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Strengthening the Guarantees for Independence of a Central Bank in Compliance with EU Requirements: The Case of Bulgaria

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1. Introduction

The objective of this paper is to analyze the regulative developments concerning central bank status in a country acceding to the European Union (EU). Trying to assess impartially the challenges faced by the Bulgarian legislator in the process of elaborating legal guarantees for the independence of the Balgarska Narodna Banka (BNB), the present work will outline both the internal and the external context of the reform. They are represented respectively by the existing legislation relating to the central bank and by the common standard, established through the legal framework of the EU, as well as through its reflection in national legislative acts of the EU Member States. After briefly explaining the juridical developments with respect to the BNB during the last decade, the research will compare the provisions in the several topical areas before and after their revisions – norms concerning the basic goal of the central bank, its institutional, functional, personal and financial independence. The additional improvements of the legal framework will be also briefly presented.

The inspiration for this research is partially generated by the recent and successful completion of the legislative reform regarding the BNB, as reflected in the extensive amendments of the Law on the Balgarska Narodna Banka dating from January 2005. Another reason was the need to investigate a curious example of central bank legislation which already demonstrated a high degree of compliance with the independence standards established by the Statute of the European System of Central Banks (ESCB Statute), but which has reached this

¹ The views expressed in this paper are only those of its author. They do not engage in any way the position of any official institution in Bulgaria or abroad. Any error is also responsibility of the author.

result in its own way, long before the imperatives of EU integration imposed the necessity to implement directly the relevant provisions. Nevertheless, despite the result already being in place, the reform proved necessary as a basis for the formal assessment of compliance and as convincing conclusion of continuous efforts for achieving real autonomy. This paper explains the dilemmas faced by the legislator, but aims at something more than simple presentation of facts or defense of a particular chosen approach. The purpose of such research is to show in somewhat different light the tenets of central bank independence and to convince that the best way towards its achievement is to create a pragmatic mechanism, that in advance naturally leads to autonomy, instead of imposing it as just another mandatory element of the EU “*acquis communautaire*”.

2. The Concept of Independence

A substantial element of the juridical basis allowing the accession to the Economic and Monetary Union is guaranteeing the independence of the central bank. This independence is usually perceived as represented by four basic elements – institutional, functional, personal and financial independence.

The institutional independence refers to the position of a national central bank within the institutional framework in the respective country, including its relationships with government bodies, private entities and international (or supra-national) bodies (Deller, 1999).

The functional dimension of independence includes the autonomy of the central bank to choose its own policy and instruments allowing the achievement of the objectives set forth by the statutory law (Muehring, 1991).

The requirement for personal independence concerns the issues connected to the appointment of the highest officials of the central bank, the duration of their mandate, the conditions for their dismissal.

Finally, as Deller (1999) underlines, the whole concept of independence as a generic notion would be worthless, if national central banks were not granted the financial means to operate autonomously in order to fulfill their mandate. According to the 1996 Convergence Report of the European Monetary Institute (“Progress towards Convergence 1996”), all national central banks within the EU “should be in a position to avail themselves of the appropriate means to ensure that their ESCB-related tasks can be properly fulfilled”.

Instead of “independence”, other authors prefer the term “autonomy”. Although Hidalgo (2003) rightly points out that in most works on the subject the terms “independence” and “autonomy” are used interchangeably, there are researchers who distinguish between the two terms, linking autonomy to the central bank’s operational freedom, and independence to the lack of institutional constraints (IMF, 1998). In this way, on the level of the EU terminology, “autonomy” seems covered

by the notion of “functional independence” and “independence” (in the narrow sense) – by “institutional independence”.

At the same time, “functional independence” is understood by some authors not as just one of the four equally important dimensions of central bank’s independence, but as a generic notion, characterizing the whole concept of that independence. Brentford (1999) defines the functional autonomy of the ECB on the basis of its tasks and competencies, given to it in order to fulfil those tasks. The author perceives the autonomy of the ECB personnel, its financial autonomy and its regulatory independence not as equally important features of the more general concept of “independence”, but as building together the *functional independence* of the ECB. The same line of argumentation is followed presumably by the European Court of Justice, seized to decide in the case “Commission of the European Communities v. European Central Bank” (C-11/00) whether the ECB was subject to Community law, whether it fell within the notion of “institutions, bodies, offices and agencies established by, or on the basis of, the Treaties” (the wording of Regulation 1073/1999) and, accordingly, whether the ECB should cooperate with the established through the same Regulation European Anti-Fraud Office (OLAF), instead of leaving the fight against fraud within the exclusive competence of its own fraud investigation department. Upholding the view of the European Commission, the Court of Justice accepted the independence of the ECB as guaranteed by Art. 108 of the Treaty, but underlined that this does not imply a complete independence from the Community law. The Court understands the independence of the ECB as a functional one, determined by the extent to which the proper execution of ECB tasks as per Art. 105 of the Treaty requires the protection of its independence from external influences. Consequently, the ECB’s independence is not complete and absolute, but a limited, functional one – its scope being defined by what is needed for isolation from external pressures of the decisions related to the achievement of price stability (Lavranos, 2004).

