrowing operations with credit institutions or other money and capital market participants. Lending should be based on adequate collateral, including book-entry securities or purchase of securities with a resale agreement or with other specific agreements. The form and the general terms and conditions of collateral shall be specified by the Monetary Policy Council in accordance with the provisions applicable each time in the ESCB legal framework.			YES
	55A(1)	The Bank of Greece shall exercise prudential supervision over credit institutions and the following categories of financial enterprises and organisations: <ul style="list-style-type: none"> a) financial leasing companies, b) factoring companies, c) mutual guarantee companies, d) counter-guarantee funds, 		YES	

Member State	Article	Text	1	2	3
		e) bureaux de change, f) money-market broker companies.			
	55A(2)	Other categories of enterprises and organisations may also be brought under the prudential supervision of the Bank of Greece, as provided for by law, without prejudice to the provisions of the last paragraph of Article 5B hereof. The scope and content of prudential supervision for each of the above-mentioned categories of institutions, undertakings and organisations is stipulated in each case by law. The objectives of prudential supervision shall be to enhance the stability and effectiveness of the credit system and of the financial sector in general. Prudential supervision shall also be aimed at ensuring transparency of the procedures and terms of transactions carried out by those subject to supervision. In performing its supervisory tasks, the Bank may impose administrative sanctions on all persons subject to its supervision, as well as their legal representatives and managers, in cases of non-compliance with provisions pertaining to the responsibilities of the Bank of Greece.	YES ⁸⁴¹	YES	
	55A(3)	[Administrative sanctions omitted]			
	55A(4)				
	55A(5)				
	55A(6)				
Hungary	4(7)	The MNB shall promote the stability of the financial system and the development and smooth conduct of policies related to the prudential supervision of the financial system.	YES	YES	
	7(a)	The MNB shall implement its monetary policy with the following instruments: a) accepting deposits and, subject to the restrictions described in Article 16, lending based on adequate collateral, within the scope of its account management;			YES
Ireland	6A(2)(a)	The Bank also has the following objectives: (a) contributing to the stability of the financial system;	YES		
	33C(9)	If a matter relating to the financial stability of the State's financial system arises in connection with the performance or exercise by the Regulatory Authority of its functions or powers, that Authority shall consult the Governor on the matter.		YES ⁸⁴²	
Italy	N/A				
Latvia	36	In order to achieve its objective and fulfil its tasks, the Bank of Latvia shall be entitled to effect, against adequate collateral, crediting transactions with credit institutions and other financial market participants. The Bank of Latvia shall not be entitled to issue credits to the Government and to buy			YES

⁸⁴¹ Also, as a Eurosystem NCB, Article 127(5) TFEU, replicated in Article 3.3 of the Statute, would apply.

⁸⁴² The Regulatory Authority forms part of the Central Bank.

Member State	Article	Text	1	2	3
		government securities on the primary market.			
Lithuania	8(1)	Implementing its primary objective, the Bank of Lithuania shall perform the following functions: 6) in the manner and cases established by laws and other legal acts, issue and revoke licenses for credit institutions of the Republic of Lithuania as well as branches of credit institutions of foreign states, and supervise the activities thereof; it shall also perform other functions related to the activities of credit institutions, established by laws;		YES	
	New 8(2)	2) in the manner and cases established by laws and other legal acts, issue and revoke licenses of credit institutions of the Republic of Lithuania as well as branches of credit institutions of foreign states, and supervise the activities thereof; it shall also perform other functions related to the activities of credit institutions, established by laws; 5) without prejudice to the requirements derived from its participation in the European System of Central Banks and notably those resulting from operations on behalf of public entities, be able to grant loans secured by adequate collateral for the Bank of Lithuania, to credit institutions registered in the Republic of Lithuania in accordance with the procedure, conditions and terms established by the Bank of Lithuania.		YES	
	27(1)	The Bank of Lithuania, pursuant to the procedure, terms and conditions laid down by the Bank, shall have the right to make loans in Litas to credit institutions registered in the Republic of Lithuania that have their accounts at the Bank of Lithuania.			YES
	27(2)	The loans made by the Bank of Lithuania shall be secured by the pledge of the following assets of a credit institution which obtains the loan: 1) debt securities issued by the Government or the Bank of Lithuania; 2) foreign currency or precious metals; and 3) bills of exchange, other debt instruments and real estate which satisfy the terms established by the Bank of Lithuania.			YES
	27(3)	Loans may also be secured by a state guarantee, or a surety or guarantee of a credit institution.			YES
	42	A credit institution shall be a bank, another legal person or a subdivision of a foreign credit institution who holds a licence issued by the Bank of Lithuania to provide licensed financial services.		YES	
	43(1)	The Bank of Lithuania shall issue licences to credit institutions to provide licensed financial services.		YES	
	43(2)	The terms and procedure for the issue of licences shall be established by the laws which regulate the establishment and activities of credit institutions and other laws of the Republic of Lithuania, as well as legal acts issued by the Bank of Lithuania.		YES	
	44	The Bank of Lithuania shall establish prudential requirements for credit institutions, and the ratios		YES	

Member State	Article	Text	1	2	3
		and methods for the calculation thereof.			
	45(1)	[Administrative provisions omitted]			
	45(2)				
	46(1)				
	46(2)				
	46 ¹ (1)				
	46 ¹ (2)				
	46 ¹ (3)				
Luxembourg	22(2)	To enable it to achieve its objectives and fulfill its tasks, the Central Bank may: conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.			YES
Malta	5(1)	In accordance with the Treaty and the Statute, the tasks of the Bank shall include the following: (c) to ensure the stability of the financial system;	YES		
	17(1)	In accordance with the Treaty and the Statute, in order to achieve its objectives and to carry out its tasks, the operations of the Bank shall include the following: (e) to grant to any credit or financial institution in Malta loans and advances against adequate security; (g) when it deems such action necessary to safeguard financial stability or in other exceptional circumstances, to grant a loan or advance to any credit institution incorporated in Malta against such forms of security as the Board may consider appropriate.	YES		YES
	30(1)	The Bank may act as banker to credit and financial institutions in Malta and may open accounts for and accept deposits from such credit and financial institutions.			
The Netherlands	3(2)	In implementation of the Treaty, the Bank shall, within the framework of the European System of Central Banks, 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.	YES		
	4(1)	The Bank shall have the task of supervising financial institutions in pursuance of the relevant statutory regulations.		YES	
	8(1)	The Bank is authorized to effect transactions in the financial markets, including receiving current-account deposits from account-holders, accepting securities and other documents of value for safe custody, and effecting credit transactions insofar as these are covered by adequate collateral.			YES
Poland	3(2)	The tasks of the NBP shall also include: 6) establishing the necessary conditions for the development of the banking system 6a) supporting the stability of the national financial system referred to in Article 2 (1) of the Law on the Financial Stability Committee of 7 November 2008	YES		

Member State	Article	Text	1	2	3
	50	The NBP may accept securities, including those issued by itself, for safekeeping and custody, and as collateral.			YES
Portugal	12(c)	Without prejudice to the requirements derived from its participation in the ESCB it shall be particularly incumbent upon the Bank to: c) Provide for the stability of the national financial system, performing for the purpose, in particular, the function of lender of last resort;	YES		
	17	In accordance with the legal rules on financial supervision, the Bank shall be responsible for the supervision of credit institutions, financial companies and other bodies legally subject to the Bank, namely by issuing directives to guide their action and to ensure the centralisation services of credit risks.		YES	
	24(1)(c)	In order to meet the objectives and to perform the ESCB tasks, the Bank may carry out any operations justified by virtue of its capacity as central bank, namely the following: c) To grant loans or to open current account credits to credit institutions and financial companies, in such forms as the Bank may deem appropriate, and duly secured by collateral;			YES
	25(b)	The Bank shall specifically not: b) Grant overdraft facilities or credit collateralized under forms, which run counter to the provisions of this Organic Law;			YES
Romania	2(2)(b)	The main tasks of Banca Națională a României shall be: b) to authorise, regulate and prudentially supervise credit institutions and to promote and oversee the smooth operation of payment systems with a view to ensuring financial stability;	YES	YES	
	19(1)	Within the framework of its monetary and exchange rate policies, Banca Națională a României may grant loans with maturities no longer than 90 days to credit institutions, against collateral consisting of, but not limited to: a) government securities from public issues, by their remittance into Banca Națională a României's portfolio, or b) deposits with Banca Națională a României or with other legal entities approved by Banca Națională a României.			YES
	19(2)	On Romania's accession to the Eurosystem, the scope of the assets eligible to collateralise the loans granted by Banca Națională a României shall be extended to the two categories of eligible assets defined by the European Central Bank.			YES
	20(1)	Banca Națională a României shall set and disclose the lending terms, the minimum interest rate on loans granted to credit institutions and the criteria that credit institutions must meet to qualify to apply for loans from Banca Națională a României on a competitive basis.			YES
	20(2)	Banca Națională a României may set lending ceilings, interest rates, repayment dates and other			YES

Member State	Article	Text	1	2	3
		terms for lending on a competitive basis from Banca Națională a României.			
	20(3)	For all its lending operations, Banca Națională a României shall set and collect interest and fees.			YES
	25(1)	Banca Națională a României shall have exclusive competence to authorise credit institutions and shall be responsible for the prudential supervision of the credit institutions it has authorised to operate in Romania according to Law No 58/1998 on banking, as subsequently amended and supplemented.		YES	
	25(2)	[Administrative supervisory provisions omitted]			
	25(3)				
	25(4)				
	25(5)				
Slovakia	2(3)	In the area of the financial market, the National Bank of Slovakia shall contribute to the stability of the financial system as a whole, as well as to the secure and sound functioning of the financial market for the sake of maintaining its credibility, client protection and out of respect for the rules of economic competition; whereby the National Bank of Slovakia shall perform a) financial market supervision pursuant to this Law and separate legal provisions;1b) b) other activities in the area of the financial market pursuant to this Law and separate legal provisions.	YES	YES	
	23	The National Bank of Slovakia is entitled to perform credit transactions, and credits provided by the National Bank of Slovakia shall be secured by adequate collateral. The National Bank of Slovakia shall in respect of its transactions accept collateral in the form of securities or other asset values which as of the euro introduction date are defined in accordance with the separate legal provisions applicable to the Eurosystem.			YES
Slovenia	4(3)	In pursuing the primary objective specified in the first paragraph of this Article and the objective specified in the second paragraph of this Article, Banka Slovenije shall strive for financial stability, while taking into account the principles of an open market economy and free competition.	YES		
	11	In performing its tasks and exercising its powers pursuant to this Act and other laws, Banka Slovenije shall, in particular: 3. be responsible for the banking system's general liquidity,	YES		
	12(1)	In addition to the tasks specified in the previous Article, Banka Slovenije shall also engage in other tasks, in particular: 9. it shall define, implement and supervise a system of prudential rules for the operation of banks and savings banks; 14. it may grant loans to banks, savings banks and electronic money institutions, given adequate collateral, taking into account Articles 101 and 102 of the Treaty establishing the European		YES	YES

Member State	Article	Text	1	2	3
		Community and Article 21 of the Statute of the European System of Central Banks and of the European Central Bank			
	18(1)	Banka Slovenije may, in order to achieve objectives and carry out tasks under this Act, conduct credit and lending transactions, based on adequate collateral, with banks and savings banks, and with other market participants.			YES
	18(2)	Banka Slovenije shall determine the terms and conditions for credit and lending offers, the forms of transactions, and the type of assets to be used as collateral.			YES
	23(1)	Banka Slovenije shall supervise banks, savings banks and other persons pursuant to the law governing banking, and shall on that basis define, implement and control a system of rules ensuring the standards for the safe operation of banks and savings banks.		YES	
	23(2)	In defining the system of rules, supervising and enforcing the measures under the previous paragraph, Banka Slovenije shall take account of the relevant standards and recommendations drawn up by competent domestic and international institutions for this purpose.		YES	
Spain	7(5)(b)	Promote the smooth operation and the stability of the financial system and, without prejudice to the terms of 3.d) above, of national payment systems.	YES		
	7(6)	The Bank shall supervise, in accordance with existing regulations, the solvency activities and compliance with specific regulations of credit institutions, and any other financial institution or market it has been called on to oversee, without prejudice to the prudential supervision of Comunidades Autónomas in their areas of responsibility, and the co-operation between these Comunidades Autónomas and the Bank in performing such regional supervisory tasks.		YES	
	9(1)	To achieve the objectives of the ESCB and carry out its functions, the Bank may conduct all types of financial operations, complying with the general principles and instruments established by the ESCB, and in particular the following: b. Conduct credit operations with credit institutions and other market participants, ensuring such operations are based on adequate collateral.			YES
Sweden	Chapter 4 Article 3;	In matters of major importance connected with the stability of the payments system or involving the supervisory activities of the Financial Supervisory Authority, the Riksbank shall consult with the Authority. In such a consultation, the Riksbank shall provide the Financial Supervisory Authority with the necessary information.	N/A ⁸⁴³		
	Chapter 6, Article 5	In pursuance of its monetary policy, the Riksbank may: 1. grant credit against adequate collateral and receive deposits; Generally applicable interest terms for such lending and borrowing according to the first paragraph			YES

⁸⁴³ In a broader context, this duty appears to be related to the financial stability.

