Barbara Dutzler

The European System of Central Banks: An Autonomous Actor?

The Quest for an Institutional Balance
• ' in EMU

SpringerWienNewYork

| List List of | of Abbreviat | Tables ions | and | Figures | XV xvii |
|-----------------|-----------------|------------------------------------|--------------|------------------|------------|
| Introdu | ection | | | | 1 |
| PART (| ONE: The | System and its P | owers | | 3 |
| I. Insti | itutional St | ructure | | | 3 |
| A. (| Constituent | Elements | | | 3 |
| 1 | l. TheES | CB ' • 1 | Ι' | | ,3 |
| 2 | 2. TheECl | В | | | 5 |
| 3 | 3. TheNC | Bs | | | 10 |
| В. Т | The Decisi | on-Making Bodi | es | | 13 |
| | 1. Introduc | ctory Remarks | | | 13 |
| 2 | 2. The Ex | ecutive Board | | - | 14 |
| | a.) Con | nposition | | | 14 |
| | b.) Task | XS . | | | 16 |
| (| 3. The Go | verning Council | | | 18 |
| | a.) Task | XS . | | | 18 |
| | b.) Con | nposition | | | 18 |
| | c.) Dec | ision-Making Pr | rocess | | 20 |
| 4 | 4. The Ge | neral Council | | | 22 |
| | a.) Con | nposition and Ta | sks | | 22 |
| | b.) The | Logic Behind | | | 23 |
| II, The | Objective | s of the ECB | | | 26 |
| A. | Preface | | | _ | . 26 |
| B. | The Object | tive of Price Sta | bility | | 26 |
| | 1. Treaty | Provisions in the | e Light of E | conomic Theory | 26 |
| | | CB's Definition a ication of Objec | | s Related to the | 30 |
| | • | CB's Discretion | | | 34 |

X Contents

| | a.) Hierarchy of Targets in Economic Union | 34 | ļ |
|-------|--|------|------------|
| | b.) A Rank Order in Monetary Union: Implications for | , 35 | 5 |
| | the ECB | | |
| III. | The ECB's Main Tasks | 40 |) |
| A. | Exposition | 40 |) |
| B. | Monetary Policy | 41 | |
| | 1. Rules, Discretion and Monetary Policy Strategies | 4] | l |
| | 2. The ECB's Monetary Policy Strategy | 44 | 1 |
| | 3. Conclusion | 48 | 3 |
| C. | External Competences | 50 |) |
| | 1. The General Framework ,'of Exchange Rate Policy | 50 |) |
| | 2. The Two Cases Foreseen by the Treaty | 52 | 2 |
| | a.) Exchange Rate Policy under "Formal Agreements" | 52 | 2 |
| | b.) Exchange Rate Policy without "Formal | 54 | 4 |
| | Agreements" | | |
| | c.) The Third Option | 5 | 8 |
| | 3. The ECB's Involvement at the International Level | 5 | 9 |
| | a.) Representation in IOS | 5 | 9 |
| | b.) What are "Monetary" Institutions? | 6 | 0 |
| | c.) Conclusion | 6 | 3 |
| PAR | Γ TWO: Controversial Aspects | 6 | 6 |
| Prefa | ce | 6 | ϵ |
| I. Th | e Legal Status of the ESCB | 6 | 6 |
| A | . Preliminary Remarks | 6 | ϵ |
| В | . The Academic Debate | 6 | 7 |
| C | . The Nature of the Link between ECB and | 7 | C |
| | Community | | |
| D | . The. Arguments in Favour and Against | 7 | 12 |
| | 1. Why an Analogy with the EIB is. Appropriate | 7 | 12 |
| | 2. Art 108 and the Degree of Independence | 7 | 72 |
| | 3 Attribution of Legal Personality and Exclusion | _ 7 | 7 6 |

Contents XI

| from List of Institutions | |
|--|------|
| 4. Monetary Policy as Own Competence of the ECB | , 79 |
| E. Consequences of the Institutional Particularities | 81 |
| 1. Importance | 81 |
| 2. Non-Contractual Liability | 82 |
| 3. The Issue of Subordination | 84 |
| F. Conclusion | 86 |
| II. Democracy and Independence | 88 |
| A. Central banks from a Democratic Theory Point of | 88 |
| View | |
| 1. Preface | 88 |
| 2. An Ideal Standard | 89 |
| 3. Economic Reasons for Independence | 93 |
| 4. Applicability to the EU? | 96 |
| B. Independent or Autonomous? A Matter of | 101 |
| Terminology | |
| 1. Insufficient Terminology | 101 |
| 2. Autonomy vs. Independence | 103 |
| 3. Admissibility of the Explication | 105 |
| 4. Autonomy of the ECB? | 106 |
| III. Accountability and the ECB | 110 |
| A. Accountability: a Conceptual Note | 110 |
| 1. A Multi-Faceted Concept | 110 |
| 2. The Limits | 112 |
| 3. Accountability and Legitimacy | 115 |
| B. The Degree of Accountability Realised with the | 116 |
| ESCB< | |
| 1. Transparency "^ | 116 |
| 2., Political Accountability | 122 |
| 3. Normative Control | 124 |
| a.) The Role of Judicial Oversight | 124 |
| b) Practical Effectiveness | 125 |