Thus “functional independence” becomes something more than one of the four building components of “independence” as a generic notion and is perceived already as the main characteristic, the very substance of that independence. Especially interesting in this regard seems the classification of central bank’s independence, proposed by Advocate General Jacobs in his opinion, given in the context of Case C-11/00. Advocate General Jacobs explained the notion of ECB independence by dividing it into three main areas: institutional, personal and financial (“functional” is already perceived not as a different kind of independence, but as the general notion, comprising the three areas). The institutional aspect is embodied in ECB’s distinct legal personality, decision-making freedom, legislative ability, and its power over its internal organization. The personal independence is determined by the rules governing the appointment of the members of the Executive Board and Governing Council, the security of tenure of these members and the norms preventing potential conflict of interests by engaging in external

activities. The financial independence of the ECB consists in its control over its own budget, which is audited by independent external auditors who are limited to examining only the operational efficiency of the ECB management (Reader, 2004). Although referring to the scope of autonomy of the ECB, the extensive enumeration of the components of independence is applicable to all central banks in the EU, since they generally follow the ECB's model, with the possible exception of Sveriges Riksbank, where the refusal to make the central bank legally independent – satisfying in this way the Treaty-based criterion for joining the Economic and Monetary Union – is used as a formal pretext for not adopting the Euro despite the eventual fulfillment of convergence criteria, since Sweden was not granted an “opt out” clause, but its population rejected the common currency on the 2003 referendum (Goebel, 1998).

Of course, one could support the view that the proper fulfillment of the tasks under Art. 105 of the Treaty would be impossible without a complete independence from the Community legislature and thus isolation from Community law, otherwise the aim of price stability could not be achieved by the ECB. That is why Zilioli and Selmayr (1999) maintain that “the ECB is not a Community institution, but a separate and autonomous entity which, though linked with the Community, rather constitutes a “Community of its own”, a “Community within the Community”; this makes the ECB an autonomous specialized organization of Community law”. An additional argument adduced by the same authors in 2000, stresses upon the fact that when defining the independence of the ECB, Art. 108 of the Treaty does not provide any exceptions or restraints.

Apart from the heated discussion over the exact scope of independence granted to the ECB, the available classifications of central bank autonomy vary at least as much as the number of authors engaged in the research of this topic, which proved to be quite attractive since the beginning of the last decade. For instance, Grilli, Masciandaro and Tabellini (1991) draw the line between “political independence” (represented by the power of the central bank to select policy objectives without government influence) and “economic independence” (allowing the central bank to utilize the whole spectrum of monetary policy instruments, and supported by the limits on the government's access to central bank credit). Others prefer to differentiate in the same context between “goal independence” and “instruments independence” (Fisher and Debelle, 1994).

Cecchetti (1999) is more inclined to speak about different ways of assessing independence, instead of about different kinds, or dimensions of “independence”. Thus, one way for assessing independence as a unified generic notion will be to determine the extent to which the central bank is free from the government in formulating and implementing its policies; another way will be to investigate the existing procedures for nomination and dismissal of the central bank managers. Still another way is to explore the extent of central banks' financial autonomy, which naturally is greatest where the central bank is self-financing and/or an

autonomous corporate entity. On the other hand, Alesina and Summers (1993) quantified the independence of central banks by creating an index of various factors, including: how the formation of the board of a central bank is determined; to what extent the bank is accountable to legislative authorities; whether the legislation creating the central bank specifically addresses price stability.

On the background of all these classifications, one is tempted to accept the broad and succinct – although not necessarily strict in juridical sense – definition of Hidalgo (2003) that “central bank independence” may be understood as a legal and institutional arrangement that allows monetary authorities to adopt policy decisions and operational procedures aimed at achieving price stability apart from the government and private sector’s interests.