Member State	Article	Text	1	2	3
		1, shall be made public.			
	Chapter 6, Article 7	The Riksbank may make available systems for settlement of payments and participate in other ways in the settlement of payments. In order to promote the function of the payment system, the Riksbank may grant intraday credit to participants in the system. Credit may only be granted against adequate collateral. The State does not need to provide collateral.			YES
The United Kingdom	N/A				

Table 4-2 National and cross-border supervisory information sharing arrangements

1: national cross-border information sharing arrangements

2: cross-border information sharing arrangements

3: confidentiality requirement for the information sharing arrangements

Member State	Article	Text	1	2	3
Austria	43	The Oesterreichische Nationalbank shall, for the purposes of fulfilling the objective set out in Article 105 paragraph 5 of the Treaty, provide support within its statutory purview to the supervisory authorities listed thereunder of Member States participating in the third stage of EMU.		YES	
	44b (2)	The FMA shall make available to the Oesterreichische Nationalbank, on the latter's demand, data relating to all financial firms (Article 2 no. 7 Finanzkonglomeratengesetz – Financial Conglomerates Act, BGBl. Part I No. 70/2004) and pension funds which the Oesterreichische Nationalbank needs in order to fulfill its tasks specified in paragraph (1). The Oesterreichische Nationalbank must record those data in the database specified in Article 79 paragraph 4 a Bankwesengesetz (Banking Act) and may process the data. Insofar as this is appropriate, the FMA may input those data directly into the database. Should the FMA not have available data requested by the Oesterreichische Nationalbank, the FMA shall compile the data, record them in the database specified in Article 79 paragraph 4 a Bankwesengesetz, and inform the OeNB accordingly. Required data that the FMA does not have available may also be compiled from credit institutions by the OeNB directly; again, these data must be recorded in the database specified in Article 79 paragraph 4 a Bankwesengesetz.	YES		

Member State	Article	Text	1	2	3
	44b (3)	The Oesterreichische Nationalbank shall, in the field of financial stability, report observations and findings of a fundamental nature or of special significance to the Federal Minister of Finance and to the FMA, and upon request it shall provide any factual explanations which appear necessary as well as relevant documents and opinions.			
	51	Furthermore, the Oesterreichische Nationalbank shall be empowered: 1. to establish relations with central banks and financial institutions in third countries and, where appropriate, with international organizations; 2. to conduct all types of banking transactions in relations with third countries and international organizations, including borrowing and lending operations; 3. to acquire, sell, hold and manage, spot and forward, all types of foreign exchange assets, securities, precious metals and other assets, in whatever form.		YES	
Belgium	35 56 Articles of Association	Except when called upon to give evidence in court in a criminal case, members of the Bank's organs and members of its staff shall be subject to professional secrecy and may not divulge : 1° to any person or authority whatsoever not qualified to have knowledge thereof, the confidential information which has to be communicated to the Bank by virtue of statutory provisions or regulations, or similar information received from foreign authorities; 2° to any person or authority whatsoever, the confidential information which is communicated to the Bank by the ECB, other central banks or monetary institutions, other public authorities entrusted with the oversight of payment systems as well as Belgian or foreign authorities responsible for the supervision of credit institutions, investment firms, undertakings for collective investment in transferable securities, insurance companies and financial markets. The members of the Bank's organs and its members of staff shall be exempt from the obligation contained in Article 29 of the Code of Criminal Procedure if the information received by the Bank originates from authorities or institutions which are themselves not subject to or exempt from this obligation. In so far as the recipients of the information are subject to an equivalent obligation to maintain professional secrecy, paragraph 1 shall not preclude the communication of such information : 1° to the ECB, other central banks or monetary institutions when such communication is necessary for their function as monetary authorities, including the oversight of payment systems; 2° to the authorities responsible for supervising credit institutions, investment firms, undertakings for collective investment in transferable securities and insurance enterprises when such information is necessary for their supervisory function; 3° to the authorities responsible for supervising financial markets when such information is necessary to take a decision concerning the application of sanctions to participants on the market in question;	YES	YES	YES

Member State	Article	Text	1	2	3
		4° to other public authorities charged with the oversight of payment systems. Contraventions of this article shall incur the penalties laid down by Article 458 of the Penal Code. The provisions of Book I of the Penal Code, including Chapter VII and Article 85, shall be applicable to contraventions of this article. The first and the second paragraph do not prevent the observance, by the members of the bodies of the Bank and its staff, of more restrictive provisions as to professional secrecy when the Bank, pursuant to article 23 (2), is charged with collecting statistical information.			
Bulgaria	4(2)	The Bulgarian National Bank shall not disclose or pass to third parties any information obtained which is of confidential bank or commercial nature for banks and the other participants in the Money turnover and credit relations, except in the cases provided for by the Law on Protection of Classified Information.			YES
	5	The Bulgarian National Bank may participate organizationally and financially in international organizations aiming at the development of International cooperation in the sphere of foreign exchange, monetary and credit policy, as well as take part on its own behalf in the activity carried out by such organizations when in the interest of the Republic of Bulgaria.		YES	
Cyprus	25(2)(b)	The obligation to maintain professional secrecy shall not apply to the provision of information to the European Central Bank in compliance with the provisions of the Treaty or the Statute.			YES
The Czech Republic	2(3)	When performing its tasks, the Czech National Bank shall co-operate with the central banks of other countries, with the authorities supervising the financial markets of other countries, and with international financial organisations and international organisations engaged in the supervision of banks, electronic money institutions and financial markets.		YES	
Denmark	N/A				
Estonia	2(5)	Eesti Pank shall co-operate with the Financial Supervision Authority in order to ensure financial stability. Eesti Pank has the right to obtain information from the Financial Supervision Authority which is necessary for the performance of its functions.	YES		
	2(6)	Eesti Pank shall co-operate with international monetary, banking and credit organisations and maintains relations with the central banks of other countries.		YES	
	21(1)	Eesti Pank shall ensure the confidentiality of information which contains banking secrets.			YES
	21(1 ¹)	Eesti Pank classifies information the disclosure of which would damage price stability or financial stability and information to which restrictions on access are established by the European System of Central Banks as information intended for internal use.			
	21(4)	Eesti Pank has the right to disclose information at its disposal concerning credit institutions provided that such information does not contain banking secrets.			
Finland	4(2)	The Bank of Finland shall cooperate as necessary with the Council of State and other authorities.	YES		

Member State	Article	Text	1	2	3
	26(1)	Other provisions on the secrecy obligation notwithstanding, the Bank of Finland shall have the right to obtain from the authorities and credit and financial institutions and other financial market participants any notifications, reports and other information necessary for carrying out the Bank's statutory tasks.	YES		YES
	26(2)	Provisions on the secrecy obligation notwithstanding, the Bank of Finland shall be obliged to provide information to the authority supervising the financial markets and information other than that obtained for statistical purposes to other authorities that are entitled under the law to obtain such information. The Bank of Finland shall be entitled to provide information obtained for statistical purposes to other authorities for statistical purposes, if such authorities are entitled under the law to obtain such information.	YES		YES
	26(3)	Rights to obtain and provide information on the tasks of the European System of Central Banks are also laid down in the legislation of the European Community.		YES	
France	L 144-1(2)	The Banque de France may disclose all or any information that it holds concerning the financial situation of undertakings to other central banks and institutions that carry out duties similar to those entrusted in France to the Banque de France, and to credit and financial institutions.			YES
Germany	N/A				
Greece	N/A				
Hungary	43(1)	In the course of performing its tasks, the MNB shall cooperate with the Supervisory Authority.	YES		
	44(1)	The MNB and the Supervisory Authority shall exchange data and information which are necessary for the partner organisation to perform its tasks.		YES	
	44(2)	The MNB and the Supervisory Authority shall conclude an agreement governing the method and system of exchanging data and information which are necessary to perform their tasks.			YES ⁸⁴⁴
Ireland	5A(1)	The Bank has the following functions: (d) to establish and maintain, either directly or indirectly, contact with the monetary authorities established in other countries and in territories; (e) whenever it thinks fit, to provide to governments of, and financial institutions and other bodies established in, other countries and in territories advice or other assistance on matters within its expertise and, when appropriate, to co-ordinate application of the resources of its constituent parts for that purpose;		YES	
	33C(9)	If a matter relating to the financial stability of the State's financial system arises in connection with the performance or exercise by the Regulatory Authority of its functions or powers, that Authority shall consult the Governor on the matter.	YES		
Italy	N/A				

⁸⁴⁴ Assuming that such kind of agreement also covers provisions regarding confidentiality.

Member State	Article	Text	1	2	3
Latvia	6(2)	The Bank of Latvia shall be entitled to receive information necessary for the execution of its tasks from the Financial and Capital Market Commission and other state and government institutions.	YES		
	7	The Bank of Latvia shall represent the Republic of Latvia in foreign central banks and international monetary institutions. <u>The Bank of Latvia shall be entitled to participate in the activities of other international financial and credit organisations, provided that these activities comply with the objectives and tasks of the Bank of Latvia.</u>		YES	
Lithuania	47	In carrying out the functions of the supervision of credit institutions, the Bank of Lithuania shall have the right to exchange information with the institutions of other states performing the supervision of credit institutions on the activities of any credit institution, and it shall have to ensure the confidentiality of such information. The information received from another institution performing the supervision of credit institutions may be communicated to other persons only in the cases provided for in laws regulating the activities of credit institutions.		YES	YES
	New 47	The Bank of Lithuania shall have the right to conclude agreements on cooperation in the area of supervision of credit institutions with the institutions of other states performing the supervision of credit institutions.		YES	
	New 54(2)	The Bank of Lithuania may provide information to the European Central Bank, central banks of the states of the European Union, international monetary and financial institutions, state and municipal institutions, if such information is required for the performance of their functions and if such provision of information is not prohibited by this and other laws of the Republic of Lithuania. This prohibition shall not be applicable to the provision of statistical information to the European Central Bank, to which the confidentiality procedure established in Article 8 of the Council Regulation (EC) No. 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank shall be applicable.		YES	
Luxembourg	33(2)	Without prejudice to the rules of professional secrecy applicable to the ESCB, the foregoing paragraph shall not preclude exchanges of information required in the context of the ESCB or prevent the Central Bank from exchanging information, to the extent necessary for the performance of its tasks and subject to reciprocity, with the Commission de surveillance du secteur financier (Commission for Supervision of the Financial Sector), the Commissariat aux assurances (Insurance Commission) and the Service central de la statistique et des études économiques (Central Service for Statistics and Economic Studies (STATEC)).	YES		YES
Malta	41(1)	The Bank may, on the basis of international agreements or upon reciprocity agreements, or otherwise in order to fulfil its international obligations including in situations of instability in the financial system, disclose information in its possession to international and other bodies, authorities and, or organisations,	YES	YES	

Member State	Article	Text	1	2	3
		when this is required to carry out its duties under the law or to fulfil its international obligations including in situations of instability in the financial system:			
	41(2)	Provided that the bodies, authorities and, or institutions receiving the information are obliged to use such information solely for such purposes as may be specifically agreed upon with the Bank:		YES	YES
	41(3)	Provided further that the bodies, authorities and, or institutions to which information is disclosed are subject to obligations of professional secrecy.			YES
The Netherlands	N/A				
Poland	23(7)	The President of the NBP may disclose the individual data referred to in paras. 2, 2a and 3 above and the statistical surveys, studies and assessments referred to para.6 above to the following entities: 1) the European Central Bank – in the performance of the obligations related to the participation of the NBP in the European System of Central Banks; 2) other foreign entities – in the performance of the international obligations undertaken by the Republic of Poland; 3) other entities than referred to in items 1) and 2) above - pursuant to separate applicable provisions.		YES	
	23(8)	Individual data referred to in para. 3 above, may be disclosed to the Minister of Finance and the Commission for Financial Supervision within the scope necessary for the proper performance of the tasks and activities of the Financial Stability Committee.	YES		
	23(9)	The provisions of para. 8 above shall apply accordingly to the information containing data protected by separate legal acts, including data protected by bank secrecy.			YES
Portugal	N/A				
Romania	3(5)	To fulfil the commitments arising from agreements, treaties and conventions to which Romania is party, Banca Națională a României shall cooperate with domestic and foreign authorities by providing information, by adopting appropriate measures or in any other way consistent with this Law.	YES	YES	
	3(6)	To implement the provisions of banking legislation on cooperation with the competent authorities of the European Union Member States, hereinafter referred to as Member States, Banca Națională a României shall ensure the conditions required to perform the exchange of information with these authorities. The information provided to the competent authorities of Member States shall be subject to the professional secrecy requirements defined in Article 52(1).			YES
	3(7)	Banca Națională a României may also conclude cooperation agreements, referring to the exchange of information, with the competent authorities of third countries or with other authorities or bodies of third countries as defined in paragraph (8) hereof, provided the information disclosed is subject to professional secrecy requirements, according to Article 52. The exchange of information shall be performed solely for the purpose of exercising the supervisory duties of the authorities and bodies concerned. Where the information is received from a Member State, it may not be disclosed without		YES	

Member State	Article	Text	1	2	3
		the express consent of the competent authority which has disclosed it, and solely for the purposes for which that authority gave its consent.			
	3(8)	In exercising its supervisory function, Banca Națională a României shall ensure the exchange of information with: a) authorities responsible for the supervision of other financial institutions and insurance companies and with the authorities responsible for the supervision of financial markets in Romania and in Member States; b) bodies and institutions in Romania and in Member States involved in the bankruptcy and winding-up of credit institutions as well as in other similar proceedings; c) persons in Romania and in Member States responsible for carrying out the financial audit of credit institutions and other financial institutions; d) bodies managing deposit guarantee schemes in Romania and in Member States.	YES	YES	
	3(9)	Banca Națională a României may cooperate, including through exchange of information, with authorities in Romania and in Member States, responsible for: a) supervising the institutions or bodies involved in the bankruptcy and winding-up of credit institutions as well as in other similar proceedings; b) supervising the persons carrying out the financial audit of credit institutions, financial investment services companies, insurance companies and other financial institutions.	YES	YES	
	3(10)	The exchange of information referred to in paragraph (9) shall comply with the following minimum requirements: a) the information shall be used by the said authorities for the sole purpose of performing the supervisory tasks referred to in paragraph (9); b) the information received shall be subject to professional secrecy requirements as defined in Article 52; c) where the information is received from a Member State, it may not be disclosed without the express consent of the competent authority which has disclosed it, and solely for the purposes for which that authority gave its consent.			YES
	3(11)	To strengthen the financial stability and preserve the integrity of the financial system, Banca Națională a României may cooperate, including through exchange of information, with the authorities or bodies vested with legal competencies in tracing and investigating breaches of corporate law. The exchange of information shall comply with the following minimum requirements: a) the information shall be used by the said authorities for the sole purpose of performing their tasks; b) the information received shall be subject to professional secrecy requirements as defined in Article 52;	YES	YES	YES