XII Contents

| c.) Evaluation | 130 |
|---|-----|
| IV.Institutional Balance | 133 |
| A. The "Beziehungsgeflecht": Remarks | 133 |
| B. The EC and the Concept of Institutional Balance | 134 |
| 1. Institutional Balance and Democracy | 134 |
| 2. Significance for the ECB | 138 |
| C. The Actors | 140 |
| 1. The Dialogue between Monetary and Fiscal | 140 |
| Authorities | |
| a.) Some Remarks | 140 |
| b.) The Council , | 143 |
| c.) The Eurogroup | 145 |
| d.) The Economic and Financial Committee | 148 |
| e.) The Economic Policy Committee | 152 |
| 2. The European Commission | 153 |
| 3. The European Parliament | 157 |
| a.) The EP's Powers | 157 |
| b.) Responsible or Responsive? | 159 |
| c.) The EP as Source of.Legitimacy | 161 |
| 4. Conclusion | 164 |
| PART THREE: Lessons from the Federal Reserve System | 166 |
| I. Comparison of the Institutional Structure | 166 |
| A. Preliminary Remarks | 166 |
| . B. History . | 167 |
| C. Independence | 171 |
| 1. Methodology | 171 |
| 2. Institutional Independence | 172 |
| a.) Legal Basis , | 172 |
| b.) Independence of Instructions • | 174 |
| 3. Financial Independence | 175 |
| a.) Capital • | 175 |

| Contents | XIII |
|----------|------|
|----------|------|

| b.) Allocation of Profits | 1//- |
|--|------|
| c.) Audit | 178 |
| 4. Personal Independence | 180 |
| a.) Introduction | 180 |
| b.) Appointment | 181 |
| c.) Composition of the Decision-Making Body | 185 |
| d.) Salaries | 186 |
| e.) Removal | 187 |
| 5. Functional Independence | 188 |
| a.) Instrument Independence | 188 |
| b.) Deficit Financing and Mbnetisation of Debt | 190 |
| c.) Foreign Exchange Policy | 193 |
| d.) Override Mechanism | 198 |
| D. Summary | 199 |
| II. The Fed's Objectives | 201 |
| A. Catalogue of Objectives | 201 |
| B. Definition of Price Stability | 206 |
| C. Monetary Policy Strategy | 208 |
| 111. Accountability Procedures | 213 |
| A. Reporting Requirements | 213 |
| 1. The Humphrey-Hawkins Act | 213 |
| 2. Government in the Sunshine | 215 |
| B. Judicial Review | 217 |
| 1. Introduction | 217 |
| 2. Review of Monetary Policy Decisions | 218 |
| 3. The Issue of Standing | 220 |
| 4. Conclusion | 221 |
| IV.Checks and Balances | 223 |
| A. The Fed's Place in the System of Checks and | 223 |
| Balances | |
| 1. The Three Branches | 223 |
| 2. Constitutionality of Independent Agencies | 225 |
| | |

XIV Contents

| 3. The Public Nature of the Fed | 228 |
|--|------------------|
| B. The Executive | _i 231 |
| 1. Relations with the Fed | 231 |
| 2. The President | 232 |
| a.) Co-ordination Powers | 232 |
| b.) Appointment and the Political Monetary Cycle | 235 |
| 3. The Treasury '. | 236 |
| C. Congress ' | 239 |
| D. Confrontation with the European System of | 244 |
| Institutional Balance | |
| I | ,,, |
| PART FOUR: Evaluation and Outlook | 249 |
| Preface | 249 |
| I. Autonomy or Independence | 249 |
| II. Justification | 253 |
| A. Introduction • | 253 |
| B. Constitutional Exemption | 253 |
| C. Compelling Reasons | 255 |
| D. Comparison with Courts | , 258 |
| E. Importance of Consent | 260 |
| III. Proposals for Reform | 263 |
| A. Remarks | 263 |
| B. Goal Independence | 265 |
| C. Institutional Balance in EMU | 267 |
| IV.Final Remarks • | 269 |
| BIBLIOGRAPHY | 271 |
| A. Monographs, Essays, Contributions in Journals | 271 |
| and (Online) Working Papers | |
| B. Institutional Studies and Publications | 298 |
| C. Newspaper Articles and Speeches | 303 |