3. Juridical Framework with Regard to the BNB after the Systemic Crisis of 1996–1997

Approaching the topic of legal developments concerning the BNB during the last 15 years and the closely related issue of systemic crisis in the banking sphere, a literary analogy comes to mind. One of the greatest 20th century’s novels – “Conversation in the Cathedral” by Mario Vargas Llosa – begins with the following scene: the protagonist stays on the street in a Latin American country (not Argentina indeed, but Peru) and asks himself: “When exactly I failed? When this country failed?” These two questions reappear constantly in the next 600 pages of the novel, in order to illustrate that the small failures of each person are inextricably intertwined with the general downfall of the state where he or she lives. The same truth is valid with respect to the central banks in all countries that have had the unenviable experience to taste a systemic crisis. Always the central bank should analyze in detail its own behavior, its own compromises, if trying to understand the roots of the State’s problems. The solutions are especially interesting – they illustrate the simple maxim that the disciplined, strongly independent and responsible central bank is instrumental in overcoming systemic crises and preventing them.

The currency board arrangement in Bulgaria was introduced after several hesitant attempts to stabilize the economy during the first stage of transition (1991–1996) and after a severe systemic crisis, which led to the brief hyperinflationary episode of December 1996–February 1997. As Balyozov (1999) points out, in the course of those efforts every nominal anchor – with one exception – was employed unsuccessfully, the policy of stabilization was eroded and all institutions lost their credibility. The boldest solution was to introduce the only remaining nominal anchor (the exchange rate), to design a “new” institution (a currency board), to gain credibility by transferring monetary sovereignty abroad, and – for the International Monetary Fund (IMF), which has seen its own prestige eroded – to support a different model of action. The currency board arrangement was a deliberate choice

and an intentional limitation in the functions of the BNB. But, paradoxically, a greater autonomy was attained at the cost of the amputation of several of the “classical” functions of the monetary authority, as Balyozov (1999) underlines.

Following the bitter lessons from extending credits to the government and state-owned enterprises, in 1997 the Bulgarian banking system adopted in its most orthodox version the basic principle for prohibition of monetary financing and privileged access of the State and any state agency. Pursuant to the currency board mechanism, the aggregate amount of monetary liabilities of the Balgarska Narodna Banka must not exceed the lev equivalent of the gross international foreign exchange reserves. According to Art. 29 (1) of the Law on the Bulgarian National Bank (LBNB) in its 1997 version, the official exchange rate of the lev to the German mark was fixed as BGL 1000 per DEM 1. With the denomination of the lev in 1999, the exchange rate became 1 BGN (“new Bulgarian lev”) per 1 DEM.

A key moment for the functioning of the currency board system is the obligation of the BNB to sell and purchase on demand Euros against levs up to any amount within the territory of Bulgaria on the basis of spot exchange rates, which should not depart from the official exchange rate by more than 0.5 percent, inclusive of any fees, commissions and other charges to the customer (Art. 30 LBNB). Pursuant to Art. 29 (2) LBNB, when the euro was introduced as legal tender in the Federal Republic of Germany, the official exchange rate of the lev to the euro was determined by reflecting the official exchange rate of conversion of the German mark to the euro. That is why at the moment the fixed exchanged rate is 1 euro per 1.95583 levs.

The currency board arrangement of 1997 significantly restricted the monetary policy operations of the central bank. Art. 32 LBNB contains an exclusive list of transactions that the Bulgarian central bank may carry on. These transactions include credit operations against collateral; precious metals operations; foreign exchange operations; deposit and financial investment operations; operations connected with the payments turnover; commission operations; cross-border bank operations. This clause is complemented with the provision of Art. 37 LBNB, stipulating that the BNB may:

- a) buy and sell gold specie and bullion or other precious metals;
- b) buy, sell or contract deals in foreign currencies using to this end all customary means;
- c) open and maintain accounts with international financial institutions, central banks and other financial institutions outside Bulgaria;
- d) open and maintain accounts or act as a representative or correspondent of international financial institutions, central banks and other financial institutions outside Bulgaria.

One of the basic features of the Bulgarian currency board system is the prohibition for the central bank to extend credits to commercial banks (Art. 33, Par. 1 LBNB). The only exception to this rule is connected with the emergence of liquidity risk

that may affect the stability of the banking system. In this case the BNB may extend a credit, but only upon the simultaneous presence of five conditions:

- a) the recipient bank must be solvent;
- b) the credit is to be lev-denominated;
- c) the maturity of the emergency credit cannot exceed 3 months;
- d) the credit should be fully collateralized by gold, foreign currency or other such high-liquid assets;
- e) such credits may be extended solely up to the amount of the excess of the lev equivalent of the gross international foreign exchange reserves over the total amount of monetary liabilities of the central bank.