Member State	Article	Text	1	2	3
		c) where the information is received from a Member State, it may not be disclosed without the express consent of the competent authority which has disclosed it, and solely for the purposes for which that authority gave its consent.			
	3(12)	Banca Națională a României shall communicate to the European Commission and to Member States the names of the Romanian authorities which may receive information pursuant to paragraphs (9) - (11) hereof.			
	3(13)	Banca Națională a României may exchange information with monetary authorities, central banks or other bodies with similar functions, as well as with other public authorities responsible for overseeing payment systems for the purpose of performing Banca Națională a României's tasks within the area of authorisation, regulation and prudential supervision of credit institutions and of fulfilling the tasks of the abovementioned authorities.	YES	YES	
	3(14)	In order to ensure the smooth operation of the payment systems, Banca Națională a României may communicate information covered by professional secrecy to clearing houses or other similar bodies legally established, with a view to providing clearing and settlement services for any market in Romania or in a Member State.			YES
	3(15)	The information Banca Națională a României receives from the competent authorities of Member States may not be disclosed to clearing houses or to other similar structures without the express consent of the competent authorities which disclosed it.			
	3(16)	The entities which received information, as laid down in paragraphs (8) – (11) and paragraphs (13) and (14) hereof, shall be bound by professional secrecy requirements.			YES
	3(17)	Public authorities and institutions shall provide Banca Națională a României with the information they deem necessary or with the information required by Banca Națională a României to perform effective supervision and to fulfil the primary objective and tasks of Banca Națională a României.	YES		
	3(18)	Until the date of Romania's accession to the European Union, the exchange of information provided for in this Article shall be made solely on a mutual basis.			
	3(19)	On Romania's accession to the European Union, the provisions of paragraph (18) hereof shall also apply to the exchange of information with entities in third countries.			
Slovakia	4(3)	In performing supervision of the financial market pursuant to a separate legal provision, the National Bank of Slovakia shall perform tasks in the area of international cooperation.		YES	
	34a(2)	The National Bank of Slovakia may, to the extent necessary for the performance of its tasks pursuant to this Law and separate legal provisions, cooperate and exchange information with public authorities in the Slovak Republic and other countries, with the Deposit Protection Fund, Investment Guarantee Fund and with international organizations.	YES		
Slovenia	48	In order to perform its tasks, Banka Slovenije may cooperate with other central banks, supervisory	YES	YES	

Member State	Article	Text	1	2	3
		institutions, international financial organisations, and organisations and funds concerned with guaranteeing deposits.			
Spain	6(2)	The secrecy obligation shall be without prejudice to the reporting requirements on monetary policy imposed on the Bank by article 10 of this law, and the terms of specific provisions which, in keeping with European Community directives on credit institutions, regulate the secrecy obligation of supervisory authorities.			YES
	7(8)	The Bank may establish relationships with other central banks, with financial supervisory authorities and financial institutions in other countries, and with international monetary and financial organisations.		YES	
Sweden	Chapter 4, Article 3	In matters of major importance connected with the stability of the payments system or involving the supervisory activities of the Financial Supervisory Authority, the Riksbank shall consult with the Authority. In such a consultation, the Riksbank shall provide the Financial Supervisory Authority with the necessary information.	YES		
The United Kingdom	N/A				

Table 4-3 Emergency liquidity assistance

- 1: Independence requirement
- 2: Collateral requirement
- 3: Short term nature requirement
- 4: Illiquidity requirement
- 5: Credit institution as counterparty
- 6: Exceptionality requirement (systemic risk, exceptional circumstances, case-by-case basis, in the last resort)

Member State	Article	Text	1	2	3	4	5	6
Austria	N/A							
Belgium	N/A							
Bulgaria	20(2)	In case any systemic risk for the stability of the banking system arises, the Banking Department shall perform the lender of last resort function under the terms and procedure set forth by this Law and by the regulations as adopted by the Governing Council.	*					
	33(1)	The Bulgarian National Bank may not extend credits to banks, except in the cases under para. 2.						
	33(2)	Upon emergence of a liquidity risk that may affect the stability of the banking system, the Bulgarian National Bank may extend to a solvent bank lev-denominated credits with maturity no longer than three months, provided they are fully collateralized by gold, foreign currency or other such high-liquid assets. The terms and procedure for extension of such credits, as well as the criteria establishing the occurrence of a liquidity risk, shall be determined by an ordinance of the Bulgarian National Bank.		YES	YES	YES	YES	YES
	33(3)	Credits under para. 2 may be extended solely up to the amount of the excess of the lev equivalent of the gross international reserves over the total amount of monetary liabilities of the Bulgarian National Bank.						
	45(1)	The Bulgarian National Bank shall not extend credits and guarantees in any form whatsoever, including through purchase of debt instruments, to the Council of Ministers, municipalities, as well as to other government and municipal institutions, organizations and enterprises.						
	45(2)	Paragraph 1 shall not apply to extension of credits to state-owned and municipal banks in the cases under Article 33, para. 2.						
Cyprus	46(3)	Without prejudice to its obligations resulting from its participation to the European		YES	YES		YES	*

Member State	Article	Text	1	2	3	4	5	6
		System of Central Banks and, in particular, Article 21 of the Statute, the Bank may grant advances against collateral security, or make loans against collateral security to banks for fixed periods and for purposes which the Bank may designate.						
The Czech Republic	29(2)	In the interests of maintaining a bank's liquidity, the Czech National Bank may exceptionally provide short-term credit for a period of up to three months. When providing such credit, the Czech National Bank shall require adequate collateral		YES	YES	YES	YES	YES
Denmark	N/A							
Estonia	N/A							
Finland	N/A							
France	N/A							
Germany	N/A							
Greece	N/A							
Hungary	14	In the event that circumstances arise which jeopardise the stability of the financial system due to the operation of a credit institution, the MNB may extend an emergency loan to the credit institution, observing the prohibition of monetary financing as set forth in Paragraph (1) of Article 16. The MNB may make the extension of such a loan subject to performance of actions by the Hungarian Financial Supervisory Authority (hereinafter referred to as the 'Supervisory Authority') or performance of actions by the credit institution, at the proposal of the Supervisory Authority.					YES	YES
Ireland	N/A							
Italy	N/A							
Latvia	N/A							
Luxembourg	N/A							
Malta	17(1)	In accordance with the Treaty and the Statute, in order to achieve its objectives and to carry out its tasks, the operations of the Bank shall include the following: (g) when it deems such action necessary to safeguard financial stability or in other exceptional circumstances, to grant a loan or advance to any credit institution incorporated in Malta against such forms of security as the Board may consider appropriate.		YES			YES	YES
The Netherlands	N/A							
Poland	42(1)	The NBP may grant refinancing loans to banks, in zloty, in order to replenish their funding.	YES				YES	
	42(2)	In granting refinancing loans, the NBP shall consider the capacity of the bank to repay the loan together with interest, on the contractual repayment dates, subject to the reservation indicated in para. 3.				*		

Member State	Article	Text	1	2	3	4	5	6
	42(3)	The NBP may also grant refinancing loan to a bank for the purpose of implementation of the programme of bank rehabilitation proceedings.						
	42(4)	Refinancing facilities may be granted: 1) up to a specified amount, as a line of credit, 2) against pledges of securities, up to an amount corresponding to a specified proportion of the face value of such securities (lombard facilities), 3) in other forms, as specified by the NBP Management Board.		YES				
	42(5)	The contract for refinancing loan may be terminated by each of the parties with a seven days termination notice.						
	42(6)	In the event of the financial situation of the bank using the refinancing facilities has worsened to the extent putting the timely repayment of the loan at risk, or such bank does not observe the substantial provisions of the contract for loan, the NBP may terminate the contract for refinancing loan and demand an earlier repayment of the loan, partial or total, within a period shorter than stipulated in such contract.						*
	42(7)	The provisions of the Act referred to in Article 25 para. 3 shall apply to the contract for refinancing loan, subject to modifications resulting from the present Act.						
	43	In the event and under the conditions referred to in Article 34 item 3 of the Act on the Bank Guarantee Fund of 14 December 1994 (Dz. U. 2007 no. 70, item 474 and Dz.U. 2008 No. 196, item. 1214 and no. 209, item 1315), the NBP may grant loans to the Bank Guarantee Fund						
Portugal	N/A							
Romania	26	To carry out its tasks on ensuring financial stability, under exceptional circumstances and only on a case-by-case basis, Banca Națională a României may grant to credit institutions loans that are either unsecured or secured with assets other than those provided by Article 19 hereof.		NO			YES	YES
Slovakia	24(1)	The National Bank of Slovakia may exceptionally grant a short-term loan to a bank for temporary support of liquidity, provided that it is in compliance with prohibition of monetary financing; the claim to repayment of such a loan shall take priority over all other liabilities of the bank. Any such loan shall be secured by adequate collateral pursuant to Article 23 and granting such loan shall not be made so as to advantage or disadvantage any one bank in relation to other banks.		YES	YES	YES	YES	YES
	24(2)	The National Bank of Slovakia may grant a short-term loan to the Deposit Protection Fund or the Investment Guarantee Fund in order to cover the fund's urgent and unforeseen needs for supply of liquidity, if aspects of the systemic stability are threatened and		YES	YES	YES	NO	YES

Member State	Article	Text	1	2	3	4	5	6
		provided that it is in compliance with the prohibition on monetary financing. Any such loan shall be sufficiently secured by adequate collateral pursuant to Article 23.						
Slovenia	N/A							
Spain	N/A							
Sweden	Chapter 6, Article 9	In exceptional circumstances, the Riksbank may, with the aim of supporting liquidity, grant credits or provide guarantees on special terms to banking institutions and Swedish companies subject to the supervision of the Financial Supervisory Authority.					YES*	YES
The United Kingdom ⁸⁴⁵	N/A							

⁸⁴⁵ Memorandum of Understanding between HM Treasury, the Bank of England and the Financial Services Authority, agreed on or about 22 March 2006.

Table 5-1 Proposals

Law on Eesti Pank as of 1 January 2011	Proposal
<p>Chapter I General Provisions</p>	
<p>§ 1. Legal bases of Eesti Pank (1) Eesti Pank is the central bank of the Republic of Estonia and a member of the European System of Central Banks. Eesti Pank is the legal successor of Eesti Pank which was established as the central bank of the Republic of Estonia in 1919. (2) Eesti Pank is a legal person with its own statute, seal, coat of arms and other attributes permitted by law. (3) Eesti Pank operates pursuant to the Constitution of the Republic of Estonia, the Constitution of the Republic of Estonia Amendment Act, the Treaty on the Functioning of the European Union, the Statute of the European System of Central Banks and of the European Central Bank, legislation of the European Central Bank, this Act, other Acts and its statute. (4) The legal status of Eesti Pank can only be changed by passing an Eesti Pank Act Amendment Act (5) In order for the functions of Eesti Pank to be performed, the Supervisory Board of Eesti Pank shall issue decisions and the Governor of Eesti Pank shall issue regulations and decrees. (6) Eesti Pank and its divisions shall be registered in the state register of state and local government agencies pursuant to the procedure provided for in the statutes of the register</p>	<p>§ 1. (3) Eesti Pank operates pursuant to the Constitution of the Republic of Estonia, the Constitution of the Republic of Estonia Amendment Act, <u>the Treaty on European Union</u>, the Treaty on the Functioning of the European Union, the Statute of the European System of Central Banks and of the European Central Bank, legislation of the European Central Bank, this Act, other Acts and its statute.</p>
<p>§ 2. Objective and functions of Eesti Pank (1) The primary objective of Eesti Pank is to maintain price stability. Eesti Pank also supports the achievement of other economic policy objectives in accordance with the Treaty on the Functioning of the European Union. (2) The functions of Eesti Pank are: 1) to help to define the monetary policy of the European Union and to implement the monetary policy determined by the Governing Council of the European Central Bank; 2) to hold and manage the official foreign exchange reserves; 3) to promote the smooth operation of the payment systems and the stability of the financial system; 4) to participate in the development of the payment systems and the financial system; 5) to regulate currency circulation, contribute to the issuance of euro banknotes and issue of euro coins; 6) to compile the balance of payments of Estonia; 7) to collect and publish statistics necessary for the performance of its functions; 8) other functions of Eesti Pank arising from the law which are not in conflict with the objectives specified in subsection (1) of this section and the functions</p>	

specified in clauses 1)-7) of this subsection.	
<p>§ 3. Autonomy of Eesti Pank</p> <p>(1) Eesti Pank operates independently of other state agencies. Eesti Pank shall report on its activities to the Riigikogu and it is not subordinated to the Government of the Republic or any other executive state agency or any third person.</p> <p>(1¹) As part of the European System of Central Banks, Eesti Pank and members of its directing bodies may apply for and receive instructions to be carried out only from the European Central Bank.</p> <p>(2) Eesti Pank shall not be held liable for any proprietary obligations of the state and the state shall not be held liable for any proprietary obligations of Eesti Pank.</p>	
<p>§ 4. Co-operation between Eesti Pank and Government of Republic</p> <p>(1) [Repealed]</p> <p>(2) Eesti Pank shall advise the Government of the Republic in matters relating to economic policy. The Government of the Republic shall not take any important economic policy decisions without hearing the opinion of Eesti Pank.</p> <p>(3) Eesti Pank is authorised by the Government of the Republic to represent the Republic of Estonia in international organisations of which the Republic of Estonia is a member.</p> <p>(4) [Repealed]</p>	
<p>§ 4¹. Financial Supervision Authority</p> <p>(1) The Financial Supervision Authority, established pursuant to law, operates as an agency at Eesti Pank.</p> <p>(2) The Financial Supervision Authority has autonomous competence in the conduct of state financial supervision and has its own directing bodies, a separate budget and its own reporting system.</p> <p>(3) The Financial Supervision Authority has the right to obtain information necessary for the performance of its functions from Eesti Pank.</p>	<p>§ 4¹.</p> <p><u>(4) Eesti Pank has the right to obtain information from the Financial Supervisory Authority which is necessary for the performance of its functions.</u></p> <p><i>Explanation: this right will be corresponding to the right of the Financial Supervision Authority to obtain information from Eesti Pank.</i></p>
<p>§ 5. Seat of Eesti Pank</p> <p>(1) The seat of Eesti Pank is in Tallinn.</p> <p>(2) Eesti Pank may open independent divisions and representative offices which operate pursuant to their own statutes both in Estonia and abroad.</p>	
<p>Chapter II</p> <p>Directing Bodies of Eesti Pank and their Competence</p>	
<p>§ 6. Supervisory Board of Eesti Pank</p> <p>The highest body of Eesti Pank is the Supervisory Board of Eesti Pank, which consists of a Chairman and seven members.</p>	
<p>§ 7. Chairman of Supervisory Board of Eesti Pank</p> <p>(1) The Chairman of the Supervisory Board of Eesti Pank is appointed to office for a term of five years by</p>	

