A constitution has two key functions: structurally it defines the institutions and the powers that they can exercise and substantively, it sets out key values and goals according to which those powers are exercised (Walker, 1996: 270). The articulation of values and goals institutionalises the underlying normative vision, but that vision alone cannot control and constrain the way power is exercised. It is the structural elements of the constitution that both allocate powers and control their exercise, and it is these structural elements that are the focus of this chapter.

While the text of a constitution may be constant, the constitutional settlement remains a dynamic process where there is ongoing bargaining. This bargaining allows for changes in institutional set up, values and goals over time. As North and Weingast (1989: 806) point out, the incentives for compliance with an existing constitution are not the same as those for entering into the constitutional bargain in the first place and hence the constitution must address future compliance problems for all the parties. While repeat games help in reenforcing the constitutional bargain where reputation is an issue, they are not sufficient to prevent reneging. This creates the need for institutional arrangements, especially at times when Member States might face asymmetric shocks. These arrangements are critical for ensuring a credible commitment by the constituents to the bargain and hence to the stability of the system underpinned by the constitutional arrangement.

While there is a vast literature on the vexed question of whether there is an EU constitution (e.g. McCormick, 1993; Weiler, 1997), this chapter does not enter into that debate. Instead it takes as a given that insofar as there is an institutional framework, powers exercised and key values and goals, the notion of a constitution is a powerful conceptual device for understanding how power is exercised and rendered accountable within EMU. This chapter discusses the structures of EMU in relation to economic and monetary policy. It first sets out the institutional structure and how power is allocated between the ECB, the Council and the Commission, before exploring the control of those powers by focusing on accountability via the European
Parliament and the European Court in particular. It concludes that in relation to monetary policy, while independence is a key value in the constitutional framework, it must be seen as relative rather than absolute. The interdependence of the ECB is particularly apparent in the context of the interdependence of monetary and fiscal policy. In relation to economic policy, the chapter concludes that while interdependence is explicitly recognised through the requirement of Member State co-ordination, accountability mechanisms are weak, mainly relying on reputational damage as a mechanism for securing compliance. As the debacle surrounding the failure to move towards sanctions against France and Germany in November 2003 indicated, the issue of the credibility of the commitment of the Member States to fiscal stability is crucial. Damage to reputation is not enough to ensure economic policy co-ordination: first, if the credibility of the mechanisms for co-ordination is called into question as inappropriate and even ‘stupid’; second, if states’ priorities prove to be substantially different from those previously agreed to; third, if there is a marked divergence in the rhetoric of all states being treated the same and the reality of more lenient treatment for larger states and fourth if criticism of a Member State by the Commission or Ecofin generates little or no opposition at the domestic level against the government’s economic policies. In these circumstances, reform of the Stability and Growth Pact is desirable to ensure that its goals are once again seen as credible and its sanctioning mechanisms productive, and thus that the stability of economic policy co-ordination and, in turn, of monetary policy are underpinned.

3.1 Institutions

3.1.1 The European system of central banks

Under the EMU constitutional arrangement, the objective is to establish a common currency with monetary policy defined by the uniform value of price stability. While regard is also to general economic policies in the Union, this is secondary to that of price stability. The institutional arrangements emphasise price stability as the key objective, with the ECB having responsibility for securing it, while the European System of Central Banks (ESCB) is the structure within which the ECB and national central banks conduct monetary policy. The Bank, while not an EU institution in the existing Treaty, is in the new constitutional treaty (Art. I-30(3)), has full legal personality, the power to issue general and specific legislative measures without reference to any other institution and the power to fine undertakings that fail to comply with them. It must also be consulted and can give an opinion on both EC and national legislative proposals in its field of competence. The ESCB controls the issuance of currency, holds and manages foreign reserves, promotes smooth operation of the payments