The European Central Bank

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Abstract

Although nowhere in the statute of the European System of Central Banks (ESCB) has the concept of the ESCB been defined, the setting up of the European Central Bank (ECB) nevertheless was inevitable. Whereas the ESCB represents a system, the ECB, which is meant to be the central bank for the European Union, will lead to the ESCB. What the position of the national central banks would be vis-à-vis the ECB remains unclear. There is the issue of whether the national central banks will remain accountable to both ESCB/ECB and the International Monetary Fund (IMF), and in the event of any conflict between the monetary policy of the ECB and that of the IMF, which one should prevail.

Introduction

Given the definitive nature of the integration policy of the European Union, one can state that the setting up of the European System of Central Banks (ESCB) and the European Central Bank (ECB) was inevitable. The Treaty Establishing the European Community simply formalised it. The setting up of the ESCB and the ECB raises a host of issues, both economic and legal, and these have received attention in the latter part of this paper. The principal reason for setting up the ESCB and ECB is to establish an identifiable central monetary and banking system within the European Union, but it is based on the assumption that the infrastructure for a system of central banks is available and that the setting up of the European Central Bank is due.

Article 8 of the Treaty Establishing the European Community forms the basis for the statute of the European System of Central Banks and of the European Central Bank. It is to be pointed out that the European Central Bank was set up to implement the broader idea of the European System of Central Banks, although nowhere in the statute has it been explained what is precisely meant by the European System of Central Banks. This is a crucially important point in that a ‘system’ provides the basis, the ideology and the working methods; and it is assumed that the ‘system’ in this context stands for a policy of centralising the banking systems within the European Union. It is the purpose of this paper to examine the European System of Central Banks and the European Central Bank.

An anatomy of the statute of the ESCB and of the ECB

The statute of the ESCB and of the ECB has been developed in nine chapters:
The European Central Bank

Chapter I Constitution of the ESCB (Art. 1)
Chapter II Objectives and Tasks of the ESCB (Arts. 2–6)
Chapter III Organisation of the ESCB (Arts. 7–16)
Chapter IV Monetary Functions and Operations of the ESCB (Arts. 17–24)
Chapter V Prudential Supervision (Art. 25)
Chapter VI Financial Provisions of the ESCB (Arts. 26–33)
Chapter VII General Provisions (Arts. 34–40)
Chapter VIII Amendment of the Statute and Complementary Legislation (Arts. 41–42)
Chapter IX Transitional and Other Provisions for the ESCB (Arts. 43–53)

The contents of these chapters are analysed in the following section.

AN ANALYSIS OF THE INSTITUTIONAL PROVISIONS OF THE STATUTE

The ESCB is composed of the ECB and of the central banks of the member states (‘national central banks’).² It is implicit in Art. 1 of the statute that there either already exists a European System of Central Banks or that it aims at establishing one; thus, all central banks of the member states come under its umbrella. Its constitution is based on the assumption that all central banks within the European Union work or will eventually be working on the same bases. Of course, the EC Second Banking Directive³ had the effect of harmonisation of the banking system within the European Union. The statute is concerned with the development and maintenance of a European System of Central Banks, though not a uniformity of the standards of banking; in other words, all central banks must operate on the same basis, but their performance levels may remain different.

Organisation of the ESCB

The decision-making bodies of the ECB are the Governing Council and the Executive Board. The ECB also has a president and a vice-president. The Governing Council, which is the policy-making body, comprises the members of the Executive Board of the ECB and the Governors of the national central banks. The members of the Governing Council must be present in person to cast votes. If a member of the Governing Council may not be able to vote for a prolonged period, he/she may appoint an alternate as a member of the Governing Council. It is only by derogation from the voting rule that a member of the Governing Council may cast his/her vote by tele-conferencing. Neither the Protocol, nor the Rules of Procedure of the General Council of the European Central Bank may allow this dispensation (presumably, however, it must be the President of the ECB or the Executive Board of the Bank).

The proceedings of the meetings of the Governing Council shall be confidential, but the Governing Council has the discretion to make the outcome of its deliberations public. No such provision exists in respect of the meetings that may be held by the Executive Board. The Governing Council shall meet at least ten times a year.

The Executive Board comprises the president, the vice-president and four other members, who are appointed on a full-time basis. No member of the Executive Board shall engage in any other occupation, paid or unpaid, unless dispensation is allowed, in exceptional circumstances, by the Governing Council. For obvious reasons, this condition does not apply to the members of the Governing Council. As to the qualifications required of the officers of the Executive Board, including its president, vice-president and the other mem-