<p>the <i>Riigikogu</i> on the proposal of the President of the Republic.</p> <p>(1¹) The Chairman of the Supervisory Board of Eesti Pank shall notify the President of the Republic of his or her resignation from office at least four months in advance.</p> <p>(2) The Chairman of the Supervisory Board of Eesti Pank must be an Estonian citizen and have a university degree. The Governor of Eesti Pank or the Minister of Finance shall not be appointed as the Chairman of the Supervisory Board of Eesti Pank.</p> <p>(3) The Chairman of the Supervisory Board of Eesti Pank shall organise the activities of the Supervisory Board, chair the meetings of the Supervisory Board, monitor the implementation of the Supervisory Board's decisions, represent the Supervisory Board of Eesti Pank and respond to interpellations concerning the activities of the Supervisory Board of Eesti Pank submitted to him or her in the <i>Riigikogu</i>.</p>	
<p>§ 8. Members of Supervisory Board of Eesti Pank</p> <p>(1) The members of the Supervisory Board of Eesti Pank are appointed by the <i>Riigikogu</i> on the proposal of the Chairman of the Supervisory Board of Eesti Pank.</p> <p>(2) Members of the Supervisory Board of Eesti Pank must be Estonian citizens and have a university degree.</p> <p>(3) Members of the Government of the Republic and employees of Eesti Pank shall not be members of the Supervisory Board of Eesti Pank.</p> <p>(4) A member of the Supervisory Board of Eesti Pank shall not be an employee of any management institution, investment fund, investment company, credit institution, insurance company or other subject of financial supervision, nor be a member of the decision-making body of any such institution.</p> <p>(5) The members of the Supervisory Board of Eesti Pank shall be appointed for a term of five years.</p> <p>(6) The authority of a member of the Supervisory Board of Eesti Pank shall terminate upon the expiry of his or her term of authority, upon his or her resignation or, pursuant to the procedure prescribed in § 12 of this Law, dismissal, or in the event of his or her death.</p> <p>(6¹) A member of the Supervisory Board shall notify the Chairman of the Supervisory Board of his or her resignation from office at least four months in advance.</p> <p>(7) If a member of the Supervisory Board of Eesti Pank is appointed as a member of the Government of the Republic or commences work at Eesti Pank, the <i>Riigikogu</i> shall, on the proposal of the Chairman of the Supervisory Board of Eesti Pank, appoint an alternate member of the Supervisory Board whose authority terminates when the member of the Supervisory Board of Eesti Pank leaves the office which precludes his or her membership of the Supervisory Board of Eesti Pank or when he or she ceases to be employed at Eesti Pank.</p> <p>(8) The authority of members appointed to the Supervisory Board of Eesti Pank at a later time</p>	

<p>terminates at the same time as the authority of the given composition of the Supervisory Board of Eesti Pank.</p>	
<p>§ 9. Competence of Supervisory Board of Eesti Pank (1) The Supervisory Board of Eesti Pank shall exercise supervision over all the activities of Eesti Pank. (2) The following issues are within the exclusive competence of the Supervisory Board of Eesti Pank: 1) [Repealed] 2) making a proposal to the President of the Republic for appointment of the Governor of Eesti Pank; 3) [Repealed] 4) appointment to office and release of Deputy Governors of Eesti Pank, the heads of the independent divisions and representative offices of Eesti Pank, and the head of the internal audit department of Eesti Pank and for the appointment and removal of members of the Supervisory Board of the Financial Supervision Authority on the proposal of the Governor of Eesti Pank; 5) approval of the statute of Eesti Pank, the statutes of the independent divisions and representative offices of Eesti Pank and the statutes of the internal audit department; 6) supervision of the implementation of the budget of Eesti Pank; 7) appointment of internal auditors of Eesti Pank and approval of the work schedule for internal audits; 7¹) appointment of the independent auditors of Eesti Pank pursuant to the procedure provided in subsection 31 (1) of this Act; 8) approval of Eesti Pank's annual report on the proposal of the Governor; 9) decision on the design of the national side of Estonian euro coins and on the nominal value and design of collector coins; 10) deciding, on the proposal of the Governor of Eesti Pank, on the establishment, reorganisation and liquidation of independent divisions of Eesti Pank; 11) review and approval of written proposals and other documents submitted to the Riigikogu in the name of Eesti Pank. (2¹) The Supervisory Board of Eesti Pank shall regularly obtain information from the Governor of Eesti Pank concerning Estonia's economy and monetary policy, the situation in the financial sector and the implementation of Eesti Pank's budget. (3) Resolutions concerning the activities of Eesti Pank shall be formulated as decisions of the Supervisory Board of Eesti Pank. (4) Meetings of the Supervisory Board of Eesti Pank shall be held as necessary but not less frequently than eight times a year. (5) Meetings of the Supervisory Board of Eesti Pank shall be closed unless otherwise decided by the Chairman of the Supervisory Board of Eesti Pank. The Governor and Deputy Governors of Eesti Pank</p>	<p>§ 9. (2):</p> <p><u>4¹) granting permission to the Governor or Deputy Governors of Eesti Pank, to conduct research or carry out pedagogical activities;</u></p> <p><i>Explanation: see proposal amending Article 10</i></p>

participate in the meetings with the right to speak. The Minister of Finance can participate in the meetings bearing in mind Article 130 of the Treaty on the Functioning of the European Union.

(6) The Supervisory Board of Eesti Pank shall adopt decisions and issue statements. The Governor of Eesti Pank shall be responsible for the implementation of decisions of the Supervisory Board of Eesti Pank.

(7) The Supervisory Board of Eesti Pank has a quorum if at least five members participate in the meeting. In the absence of the Chairman, a member of the Supervisory Board elected from among those present shall chair the meeting.

(8) Decisions on issues specified in clauses (2) 2), 5), 6) and 8) of this section shall only be passed by a majority vote of the members of the Supervisory Board. Other decisions shall be passed by a majority vote of those members of the Supervisory Board present at the meeting. If the votes are equally divided, the Chairman of the Supervisory Board shall have the deciding vote.

(9) Decisions of the Supervisory Board of Eesti Pank which are of a regulatory nature shall be published in the *Riigi Teataja*.

§ 10. Governor and Vice-Governors of Eesti Pank

(1) The Governor of Eesti Pank is appointed to office for a term of seven years by the President of the Republic on the proposal of the Supervisory Board of Eesti Pank. The Governor of Eesti Pank shall not be appointed to office for more than one consecutive term.

(1¹) The Governor of Eesti Pank shall notify the Supervisory Board of Eesti Pank of his or her resignation at least four months in advance.

(2) The Governor of Eesti Pank must be an Estonian citizen and have a university degree. A Deputy Governor of Eesti Pank must be Estonian citizen and have a university degree.

(2¹) Deputy Governors of Eesti Pank shall be appointed to office by the Supervisory Board of Eesti Pank for a term of five years on proposal of the Governor of Eesti Pank.

(3) The Governor and Deputy Governors of Eesti Pank shall be independent in the performance of their functions. They shall not hold any other office, be in service or be party to any activities which, by their nature, restrict or may restrict the autonomy of Eesti Pank or adversely affect or may adversely affect Eesti Pank in the achievement of its objectives or the performance of its functions.

(4) In the absence of the Governor of Eesti Pank, a Deputy Governor shall substitute for him or her and the Governor of Eesti Pank shall transfer his or her authority temporarily to the Deputy Governor by a regulation. If it is not possible to transfer the authority to a Deputy Governor, the Supervisory Board of Eesti Pank shall designate the person to substitute for the Governor from among the Deputy Governors. If the Supervisory Board has not designated a person to substitute for the Governor, the Deputy Governor who is senior in age shall substitute for the Governor. The person substituting for the Governor of Eesti Pank

§ 10. Governor and Vice-Governors of Eesti Pank

(1) The Governor of Eesti Pank is appointed to office for a term of seven years by the President of the Republic on the proposal of the Supervisory Board of Eesti Pank. ~~The Governor of Eesti Pank shall not be appointed to office for more than one consecutive term.~~

~~(1¹) The Governor of Eesti Pank shall notify the Supervisory Board of Eesti Pank of his or her resignation at least four months in advance.~~

~~(2) The Governor of Eesti Pank must be an Estonian citizen and have a university degree. A Deputy Governor of Eesti Pank must be Estonian citizen and have a university degree.~~

~~(2¹) Deputy Governors of Eesti Pank shall be appointed to office by the Supervisory Board of Eesti Pank for a term of five years on proposal of the Governor of Eesti Pank.~~

(2) The appointment of the Governor of Eesti Pank shall not be renewed.

(3) Deputy Governors of Eesti Pank shall be appointed to office by the Supervisory Board of Eesti Pank for a term of five years on proposal of the Governor of Eesti Pank. Their term of office may be renewed once.

(4) The Governor and Deputy Governors of Eesti Pank shall meet the following conditions:

1) be an Estonian citizen;

2) have the full legal capacity;

3) have either a proof of university education or high integrity and prominent qualifications in economics, finance or banking;

4) have sound background, eligible for highest security clearance, be not sentenced to imprisonment or being adjudicated on bankruptcy in the past.

(5) The Governor and Deputy Governors of Eesti Pank shall be independent in the performance of their functions. They shall not hold any other office, be in service or be party to any activities which, by their nature, restrict or may restrict the autonomy of Eesti Pank or adversely affect or may adversely affect Eesti Pank in the achievement of its objectives or the performance of its functions. They may have no other position outside Eesti Pank, except for research or pedagogical activities upon consent from the Supervisory Board.

(6) In the absence of the Governor of Eesti Pank, a Deputy Governor shall substitute for him or her and the Governor of Eesti Pank shall transfer his or her authority temporarily to the Deputy Governor by a regulation. If it is not possible to transfer the authority to a Deputy Governor, the Supervisory Board of Eesti Pank shall designate the person to substitute for the Governor from among the Deputy Governors. If the Supervisory Board has not designated a person to substitute for the Governor, the Deputy Governor who is senior in age shall substitute for the Governor. The person substituting for the Governor of Eesti Pank

<p>shall, during his or her term of authority, have the full authority of the Governor of Eesti Pank.</p>	<p>shall, during his or her term of authority, have the full authority of the Governor of Eesti Pank.</p> <p><i>Explanation: since the Estonian NCB Statute foresees the dismissals on the basis of Article 14.2 of the Statute, Article 10 needs to be amended in order to reflect the conditions required for the performance of the Governor's duties as well as the duties themselves (the duty of loyalty and the duty of non-competition Breach of these duties would constitute a serious misconduct.</i></p>
<p>§ 11. Competence of Governor of Eesti Pank (1) The following issues are within the exclusive competence of the Governor of Eesti Pank: 1) designing of banking policies, general management</p>	<p>§ 11.</p>

<p>of Eesti Pank's activities and organisation of the performance of the tasks of the European System of Central Banks;</p> <p>2) organisation of the implementation of decisions of the Supervisory Board of Eesti Pank and the application of measures (including sanctions) necessary to ensure their implementation;</p> <p>3) [Repealed]</p> <p>4) representation of Eesti Pank without special authorisation in all matters and instances both in Estonia and abroad;</p> <p>5) grant of authorisation to represent Eesti Pank in certain cases or in certain matters;</p> <p>6) making proposals to the Supervisory Board of Eesti Pank for the appointment to office and release of the Deputy Governors and the head of the internal audit department of Eesti Pank and the heads of the independent divisions of Eesti Pank, and for the appointment and removal of members of the Supervisory Board of the Financial Supervision Authority;</p> <p>7) approval of Eesti Pank's budget.</p> <p>(2) The Governor of Eesti Pank shall report to the <i>Riigikogu</i> and respond to interpellations concerning Eesti Pank's activities submitted to him or her in the <i>Riigikogu</i>.</p> <p>(3) If the Governor of Eesti Pank does not agree with a decision of the Supervisory Board of Eesti Pank, he or she shall report to the President of the <i>Riigikogu</i> not later than within three working days and make a proposal to submit an interpellation in the matter to the Chairman of the Supervisory Board of Eesti Pank.</p> <p>(4) The Governor of Eesti Pank shall report regularly on his or her activities to the Supervisory Board of Eesti Pank.</p> <p>(5) The Governor of Eesti Pank shall issue regulations and decrees.</p> <p>(6) The regulations of the Governor of Eesti Pank shall be published in the <i>Riigi Teataja</i>.</p>	<p>(¹) <u>The Governor of Eesti Pank shall:</u></p> <p><u>1) organise the activities of the Executive Board;</u></p> <p><u>2) chair the meetings of the Executive Board;</u></p> <p><u>3) attend the meetings of the decision-making bodies of the ECB where he is a member;</u></p> <p><u>4) attend the meetings of the Supervisory Board of the Financial Supervisory Authority;</u></p> <p><u>5) participate in other bodies as set forth by law.</u></p> <p><i>Explanation: this amendment clarifies the Governor's duties in addition to the general duty described in Article 10(5) above.</i></p>
<p>[§ 11¹, 11² Security vetting of the candidates for the positions of the Governor and the member of the Supervisory Board of Eesti Pank]</p>	
<p>§ 11³. Extension of authority</p> <p>If a new Governor of Eesti Pank or a new Chairman or member of the Supervisory Board of Eesti Pank has not been appointed by the due date for termination of the authority of the Governor of Eesti Pank or the Chairman or a member of the Supervisory Board of Eesti Pank, the authority of the person in office shall extend until the entry into force of a corresponding decision on appointment to office.</p>	

<p>§ 12. Dismissal</p> <p>(1) The Chairman and members of the Supervisory Board of Eesti Pank may be dismissed upon the entry into force of a judgment of conviction.</p> <p>(2) The Governor and a Deputy Governor of Eesti Pank may be dismissed only on the basis specified in Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank.</p>	
<p>§ 13. Executive Board of Eesti Pank</p> <p>(1) Eesti Pank's activities are managed by the Executive Board of Eesti Pank, the Chairman of which by virtue of office shall be the Governor of Eesti Pank. The Executive Board of Eesti Pank is composed of the Governor of Eesti Pank and the Deputy Governors.</p> <p>(1¹) The Executive Board shall be responsible for planning and organising Eesti Pank's activities. The Governor of Eesti Pank may assign additional functions to the Executive Board. The Executive Board passes decisions for performance of the functions thereof.</p> <p>(2) The division of tasks and bases for the organisation of work of the Executive Board of Eesti Pank shall be provided for in the statute of Eesti Pank.</p>	
<p>Chapter III Monetary Policy and Currency Circulation</p>	
<p>§ 14. Rights of Eesti Pank</p> <p>(1) Taking into account the competences of the European Central Bank and the European System of Central Banks, Eesti Pank has the right to:</p> <p>1) take and grant loans against adequate collateral;</p> <p>2) make and accept deposits;</p> <p>3) trade in securities, precious metals and foreign currency;</p> <p>4) conclude other transactions in money, securities or foreign currency markets;</p> <p>5) process payment instructions and clearing payments;</p> <p>6) own shares and other holdings or real estate;</p> <p>7) establish rules regulating the money market, and prudential standards based on law;</p> <p>8) establish rules regulating the handling of euro banknotes and coins;</p> <p>9) impose sanctions on persons violating the rules of currency circulation, except for the sanctions imposed by the European Central Bank based on Article 34.3 of the statute of the European System of Central Banks and of the European Central Bank;</p> <p>10) receive information from state and local government authorities and other persons and agencies required for the performance of its functions;</p> <p>11) perform other acts for the performance of its functions.</p>	<p>§ 14. (1)</p> <p><u>1¹) exceptionally, a short-term loan to a credit institution for temporary support of liquidity may be granted, provided that it is in compliance with prohibition of monetary financing and will be granted in the interest of financial stability;</u></p> <p><i>Explanation: Assuming that the emergency liquidity assistance in the euro area will remain a national task as discussed in Section 4.3.1, one would need a clear legal basis for that kind of activity. Due to the unclear status of State guarantees with regard to ELA, no drafting suggestions have been made in this regard.</i></p>

<p>§ 14¹. Euro banknotes and coins (1) With the permission of the European Central Bank, Eesti Pank has the right to emit euro banknotes. (2) Eesti Pank has the exclusive right to emit euro coins in the Republic of Estonia. The amount of the issue of euro coins must be approved by the European Central Bank in advance. (3) Eesti Pank and credit institutions authorised thereby shall receive mutilated or damaged euro banknotes notes and coins and substitute them with new banknotes and coins pursuant to the procedure provided by the legislation of the European Union. The Governor of Eesti Pank has the right to establish specific rules for handling mutilated or damaged euro banknotes and coins.</p>	
<p>§ 15. Regulation of foreign currency operations (1) The procedure for foreign currency operations is determined by law. (2) Eesti Pank shall, pursuant to law, establish rules for the import into Estonia and the export of foreign currency and for the formation and use of foreign currency reserves. (3) Eesti Pank shall establish the conditions and rules for the performance of cross-border banking transactions by credit institutions and other legal persons. (4) [Repealed] (5) [Repealed]</p>	
<p>§ 16. [Repealed]</p>	
<p>Chapter IV Supervision over Activities of Credit Institutions</p>	
<p>§ 17. [Repealed]</p>	
<p>§ 18. [Repealed]</p>	
<p>§ 19. Correspondent accounts and reserve accounts of credit institutions Eesti Pank shall hold the correspondent accounts and reserve requirement accounts of credit institutions, monitor that the balances of these accounts meet the established requirements and, in the case of deviations, implement measures to ensure that the requirements are met.</p>	
<p>§ 20. [Repealed]</p>	
<p>§ 21. Confidential and public information (1) Eesti Pank shall ensure the confidentiality of information which contains banking secrets. (1¹) Eesti Pank classifies information the disclosure of which would damage price stability or financial stability and information to which restrictions on access are established by the European System of Central Banks as information intended for internal use. (2) [Repealed] (3) [Repealed] (4) Eesti Pank has the right to disclose information at its disposal concerning credit institutions provided that such information does not contain banking secrets. (5) Eesti Pank shall periodically publish information concerning its activities and the economy of Estonia and the European Union.</p>	
<p>§ 22. [Repealed]</p>	

§ 23. [Repealed]	
§ 24. [Repealed]	
Chapter V Assets and Reporting of Eesti Pank	
<p>§ 25. Capital and funds of Eesti Pank</p> <p>(1) The own capital of Eesti Pank includes:</p> <p>1) statutory capital;</p> <p>2) reserve capital;</p> <p>3) foundation capital and funds for specific purposes.</p> <p>(2) The statutory capital of Eesti Pank is 100 000 000 euros.</p> <p>(3) [Repealed]</p>	
<p>§ 26. Assets of Eesti Pank</p> <p>(1) [Repealed]</p> <p>(2) Eesti Pank shall possess, use and dispose of its assets independently.</p> <p>(3) Immovable and movable property which was in the ownership of the Eesti Pank established as the central bank of the Republic of Estonia in 1919 and which was unlawfully expropriated in 1940 also belongs to Eesti Pank.</p> <p>(4) The holding and management of the official foreign exchange reserves shall be carried out pursuant to Acts, the Statute of Eesti Pank and the guidelines of the Governing Council of the European Central Bank.</p>	
<p>§ 27. Reserve capital, foundation capital and funds for specific purposes of Eesti Pank</p> <p>(1) Reserve capital, foundation capital and funds for specific purposes shall be established from the profits of Eesti Pank and from other revenue intended for specific purposes and prescribed by the statute.</p> <p>(2) When reserve capital becomes equal to statutory capital, the Riigikogu shall decide whether the size of reserve capital shall be increased further or not.</p> <p>(3) The procedure for the establishment and use of reserve capital, foundation capital and funds for specific purposes shall be prescribed by the statute of Eesti Pank.</p>	
<p>§ 28. Financial year</p> <p>Eesti Pank's financial year begins on 1 January and ends on 31 December.</p>	
§ 29. [Repealed]	
<p>§ 30. Profit and loss of Eesti Pank</p> <p>(1) The profit (loss) of Eesti Pank is the difference between its revenue and its expenditure.</p> <p>(2) At least 25 per cent of annual profits shall be used to increase statutory capital up to the amount determined by the <i>Riigikogu</i>.</p> <p>(3) At least 25 per cent of annual profits shall be used to increase reserve capital pursuant to a decision of the Supervisory Board of Eesti Pank.</p> <p>(4) After the allocations specified in subsections (2) and (3) of this section are made, part of the profits may be used, pursuant to a decision of the Supervisory Board of Eesti Pank, to establish and augment the foundation capital and funds for specific purposes prescribed by the statute of Eesti Pank.</p> <p>(5) Any profits remaining after the allocations specified in subsections (2), (3) and (4) of this section</p>	§ 30.

<p>are made shall be transferred to the state budget.</p> <p>(6) Any loss incurred by Eesti Pank shall be covered from reserve capital. If the reserve capital is insufficient, losses may be covered from statutory capital with the permission of the <i>Riigikogu</i>.</p> <p>(7) Eesti Pank, being the central bank of the state, does not pay income tax or any other taxes related to its economic activity into the state budget or local budgets, except taxes related to natural persons. The Government of the Republic has the right to release Eesti Pank from the payment of other state taxes in exceptional circumstances.</p>	<p><u>(6¹) Upon deciding on the coverage of losses from the statutory capital, the Riigikogu shall also decide, whether the method referred to in Article 30(2) shall be used or whether the necessary amount shall be allocated from the State budget in order to recover the statutory capital.</u></p> <p><i>Explanation: In the cases the statutory capital needs to be written off as a result of losses, the central bank needs to be recapitalised.</i></p>
<p>§ 31. Monitoring of activities and annual report of Eesti Pank</p> <p>(1) The Supervisory Board of Eesti Pank shall appoint independent auditors recommended by the Governing Council of the European Central Bank and approved by the Council of the European Union to monitor Eesti Pank's activities during the financial year and to attest to the accuracy of the annual report prepared by Eesti Pank. Eesti Pank's activities may be examined further if the Riigikogu passes a corresponding resolution.</p> <p>(1¹) An auditor of Eesti Pank shall audit the annual profit and loss account of the Financial Supervision Authority.</p> <p>(2) Eesti Pank's annual report shall be prepared pursuant to the rules established on the basis of Article 26.4 of the Statute of the European System of Central Banks and of the European Central Bank.</p> <p>(3) The annual report shall be approved and, together with the auditor's report, submitted to the Riigikogu by the Supervisory Board of Eesti Pank. The annual report of the Financial Supervision Authority approved by the Supervisory Board of the Financial Supervision Authority shall be submitted to the Riigikogu at the same time as Eesti Pank's annual report. The Riigikogu shall hear a presentation concerning Eesti Pank's annual report by the Governor of Eesti Pank.</p> <p>(4) The annual report shall be published in the <i>Riigi Teataja</i> and in Eesti Pank's Yearbook.</p>	
<p>Chapter VI Final Provisions</p>	
<p>§ 32. Relations with central banks of other countries and cross-border transactions</p> <p>Eesti Pank shall maintain relations with the central banks of other countries and other financial institutions and it has the right to carry out transactions therewith for the performance of functions specified in this Act.</p> <p>§ 33. Banking operations with own employees</p> <p>(1) Under the conditions approved by the Supervisory</p>	

<p>Board of Eesti Pank, Eesti Pank has the right to accept cash deposits from members of the Supervisory Board of Eesti Pank and employees of Eesti Pank and to pay interest thereon not exceeding the average rates of interest paid by banks.</p> <p>(2) [Repealed]</p> <p>(3) Eesti Pank has the right to grant loans to its employees and members of the Supervisory Board under the conditions approved by the Supervisory Board of Eesti Pank.</p>	
<p>§ 34. Compilation of balance of payments</p> <p>(1) Taking into account the competences of the European Central Bank and the European System of Central Banks, Eesti Pank shall collect monetary, financial and balance of payments statistics, necessary for performance of its functions, on the basis and pursuant to the procedure provided by the Official Statistics Act.</p> <p>(2) Eesti Pank has the right to obtain, free of charge, the information necessary for drawing up the balance of payments of Estonia from all state and local government agencies and persons conducting cross-border economic transactions in the territory of Estonia.</p>	
<p>§ 35. Obligation to maintain confidentiality of professional secrets</p> <p>(1) Members of the Supervisory Board of Eesti Pank and persons employed by Eesti Pank are required to maintain the confidentiality of information pertaining to Eesti Pank, all credit institutions and other legal persons if the disclosure of such information could result in damage to the Estonian economy or to the economic interests of credit institutions or their clients.</p> <p>(2) The obligation to maintain confidentiality applies to information which has become known to employees of Eesti Pank solely in connection with their employment at Eesti Pank. The obligation to maintain confidentiality applies even after the persons have left the employment of Eesti Pank.</p> <p>(3) If a professional secret is disclosed, the persons at fault shall be punished under disciplinary or criminal procedure pursuant to law.</p>	<p>§ 35.</p> <p><u>(1¹) Eesti Pank may exchange confidential information within the ESCB and with third parties, provided that the confidentiality of information shall be ensured by the recipients at the classification level established by Eesti Pank.</u></p> <p><i>Explanation: In accordance with the case law of the Court of Justice, it is necessary, that professional secrets will be known only to a limited number of persons. It must then be information whose disclosure is liable to cause serious harm to the person who has provided it or to third parties. Finally, the interests liable to be harmed by disclosure must, objectively, be worthy of protection. Depending on the impact an unauthorised disclosure may cause, the information needs to be classified and treated in accordance with its classification. If confidential information is exchanged, the same level of protection shall be ensured by the recipient.</i></p>
<p>§ 36. Participation in enterprise</p> <p>Eesti Pank may establish enterprises which are necessary for the performance of its functions and may participate in the activities of such enterprises.</p>	
<p>§ 37. [Omitted]</p>	
<p>§ 38. [Omitted]</p>	
<p>§ 39. [Omitted]</p>	

Bibliography

A Historic Political Agreement. (2010, February 12). Retrieved February 15, 2010, from Eurointelligence.com: <http://www.eurointelligence.com/article.581+M5617bdad7a7.0.html>

Aare, J. (2002). *Päästetud kroon*. Tallinn: Kirjastus ILO.

Adler, E., Kavanagh, J., & Ugryumov, A. (2010). State Aid to Banks in the Financial Crisis: The Past and the Future. *Journal of European Competition Law & Practice Vol. 1 No. 1*, 66-71.

Albi, A. (2000). Euroliit ja kaasaegne suveräänsus. *Juridica Nr. 3*, 160-171.

Albi, A. (2001). Põhiseaduse muutmine Euroopa Liitu astumiseks. *Juridica Nr. 9*, 603-615.

Albi, A. (2007). Supremacy of EC Law in the New Member States: Bringing Parliaments into the Equation of 'Co-operative Constitutionalism'. *European Constitutional Law Review No. 3*, 25-67.

Albi, A., Gallagher, M., Koolmeister, I., Mälksoo, L., & Roosma, P. (2002). Ühispöördumine seoses nn. Põhiseaduse Kolmanda akti riigiõiguslike probleemidega. *Juridica Nr. 5*, 352-353.

Almunia, J. (2010, June 14). *Competition and Regulation: Micro-economic support for macro-economic recovery*, *SPEECH/10/312*. Retrieved June 20, 2010, from European Commission's website: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/312&format=PDF&aged=0&language=EN&guiLanguage=en>

Amtenbrink, F. (1999). *A Comparative Study of the European Central Bank*. Oxford: Hart Publishing Ltd.

Amtenbrink, F. (2005). The Three Pillars of Central Bank Governance - Towards a Model central Bank Law or a Code of Good Governance? *International Monetary Fund*, pp. 101-132.

Amtenbrink, F., & de Haan, J. (2002). The European Central Bank: an Independent Specialised Organisation of Community Law - A Comment. *Common Market Law Review*, 65-67.

Amtenbrink, F., & Lastra, R. M. (2008). Securing Democratic Accountability of Financial Regulatory Agencies - A Theoretical Framework. In R. V. De Mulder, *Mitigating Risk in the Context of safety and security. How relevant is a Rational Approach?* (pp. 115-132). Rotterdam: Erasmus School of Law & Research School for Safety and Security.

Arda, A. (2006, June 1). *The Independence of the European System of Central Banks: A Commentary on Article 108 TEC*. Retrieved February 22, 2010, from SSRN website: <http://ssrn.com/abstract=927316>

Arnone, M., Darbar, S. M., & Gambini, A. (2007, April). Banking Supervision: Quality and Governance. *IMF Working Paper WP/07/82*.

Avgerinos, Y. V. (2003). *Regulating and Supervising Investment Services in the European Union*. Palgrave Macmillan.

Ayadi, R., & Lastra, R. M. (2010). Proposals for reforming deposit guarantee schemes in Europe. *Journal of Banking Regulation, Vol. 11, 3*, 210-222.

Banca d'Italia. (2005, December 19). *Comunicato Stampa*. Retrieved August 15, 2006, from Banca d'Italia website: http://www.bancaditalia.it/media/comsta/2005/c_s_191205/en_comunicato_19_12_05.pdf

Bank for International Settlements. (2006, October 5). *Bank supervisors from 120 countries endorse updated international principles for effective banking supervision*. Retrieved January 6, 2010, from BIS website: <http://www.bis.org/press/p061005a.htm>

Bank for International Settlements. (2009, May 29). *Issues in the Governance of Central Bank: A Report from the Central Bank Governance Group*. Retrieved March 20, 2010, from BIS website: <http://www.bis.org/publ/othp04.pdf>

Barnard, C., & Deakin, S. (2002). Market Access and Regulatory Competition. In C. Barnard, & J. Scott, *The Law of the Single European Market: Unpacking the Premises* (pp. 197-224). Oxford and Portland: Hart Publishing.

Basel Committee on Banking Supervision. (2006, October 5). *Core Principles for Effective Banking Supervision*. Retrieved January 6, 2010, from BIS website: <http://www.bis.org/publ/bcbs129.pdf>

Basel Committee on Banking Supervision. (2009, August). *History of the Basel Committee and its Membership*. Retrieved January 6, 2010, from Bank for International Settlements: <http://www.bis.org/bcbs/history.pdf?noframes=1>

- Belke, A. H., & Styczynska, B. (2006). The Allocation of Power in the Enlarged ECB Governing Council: An Assessment of the ECB Rotation Model. *Journal of Common Market Studies*, Vol. 44, No. 5, 865-897.
- Bénassy-Quéré, A., & Turkish, E. (2009). The ECB Governing Council in an Enlarged Euro Area. *Journal of Common Market Studies* Vol. 47, No 1, 25-53.
- Berger, H., & de Haan, J. (1999). A State within the State? An Event Study on the Bundesbank (1948 - 1973). *Scottish Journal of Political Economy*, Vol. 46, No. 1, 17-39.
- Bini Smaghi, L. (2008). Central Bank Independence in the EU: From Theory to Practice. *European Law Journal*, Vol. 14, Issue 4, 446-460.
- Bini Smaghi, L. (2009, February 12). *Financial crisis: Where does Europe stand?* Retrieved January 21, 2010, from <http://www.ecb.int/press/key/date/2009/html/sp090212.en.html>
- Bini Smaghi, L. (12 June 2008). Supervision and central banking: improving the exchange of information. “*Financial turmoil and missing risks: new challenges for bankers and regulators*”. Milan: ECB at <http://www.ecb.int/press/key/date/2008/html/sp080612.en.html>.
- Bofinger, P., Enderlein, H., Padoa-Schioppa, T., & Sapir, A. (2010, September 27). *Eurozone needs a permanent bail-out fund*. Retrieved December 6, 2010, from FT.com: <http://www.ft.com/cms/s/0/10a71e1c-ca6c-11df-a860-00144feab49a.html#axzz17L8wCe1Q>
- Borio, C. E., & Shim, I. (2007, December). *What can (macro-)prudential policy do to support monetary policy?* Retrieved January 8, 2010, from BIS Working Papers No 242: http://www.bis.org/repofficepubl/arpresearch_fs_200712.01.pdf?noframes=1
- Borio, C., & Drehmann, M. (2009, June). *Towards an operational framework for financial stability: “fuzzy” measurement and its consequences*. Retrieved January 7, 2010, from <http://www.bis.org/publ/work284.htm>
- Breidhart, A. (2010, September 9). *German central banker in race row resigns*. Retrieved December 10, 2010, from Reuters.com: <http://www.reuters.com/article/idUSTRE6885CX20100909>
- Brinkhorst, L. J., Louis, J.-V., & Smits, R. (2009, April 6). *De Larosière report fails to tackle main issues* . Retrieved January 15, 2010, from EurActive.com: http://www.euractiv.com/en/financial-services/larosire-report-fails-tackle-main-issues/article-181014?_print

Brown, M. (2010, September 20). *Fitch, Moody's, S&P to assign EFSF Triple A-Ratings*. Retrieved December 6, 2010, from Wall Street Journal Online: <http://online.wsj.com/article/BT-CO-20100920-703246.html>

Bryant, C. (2010, September 8). *Hungary warned on pay cap law*. Retrieved December 10, 2010, from FT.com: <http://www.ft.com/cms/s/0/a4c26732-ba95-11df-b73d-00144feab49a.html#axzz193Xkfuog>

CEBS and CEIOPS. (2009, January 27). *Colleges of Supervisors - 10 Common Principles*. Retrieved January 15, 2010, from <http://www.c-eps.org/getdoc/aeecaf1a-81b5-476a-95dd-599c5e967697/Clean-V3-formatted-CEBS-2008-124-CEIOPS-SEC-08-54-.aspx>

CEBS. (2010, June 18). *CEBS's Press Release on State of Play with the 2010 EU-Wide Stress-Testing Exercise*. Retrieved June 27, 2010, from CEBS' website: http://www.c-eps.org/documents/News---Communications/2010/PR_2010stresstesting.aspx

Chiti, E. (2009). An important part of the EU's institutional machinery: Features, problems and perspectives of European agencies. *Common Market Law Review Vol. 46*, 1395-1442.

Čihák, M., & Nier, E. (2009, September). The Need for Special Resolution Regimes for Financial Institutions—The Case of the European Union. *IMF Working Paper WP/09/200*.

Committee of European Banking Supervisors. (2009). *Annual Report 2008*. Retrieved January 27, 2010, from CEBS website: <http://www.c-eps.org/documents/Publications/Other-Publications/AnnualReport/AR2008.aspx>

Committee of European Banking Supervisors. (2009, March 6). *Mapping of supervisory objectives and powers, including early intervention measures and sanctioning powers (CEBS 2009 47)*. Retrieved January 2, 2010, from CEBS website: [http://www.c-eps.org/getdoc/f7a4d0f8-5147-4aa4-bb5b-28b0e56c1910/CEBS-2009-47-Final-\(Report-on-Supervisory-Powers\)-.aspx](http://www.c-eps.org/getdoc/f7a4d0f8-5147-4aa4-bb5b-28b0e56c1910/CEBS-2009-47-Final-(Report-on-Supervisory-Powers)-.aspx)

Committee of Governors of the Central Banks of the Member States of the European Economic Community. (1990, December 8). Draft Statute of the European System of Central Banks and of the European Central Bank. *"Europe" Documents No 1669/1670*, pp. 1-30.

Council of the European Union. (2009, December 2). *Press Release, 2981st Council meeting, Economic and Financial Affairs*. Retrieved June 27, 2010, from Council of the European Union's website: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/111706.pdf

Craig, P., & de Burca, G. (2008). *EU Law: Text, Cases, and Materials, Fourth edition*. Oxford: Oxford University Press.

Cranston, R. (2002). *Principles of Banking Law, 2nd ed.* Oxford University Press.

Crockett, A. (2000, September 21). *Marrying the micro- and macroprudential dimensions of financial stability*. Retrieved January 8, 2010, from BIS website: <http://www.bis.org/review/rr000921b.pdf>

Cukierman, A. (October 25th, 2010). Central Bank Finances and Independence - How Much Capital Should a Central Bank Have? In S. Milton, & P. Sinclair, *The Capital Needs of Central Banks*. Routledge Publishing House.

De Haan, J., & Oosterloo, S. (2006). Transparency and accountability of central banks in their role of financial stability supervisor in OECD countries. *European Journal of Law & Economics*, 255-271.

de Larosière, J., Balcerowicz, L., Issing, O., Maserà, R., Mc Carthy, C., Nyberg, L., et al. (2009, February 25). *Report of the High-level Group of Financial Supervision in the EU*. Retrieved January 2, 2010, from European Commission's website: http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf

Delfino, R. (2004). Credit Institutions and State Aids in EC Law. *European Business Law Review*, 775-810.

Delors, J., Thygesen, N., Lamfalussy, A., & Boyer, M. (1989, April 12). *Report on economic and monetary union in the European Community, Committee for the Study of Economic and Monetary Union*. Retrieved January 12, 2010, from European Commission's website: http://ec.europa.eu/economy_finance/emu_history/documentation/chapter13/19890412en235r_epeconommetary_a.pdf

Demertzis, M. (2007, January 26). *A case against transparency and communication in monetary policy*. Retrieved August 29, 2010, from Eurointelligence website: <http://www.eurointelligence.com/article.581+M5c6d9d8af2f.0.html>

Demmke, C., Bovens, M., Henökl, T., van Lierop, K., Moilanen, T., Pikker, G., et al. (2007, October). *Regulating Conflicts of Interest for Holders of Public Office in the European Union*. Retrieved March 20, 2010, from European Commission's website: http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf

Deutsche Bundesbank. (2010, September 2). *Executive Board of the Deutsche Bundesbank submits application for the dismissal of Dr Thilo Sarrazin*. Retrieved September 4, 2010, from Deutsche Bundesbank website: <http://www.bundesbank.de/download/presse/presenotizen/2010/20100902.sarrazin.en.php>

Deutsche Bundesbank. (2004, April 16). *Personal statement by Bundesbank President Ernst Welteke*. Retrieved August 16, 2006, from Deutsche Bundesbank website: http://www.bundesbank.de/download/presse/presenotizen/2004/20040416bbk5_en.pdf

Deutsche Bundesbank. (2010, August 30). *Statement by the Deutsche Bundesbank*. Retrieved September 4, 2010, from Deutsche Bundesbank website: <http://www.bundesbank.de/download/presse/presenotizen/2010/20100830.stellungnahme.en.php>

Deutsche Bundesbank. (2004, April 8). *Statement from the Executive Board of the Deutsche Bundesbank*. Retrieved August 15, 2006, from Deutsche Bundesbank website: http://www.bundesbank.de/download/presse/presenotizen/2004/20040408bbk2_en.pdf

Doherty, J., & Lenihan, N. (2005). Central bank independence and responsibility for financial supervision within the ESCB: the case of Ireland. In *Legal Aspects of the European System of Central Banks: Liber Amicorum Paolo Zamboni Garavelli* (pp. 213-232). Frankfurt am Main: European Central Bank.

Dougan, M. (2008). Dougan, M. The Treaty of Lisbon 2007: Winning Minds, Not Hearts. *Common Market Law Review*, Vol. 45, 617–703.

Drėviņa, K., Laurinavičius, K., & Tupits, A. (2007, July). *Legal and institutional aspects of the currency changeover following the restoration of the independence of the Baltic States*, ECB Legal Working Paper Series No 5. Retrieved December 5, 2008, from ECB website: <http://www.ecb.int/pub/pdf/scplps/ecblwp5.pdf>

Eurogroup. (2010, June 7). *Terms of reference of the Eurogroup: European Financial Stability Facility*. Retrieved June 20, 2010, from The Council of the European Union's website: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/misc/114977.pdf

European Central Bank. (1999, April). *Annual Report 1998*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar1998en.pdf>

European Central Bank. (2000, April). *Annual Report 1999*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar1999en.pdf>

European Central Bank. (2001, May). *Annual Report 2000*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2000en.pdf>

European Central Bank. (2002, April). *Annual Report 2001*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2001en.pdf>

European Central Bank. (2003, April). *Annual Report 2002*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2002en.pdf>

European Central Bank. (2004, April). *Annual Report 2003*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2003en.pdf>

European Central Bank. (2005, April). *Annual Report 2004*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2004en.pdf>

European Central Bank. (2006, April). *Annual Report 2005*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2005en.pdf>

European Central Bank. (2007, April). *Annual Report 2006*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2006en.pdf>

European Central Bank. (2008, April). *Annual Report 2007*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2007en.pdf>

European Central Bank. (2009, April). *Annual Report 2008*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2008en.pdf>

European Central Bank. (2010, April). *Annual Report 2009*. Retrieved September 4, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar2009en.pdf>

European Central Bank. (2004, October). *Convergence Report 2004*. Retrieved February 7, 2010, from ECB website: <http://www.ecb.int/pub/pdf/conrep/cr2004en.pdf>

European Central Bank. (2006, December). *Convergence Report December 2006*. Retrieved February 7, 2010, from ECB website: <http://www.ecb.int/pub/pdf/conrep/cr200612en.pdf>

European Central Bank. (2006, May). *Convergence Report May 2006*. Retrieved February 7, 2010, from ECB website: <http://www.ecb.int/pub/pdf/conrep/cr2006en.pdf>

European Central Bank. (2007, May). *Convergence Report May 2007*. Retrieved February 7, 2010, from ECB website: <http://www.ecb.int/pub/pdf/conrep/cr200705en.pdf>

European Central Bank. (2008, May). *Convergence Report May 2008*. Retrieved February 19, 2010, from European Central Bank website: <http://www.ecb.int/pub/pdf/conrep/cr200805en.pdf>

European Central Bank. (2010, May). *Convergence Report May 2010*. Retrieved July 29, 2010, from ECB website: <http://www.ecb.de/pub/pdf/conrep/cr201005en.pdf>

European Central Bank. (n.d.). *Financial Stability Review - What is financial stability?* Retrieved January 26, 2010, from ECB website: <http://www.ecb.int/pub/fsr/html/index.en.html>

European Central Bank. (2006, December). *Financial Stability Review*. Retrieved October 17, 2010, from ECB website: <http://www.ecb.int/pub/pdf/other/financialstabilityreview200612en.pdf?f2aa02332668e8925f2ab0259de6389d>

European Central Bank. (2009, December). *Financial Stability Review: Preface*. Retrieved January 27, 2010, from ECB website: <http://www.ecb.int/pub/fsr/shared/pdf/prefacefinancialstabilityreview200912en.pdf?6a0fa26cdc3b5e3366aecec2a3e1a1a9>

European Central Bank. (2005). *Guide to Consultation of the European Central Bank by National Authorities Regarding Draft Legislative Provisions*. Retrieved October 16, 2010, from ECB website: <http://www.ecb.int/pub/pdf/other/guideconsultationecb2005en.pdf>

European Central Bank. (2010, May 12). *Interview with Jean-Claude Trichet, President of the ECB, and Handelsblatt, conducted by Ms Marietta Kurm-Engels and Mr Andreas Hoffbauer*. Retrieved September 4, 2010, from ECB website: <http://www.ecb.int/press/key/date/2010/html/sp100514.en.html>

European Central Bank. (2005, May 18). *Memorandum of Understanding on co-operation between the Banking Supervisors, Central Banks and Finance Ministries of the European Union in Financial Crisis situations*. Retrieved January 4, 2010, from ECB website: http://www.ecb.int/press/pr/date/2005/html/pr050518_1.en.html

European Central Bank. (2003, March 10). *Memorandum of Understanding on high-level principles of co-operation between the banking supervisors and central banks of the*

European Union in crisis management situations. Retrieved January 4, 2010, from ECB website: http://www.ecb.int/press/pr/date/2003/html/pr030310_3.en.html

European Central Bank. (2002, November). *Monthly Bulletin*. Retrieved August 29, 2010, from ECB website: <http://www.ecb.int/pub/pdf/mobu/mb200211en.pdf>

European Central Bank. (2001, September 14). *Speech delivered by Ms Sirkka Hämmäläinen, Member of the Executive Board of the European Central Bank, Old Age, New Economy and Central Banking Conference, organised by CEPR/ESI and Suomen Pankki, Helsinki*. Retrieved February 7, 2010, from ECB website: <http://www.ecb.eu/press/key/date/2001/html/sp010914.en.html>

European Central Bank. (2007, February). The EU arrangements for financial crisis management. *ECB Monthly Bulletin*, pp. 73-84.

European Central Bank. (2001, March 30). *The role of central banks in prudential supervision*. Retrieved January 4, 2010, from ECB website: http://www.ecb.int/pub/pdf/other/prudentialsupcbrole_en.pdf

European Central Bank. (2009, December). *Towards the European Systemic Risk Board*. Retrieved January 27, 2010, from Financial Stability Review: <http://www.ecb.int/pub/fsr/shared/pdf/ivafinancialstabilityreview200912en.pdf?692c09945afec89a00970d85174ca872>

European Commission. (2010, May 26). *Bank Resolution Funds, COM(2010) 254 final*. Retrieved June 19, 2010, from European Commission's website: http://ec.europa.eu/internal_market/bank/docs/crisis-management/funds/com2010_254_en.pdf

European Commission. (2009, September 23). *Commission's Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority, COM(2009) 501 final, 2009/0142 (COD)*. Retrieved January 19, 2010, from European Commission's website: http://ec.europa.eu/internal_market/finances/docs/committees/supervision/20090923/com2009_501_en.pdf

European Commission. (2009, September 23). *Commission's Proposal for a Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority, COM(2009) 502 final, 2009/0143 (COD)*. Retrieved

January 19, 2010, from European Commission's website:
http://ec.europa.eu/internal_market/finances/docs/committees/supervision/20090923/com2009_502_en.pdf

European Commission. (2009, September 23). *Commission's Proposal for a Regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority, COM(2009) 503 final, 2009/0144 (COD)*. Retrieved January 19, 2010, from European Commission's website:
http://ec.europa.eu/internal_market/finances/docs/committees/supervision/20090923/com2009_502_en.pdf

European Commission. (2009, September 23). *Commission's Proposal for a Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board, COM(2009) 500 final, 2009/0141 (AVC)*. Retrieved January 26, 2010, from European Commission's website:
http://ec.europa.eu/internal_market/finances/docs/committees/supervision/20090923/com2009_500_en.pdf

European Commission. (2009, September 23). *Commission's Proposal for a Regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, COM (2009) 499 final 2009/0140 (COD)*. Retrieved January 26, 2010, from European Commission's website:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0499:FIN:EN:PDF>

European Commission. (1985, June 14). *Completing the Internal Market, White Paper to the European Council of 28/29 June 1985 in Milan COM (85) 310 final*. Retrieved January 12, 2010, from European Commission's website:
http://europa.eu/documents/comm/white_papers/pdf/com1985_0310_f_en.pdf

European Commission. (2004, October 20). *Convergence report 2004 COM(2004) 690 final*. Retrieved February 7, 2010, from European Commission's website:
http://ec.europa.eu/economy_finance/publications/publication7786_en.pdf

European Commission. (2010, May 3). *Convergence Report 2010: European Economy 3*. Retrieved September 5, 2010, from European Commission's website:
http://ec.europa.eu/economy_finance/publications/european_economy/2010/pdf/ee-2010-3_en.pdf

European Commission. (1999, May 11). *Financial services: implementing the framework for financial markets: Action Plan, Communication of the Commission COM(1999)232*. Retrieved January 12, 2010, from European Commission's website: http://ec.europa.eu/internal_market/finances/docs/actionplan/index/action_en.pdf

European Commission. (2009, October 26). *Proposal for a directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC, COM(2009) 576 final*. Retrieved June 19, 2010, from European Commission's website: http://ec.europa.eu/internal_market/finances/docs/committees/supervision/20091026_576_en.pdf

European Commission. (2010, June 3). *Report on Competition Policy 2009, COM(2010) 282 final*. Retrieved June 27, 2010, from European Commission's website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:0666:FIN:EN:PDF>

European Commission. (1998, March 25). *Report on progress towards convergence and recommendation with a view to the transition to the stage three of economic and monetary union COM(1998) final*. Retrieved February 7, 2010, from European Commission's website: http://ec.europa.eu/economy_finance/publications/publication8013_en.pdf

European Commission. (2010, May 27). *Report on recent developments on crisis aid to the financial sector - Spring 2010 Update, COM(2010) 255*. Retrieved June 27, 2010, from European Commission's website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0255:FIN:EN:PDF>

European Commission. (2009, April 4). *State aid scoreboard - Special edition on State aid interventions in the current financial and economic crisis COM(2009) 164*. Retrieved February 3, 2010, from European Commission's website: http://ec.europa.eu/competition/state_aid/studies_reports/archive/2009_spring_en.pdf

European Monetary Institute. (1997, April). *Annual Report 1996*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar1996en.pdf>

European Monetary Institute. (1998, May). *Annual Report 1997*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar1997en.pdf>

European Monetary Institute. (1995, April). *Annual Report 2004*. Retrieved January 28, 2010, from ECB website: <http://www.ecb.int/pub/pdf/annrep/ar1994en.pdf>

European Monetary Institute. (1998, March). *Convergence Report (EMI) 1998*. Retrieved February 7, 2010, from ECB website: <http://www.ecb.int/pub/pdf/conrep/cr1998en.pdf>

European Monetary Institute. (1996, November). *Progress towards convergence (EMI) 1996*. Retrieved February 7, 2010, from ECB website: <http://www.ecb.int/pub/pdf/conrep/cr1996en.pdf>

European Monetary Institute. (1995, November). *Progress Towards Convergence: Report prepared in accordance with Article 7 of the EMI Statute*. Retrieved February 7, 2010, from ECB website: <http://www.ecb.int/pub/pdf/othemi/emiprogresstowardsconvergence199511en.pdf>

Fahrholz, C., & Mohl, P. (2004, June 1). *EMU-enlargement and the Reshaping of Decision-making within the ECB Governing Council: A Voting-Power Analysis*. Retrieved August 15, 2008, from Ezoneplus Working Paper No. 23: http://www.ezoneplus.org/archiv/ezp_wp_23.pdf

Financial Services Authority. (2009, March 18). *The Turner Review: a wide-ranging review of global banking regulation*. Retrieved January 14, 2010, from http://www.fsa.gov.uk/pubs/other/turner_review.pdf

Frankal, B., Arruga Oleaga, I., & Coussens, W. (2007-2008/2). How will the Treaty of Lisbon affect EMU. *Euredia*, 121-159.

Garcia, G. G., Lastra, R. M., & Nieto, M. J. (2009). Bankruptcy and reorganisation procedures for cross-border banks in the EU: towards an integrated approach to the reform of the EU safety net. *Journal of Financial Regulation and Compliance*, 240-276.

Gerard, D. (2009). EC Competition Law Enforcement at Grips with the Financial Crisis: Flexibility on the Means, Consistency in the Principles. *Concurrences*, No. 1, 46-62.

Giani, L. (2010). The complimentary gap between financial supervision and crisis resolution: a gap in the EU framework at the time of the crisis. *Law and Financial Markets Review*, 421-427.

Goddard, J., Molyneux, P., & Wilson, J. O. (2009). The financial crisis in Europe: evolution, policy responses and lessons for the future. *Journal of Financial Regulation and Compliance*, 362-380.

- Goodhart, C. A. (1994). European Monetary Union: A Progress Report. *Hilldale Lecture in Social Studies delivered at the University of Wisconsin in Madison, Wisconsin*. London: London School of Economics Financial Markets Group.
- Goodhart, C. A. (2009). *The Regulatory Response to the Financial Crisis*. Edward Elgar.
- Goodhart, C. (1990). The Draft Statute of the European System of Central Banks: A Commentary. *London School of Economics Special Paper No 37*.
- Goodhart, C., & Schoenmaker, D. (March 2009). Fiscal Burden Sharing in Cross-Border Banking Crisis. *International Journal of Central Banking*, 141-165.
- Goodhart, C., Hartmann, P., Llewellyn, D., Rojas-Suarez, L., & Weisbrod, S. (1998). *Financial Regulation: Why, how and where now?* London: Bank of England.
- Gray, J. (2010). Legal commentary: High Court considers whether FSA disclosures are exempt from the freedom of information requests. *Journal of Financial Regulation and Compliance*, Vol. 18, No. 1, 70-77.
- Grunbichler, A., & Darlap, P. (2004). Integration of EU financial markets supervision: harmonisation or unification. *Journal of Financial Regulation and Compliance*, 36-44.
- Hahn, H. J. (1998). The Stability Pact for European Monetary Union: Compliance with Deficit Limit as a Constant Legal Duty. *Common Market Law Review* Vol. 35, 77-100.
- Haynes, A. (2009). Market abuse, Northern Rock and bank rescues. *Journal of Banking Regulation*, Vol. 10, 4, 321-334.
- Herdegen, M. J. (1998). Price stability and budgetary restraints in the Economic and Monetary Union: the Law as guardian of economic wisdom. *Common Market Law Review*, Vol. 35, 9-32.
- Hertig, G., Lee, R., & McCahery, J. A. (2009, August). *Empowering the ECB to Supervise Banks: A Choice-based approach*. Retrieved February 22, 2010, from SSRN database: <http://ssrn.com/abstract=1327824>
- Hochreiter, E. (2000). The Current Role of National Central Banks in the Eurosystem. *Atlantic Economic Journal* 28(3), 300-308.
- Hüpkes, E. (2009). Special bank resolution and shareholders' rights: balancing competing interests. *Journal of Financial Regulation and Compliance*, 277-301.

Hüpkas, E., Quintyn, M., & Taylor, M. W. (2005, March). The Accountability of Financial Sector Supervisors: Principles and Practice. *IMF Working Paper WP/05/51*.

International Monetary Fund. (1999, September 26). *Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles*. Retrieved January 28, 2010, from IMF website: <http://www.imf.org/external/np/mae/mft/code/index.htm>

Issing, O. (2010, February 15). *Europe cannot afford to rescue Greece*. Retrieved February 16, 2010, from FT.com: <http://www.ft.com/cms/s/0/9b8e66a6-1a3c-11df-b4ee-00144feab49a.html>

Issing, O., Asmussen, J., Krahn, J. P., Regling, K., Weidmann, J., & White, W. (2009, February). *White Paper No. I - New Financial Order, Recommendations by the Issing Committee / Preparing G-20 – Washington, November 15, 2008*. Retrieved January 14, 2010, from Institute for Law and Finance, Johann Wolfgang Goethe - Universität website: http://www.ifk-cfs.de/fileadmin/downloads/publications/white_paper/White_Paper_No_1_Final.pdf

Issing, O., Asmussen, J., Krahn, J. P., Regling, K., Weidmann, J., & White, W. (2009, February). *White Paper No. II - New Financial Order, Recommendations by the Issing Committee / Preparing G-20 – London, April 2, 2009*. Retrieved January 14, 2010, from Institute for Law and Finance, Johann Wolfgang Goethe - Universität website: http://www.ifk-cfs.de/fileadmin/downloads/publications/white_paper/White_Paper_No_2_2009_Final.pdf

Jackson, P. (2004). Financial stability as a policy objective. *Journal of Financial Crime*, 356-362.

Jenkinson, N. (2008). Developing a Framework for Stress Testing of Financial Stability Risks. *Simulating Financial Stability: Conference on Stress Testing and Financial Crisis Simulation Exercises* (pp. 70-78). Frankfurt am Main: European Central Bank.

Jõks, A. (28. aprill 2005. a.). Rahvahäätust ei ole vaja karta. *Postimees*.

Kaju, U. (2003). *Eesti Pank: persoonid ja saladused*. Tallinn: Eesti Päevaleht.

Kapteyn, P., & VerLoren van Themaat, P. (2008). *The Law of the European Union and the European Communities, 4th edition*. Kluwer Law International.

- Knicht, M. D. (2006, October 5). *Marrying the micro and macroprudential dimensions of financial stability: six years on*. Retrieved January 8, 2010, from BIS website: <http://www.bis.org/speeches/sp061005.htm>
- Krauskopf, B., & Steven, C. (2009). The Institutional Framework of the European System of Central Banks: Legal Issues in the Practice of the First Ten Years of its Existence. *Common Market Law Review*, Vol. 46, 1143-1175.
- Laffranque, J. (2003). Eesti põhiseaduse ja Euroopa õiguse kooselu. *Juridica Nr. 3*, 180-190.
- Laffranque, J., Madise, Ü., Merusk, K., Põld, J., & Rask, M. (2002). Põhiseaduse täiendamise seaduse eelnõust. *Juridica Nr. 8*, 563-568.
- Lamandini, M. (2009). When More is Needed: The European Financial Supervisory Reform and Its Legal Basis. *European Company Law Vol. 6, No 5*, 197-202.
- Lamfalussy, A., Cats, J.-F., Kiekens, W., Lefebvre, O., Noels, G., Praet, P., et al. (2009, June 16). *High Level Committee on a New Financial Architecture: Final Report*. Retrieved January 14, 2010, from http://www.docufin.fgov.be/intersalgen/wegwijs/siteoverzicht/Pdf/High_level_committee_on_a_new_financial_architecture_final_report_20090616.pdf
- Lamfalussy, A., Herkströter, C., Rojo, L. A., Ryden, B., Spaventa, L., Walter, N., et al. (2001, February 15). *Final Report of the Committee of Wise Men on the Regulation of European Securities Markets*. Retrieved January 3, 2010, from European Commission's website: http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/final-report-wise-men_en.pdf
- Lastra, R. M. (2010). Central Bank Independence and Financial Stability. *Estabilidad Financiera, Num. 18*, 51-66.
- Lastra, R. M. (2006). *Legal Foundations of International Monetary Stability*. Oxford: Oxford University Press.
- Lastra, R. M. (1992). The Independence of the European System of Central Banks. *Harvard International Law Journal, Vol. 33, No. 2*, 475-519.
- Lenihan, N. J. (2006, October 23-27). *The Price Stability Mandate of the European System of Central Banks: A Legal Perspective*. Retrieved September 8, 2010, from IMF website: <http://www.imf.org/external/np/seminars/eng/2006/mfl/njl.pdf>

- Louis, J.-V. (2010). Guest editorial: The No-Bailout Clause and Rescue Packages. *Common Market Law Review* Vol. 47, 971-986.
- Louis, J.-V. (2005). Monetary policy and central banking in the Constitution. In *Legal Aspects of the European System of Central Banks: Liber Amicorum Paolo Zamboni Garavelli* (pp. 27-42). Frankfurt am Main: European Central Bank.
- Lõhmus, U. (2005). Mida teha põhiseadusega. *Juridica* Nr. 2, 75-83.
- Madise, Ü. (7. september 2005. a.). Euro käibeletulek ei sõltu põhiseaduse muudatustest. *Eesti Päevaleht*.
- Marsh, D. (2009). *The euro: the politics of the new global currency*. Yale University Press.
- Maruste, R., & Albi, A. (2003). Eesti Vabariigi põhiseadus Euroopa Liidu õiguskorras. *Juridica* Nr. 1, 3-7.
- Masciandaro, D., Nieto, M., & Quintyn, M. (2009). Financial Supervision in the EU: Is There Convergence in the National Architectures? *Journal of Financial Regulation and Compliance*, 86-95.
- Masciandro, D., & Quintyn, M. (2009). Regulating the Regulators: The Changing Face of Financial Supervision Architectures before and after the Crisis. *European Company Law* Vol. 6, No 5, 187-196.
- Mastroianni, R., & Arena, A. (2008). Case C-432/04, Commission of the European Communities v. Edith Cresson, Judgment of the Court (Full Court) of 11 July 2006, [2006] ECR I-6387. *Common Market Law Review* vol. 45, 1207-1232.
- Mehta, C. (2009). Rescue and restructuring aid. In K. Bacon, *European Community Law of State Aid* (pp. 209-228). Oxford: Oxford University Press.
- Mishkin, F. S. (2001). Why Is It Important and What Are the Issues? In F. S. Mishkin, *Prudential Supervision: What Works and What Doesn't* (pp. 1-30). Chicago: The University of Chicago Press.
- Moutot, P., Jung, A., & Mongelli, F. P. (2008, January). *The workings of the Eurosystem: Monetary policy preparations and decision-making - selected issues*, ECB Occasional Paper Series No 79. Retrieved February 7, 2010, from ECB website: <http://www.ecb.int/pub/pdf/scpops/ecbocp79.pdf>

- Mullineux, A. (2006). The corporate governance of banks. *Journal of Financial Regulation and Compliance*, 375-382.
- Mülbert, P. O. (2009, August 12). Corporate Governance of Banks. *ECGI - Law Working Paper No. 130/2009*.
- Nieto, M. J., & Schinasi, G. J. (2007, November 20). EU Framework for Safeguarding Financial Stability: Towards an Analytical Benchmark for Assessing its Effectiveness. *IMF Working Paper WP/07/260*.
- Noonan, L. (2010, September 1). *Anglo facing 'horrendous' €14bn losses*. Retrieved December 6, 2010, from Independent.ie: <http://www.independent.ie/national-news/anglo-facing-horrendous-euro14bn-losses-2319453.html>
- Nordea. (2009, March). *Legal structure*. Retrieved January 21, 2010, from Nordea Bank's website:
<http://www.nordea.com/About+Nordea/Corporate+Governance/Legal+structure/1110972.html>
- OECD. (2000). *Trust in Government: Ethics Measures in OECD Countries*. N/A: OECD.
- Padoa-Schioppa, T. (2000, December 21). *High-level seminar with the EU-candidate countries*. Retrieved February 20, 2010, from ECB website:
<http://www.ecb.int/press/key/date/2000/html/sp001221.en.html>
- Padoa-Schioppa, T. (2004). *Regulating Finance: Balancing Freedom and Risk*. Oxford University Press.
- Padoa-Schioppa, T. (2004). *The Euro and Its Central Bank: Getting United After the Union*. Cambridge/London: MIT Press.
- Papademos, L. (2007). The Banking Supervision Committee of the ESCB and its contribution to financial stability in the EU. *Kreditwesen vol. 8*, 28-31.
- Prete, L., & Smulders, B. (2010). The Coming of Age of Infringement Proceedings. *Common Market Law Review Vol. 47*, 9-61.
- Proctor, C. (2005). *Mann on the Legal Aspect of Money, 6th Edition*. Oxford: Oxford University Press.

- Quinn, B. (1998). Rules v discretion: the case of banking supervision in the light of the debate on monetary policy. In C. E. Goodhart, *The Emerging Framework of Financial Regulation* (pp. 119-132). London: Central Banking Publications Ltd.
- Quintyn, M., & Taylor, M. W. (2002, March). Regulatory and Supervisory Independence and Financial Stability. *IMF Working Paper WP/02/46*.
- Quintyn, M., Ramirez, S., & Taylor, M. W. (2007, February). The Fear of Freedom: Politicians and the Independence and Accountability of Financial Sector Supervisors. *IMF Working Paper WP/07/25*.
- Randzio-Plath, C. (2000). A New Political Culture in the EU: Democratic Accountability of the ECB. *ZEI Working Paper B 16*, 2-22.
- Recine, F., & Teixeira, P. G. (2009, November 22). The New Financial Stability Architecture in the EU. *Paolo Baffi Centre Research Paper No. 2009-62*.
- Reinsalu, U. (2005). Kas vajame uut põhiseadust? *Juridica Nr. 3*, 147-151.
- Rossi, P., & Sansonetti, V. (2007). Survey of State Aid in the Lending Sector: A Comprehensive Review of Main State Aid Cases. *European Business Law Review, Vol. 18, No. 6*, 1353-1394.
- Ruhkamp, S. (15. März 2010). Kritik am Bundesbank-System. *Frankfurt Allgemeine Zeitung*, S. 11.
- Scheller, H. K. (2006). *The European Central Bank: History, Role and Functions (2nd ed.)*. Frankfurt am Main: European Central Bank.
- Schinasi, G. J. (2004, October 1). Defining Financial Stability. *IMF Working Paper WP/04/187*.
- Schinasi, G. J. (2006). *Safeguarding financial stability: theory and practice*. Washington, D.C.: International Monetary Fund.
- Schinasi, G. J., & Teixeira, P. G. (2006, May). *The Lender of Last Resort in the European Single Financial Market*. Retrieved January 6, 2010, from IMF Working Paper WP/06/127: <http://ssrn.com/abstract=910692>
- Schinasi, G. J., & Teixeira, P. G. (2006, March). *The Lender of Last Resort in the European Single Financial Market, Working Paper Series No. 43*. Retrieved January 3, 2010, from

Institut for Law and Finance, Johann Wolfgang Goethe - Universität website: http://www.ilf-frankfurt.de/uploads/media/ILF_WP_043.pdf

Schoenmaker, D. (1998). Banking Supervision in Stage Three of EMU. In C. E. Goodhart, *The Emerging Framework of Financial Regulation* (pp. 581-606). London: Central Banking Publications Ltd.

Schoenmaker, D. (2010). Burden Sharing for Cross-Border Banks. *Estabilidad Financiera*, Num. 18, 33-47.

Schoenmaker, D. (2009, February 10). *The Trilemma of Financial Stability*. Retrieved January 14, 2010, from SSRN database: <http://ssrn.com/abstract=1340395>

Sepp, U., Lättemäe, R., & Randveer, M. (2002). *The History and Sustainability of the CBA in Estonia*. Tallinn: Eesti Pank/Bank of Estonia.

Servais, D. (2006). The Future Voting Modalities of the ECB Governing Council. *OeNB Workshops No 7*, 246-264.

Sibert, A. (2010, January 16). *A systemic risk warning system*. Retrieved January 26, 2010, from <http://www.voxeu.org/index.php?q=node/4495>

Simon, Z. (2010, September 7). *EU Asks Hungary to Modify Central Bank Pay Cut or Face Lawsuit, Index Says*. Retrieved December 12, 2010, from Bloomberg.com: <http://www.bloomberg.com/news/2010-09-07/eu-asks-hungary-to-modify-central-bank-pay-cut-or-face-lawsuit-index-says.html>

Smits, R. (1997, reprinted with corrections 2000). *European Central Bank Institutional Aspects*. The Hague: Kluwer Law International.

Smits, R. (2009). From the Board: The Credit Crisis and Its Aftermath. *Legal Issues of Economic Integration Vol. 36, No. 4*, 279-284.

Smits, R. (2010). Ten legal gaps Europe's regulators must close. *Central Banking, Volume 20, Number 4*, 35-44.

Smits, R. (2005). The role of the ESCB in banking supervision. In *Legal Aspects of the European System of Central Banks: Liber Amicorum Paolo Zamboni Garavelli* (pp. 199-213). Frankfurt am Main: European Central Bank.

Suksi, M. (2005). Case C-234/02 P, European Ombudsman v. Frank Lamberts, judgment of the Full Court of 23 March 2004 [2004] ECR I-2803. *Common Market Law Review* vol. 42, 1765-1781.

Swinburne, M. (2008). The IMF's Experience with Macro Stress Testing. *Simulating Financial Stability: Conference on Stress Testing and Financial Crisis Simulation Exercises* (pp. 58-69). Frankfurt am Main: European Central Bank.

Zilioli, C., & Selmayr, M. (2000). The European Central Bank: An independent specialised organisation of community law. *Common Market Law Review* Vol. 37, 591-644.

Zilioli, C., & Selmayr, M. (2001). *The Law of the European Central Bank*. Oxford: Hart Publishing.

Tait, N. (2010, September 2). *Deal paves way for pan-EU financial watchdogs*. Retrieved December 6, 2010, from FT.com: <http://www.ft.com/cms/s/0/286963f6-b6c7-11df-b3dd-00144feabdc0.html#axzz193ZJHJXL>

Tait, N. (2010, October 4). *EU nations win a year's reprieve on state aid*. Retrieved December 6, 2010, from FT.com: <http://www.ft.com/cms/s/0/50ca56a0-cfdd-11df-bb9e-00144feab49a.html#axzz193bpJndo>

Tait, N. (2010, February 10). *MEPs want more financial watchdog powers*. Retrieved February 10, 2010, from FT.com: <http://www.ft.com/cms/s/0/ffd06f82-166e-11df-bf44-00144feab49a.html>

Ternieden, H. (9. September 2010). *Rücktritt aus Bundesbank - Sarrazin macht Schluss*. Abgerufen am 6. Dezember 2010 von Spiegel Online: <http://www.spiegel.de/politik/deutschland/0,1518,716690,00.html>

The European Union Committee of the House of Lords. (2009, June 17). *14th Report of Session 2008–09, The future of EU financial regulation and supervision, Volume I: Report*. Retrieved January 4, 2010, from House of Lords website: <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcom/106/106i.pdf>

Top Euro banker cleared of scandal cover-up. (2003, June 18). Retrieved May 9, 2010, from news.bbc.co.uk: <http://news.bbc.co.uk/2/hi/business/3000170.stm>

Torrent, R. (1999). Whom in the European Central Bank the Central Bank of?: Reaction to Zilioli and Selmayr. *Common Market Law Review*, 1299-1241.

- Truuväli, E.-J., Aaviksoo, B., Kask, O., Lehis, L., Madise, L., Madise, Ü., et al. (2008). *Eesti Vabariigi Põhiseadus: kommenteeritud väljaanne*. Tallinn: Tallinna Raamatutrükikoda.
- Tupits, A. (2000). The Duties and Liabilities of Directors under EU Company Law. *International and Comparative Corporate Law Journal*, Vol. 2, Issue 3, 389-414.
- Tupits, A. (2001). Tingimused kandidaatriigi keskpangale Euroopa Liiduga liitumisel. *Juridica III*, 175-181.
- Tupits, A. (2005). Ühisraha euro kasutuseelvõtu riigiõiguslikud aspektid. *Juridica Nr. 7*, 459-465.
- Ulst, I. (2005). *Linkages of Financial Groups in the European Union: Financial Conglomeration Developments in the Old and New Member States*. Budapest: Central European University Press.
- van den Berg, C. C. (2005). *The Making of the Statute of the European System of Central Banks*. Amsterdam: Dutch University Press.
- van der Crujssen, C., & Eijffinger, S. (January 2008). Actual versus Perceived Transparency. *De Nederlandsche Bank Working Paper No 163*.
- Webster, P. (2003, June 19). *Acquittal clears Trichet's path to European Bank*. Retrieved May 2010, 9, from www.guardian.co.uk: <http://www.guardian.co.uk/business/2003/jun/19/theeuro.europeanunion>
- Weenink, H., & Schulze Steinen, P. (2008). State aid in the financial services sector. *Journal of International Banking Law and Regulation*, 514-522.
- Werlauff, E. (2003). *EU-Company Law Common business law of 28 states, 2nd ed.* Copenhagen: DJOF Publishing Copenhagen.
- Wymeersch, E. (2008, October 23). Corporate Governance and Financial Stability. *Financial Law Institute Working Paper No. WP 2008-11*.
- Wymeersch, E. (2006, November 24). *The Structure of Financial Supervision in Europe: About single, twin peaks and multiple financial supervisors*. Retrieved January 7, 2010, from SSRN database: <http://ssrn.com/abstract=946695>