The procedure for extension of such credits is determined through Regulation No. 6 on Extending Collateralized Lev Loans to Banks. On the first place, this Regulation provides strict criteria for establishing the existence of a liquidity risk as a necessary precondition for extending loans. Several rules are then devoted to the regime of collateral. The BNB is allowed to accept as collateral against its lev loans to banks only:

- a) monetary gold;
- b) foreign currency – euros, U.S. dollars, or Swiss francs (deposited on a special account with the BNB, which is to be blocked until the collateralized claim is fully repaid, and the pledgor has no right to dispose with the amount deposited);
- c) paper or book-entry liquid securities issued by the Government of the Republic of Bulgaria, or guaranteed by it (the book-entry securities are to be blocked on the register maintained until the collateralized claim is fully repaid, and the pledgor has no right to dispose with them);
- d) prime-rate liquid securities issued by foreign governments and central banks, or guaranteed by them.

The pledged items and securities have to be submitted to the BNB which has the right to hold them until the collateralized claim is fully repaid.

The total amount of the assets pledged as collateral and assessed at their market value must cover at least 125% of the loan amount approved by the BNB at the time of its extension. If the submitted collateral becomes insufficient, as its market value falls below 105% of the bank's total obligation on the extended loan, the credited bank is obliged to supplement it within 3 days. If the bank defaults on this duty, without at the same time repaying the relevant part of the loan, the BNB may call the loan and proceed to its collection, including through the sale of the collateral without interference of a court of law. The way to this shortened procedure is paved by the clause of Art. 34 LBNB, which stipulates that in the event of the default in the repayment of any collateralized credit, the central bank shall have the right to sell the collateral as received without litigation. The sale proceeds are expected to cover the BNB's claims as regards the credit principal, interest and costs.

As a whole, Regulation No. 6 adopts quite a stringent regime for extending loans to commercial banks – a natural solution, stemming from the basic mechanism of the currency board system, with its requirement for a great discipline in using credit facilities by the central bank. The procedure contains a motivated written application by the troubled commercial bank, addressed to the Deputy Governor heading the Banking Department of the BNB. The application must be accompanied by information on the current financial status of the bank. The application is brought to the attention of the Banking Supervision Department of the BNB, which has to present a written statement of opinion on the current solvency of the bank within 24 hours. Finally, the decision on the loan application is to be made by the Managing Board of the BNB. In the event of approval, a loan contract is concluded.

In the final analysis, despite this role of a lender of last resort, assumed by the BNB, in principle commercial banks are expected to borrow funds on the interbank money market, because in a situation of sudden liquidity crisis (e.g. occurring in the context of participation in the payments systems) the bank cannot afford to be exclusively dependent on the cumbersome mechanism described – that is probably the explanation why it has never been used since the introduction of the currency board in 1997.

Apart from extending collateralized credits to commercial banks in the case of liquidity risk, the BNB may at present conduct its monetary policy through the classical instrument of minimum reserve requirements, as a lever for regulating the money supply. The use of the other two tools for achieving this goal through influence over banking reserves – open market operations and the “discount window” crediting – is quite restricted due to the currency board system. Prior to June 1997, the BNB had implemented its monetary policy through open market operations (repo and reverse repo agreements), outright sales and purchases of government securities, Lombard loans, the discount window and minimum required reserves.

Art. 41 LBNB gives the BNB the power to determine by a regulation the minimum reserve requirements which banks are required to keep with the BNB, the method of their calculation, as well as the terms and procedures for interest payment on them. Following this normative delegation, the BNB has issued Regulation N 21 on the Minimum Required Reserves Maintained with the Balgarska Narodna Banka by Banks. The use of a Regulation as a legal tool provides space for considerable flexibility in applying the minimum reserve requirements.

Banks may use the funds on their current accounts on particular days without limitation, since the minimum required reserves should be fulfilled on an average monthly basis. However, overdrafts on the current accounts are not allowed.

With regard to the foreign exchange management, the LBNB explicitly defines the composition of the gross international foreign exchange reserves of the BNB.

They are equal to the market value of several kinds of Bank's assets, enumerated in Art. 28, Par. 3 /1-6/. The BNB may take any necessary action in connection with the acquisition, possession and sale of these assets. Their investment should be in accordance with the principles and practices of prudent investment. Investments in securities are limited to liquid debt instruments, which are issued by foreign countries, central banks, other financial institutions or international financial organizations, whose obligations are assigned one of the two highest ratings by two internationally recognized credit rating agencies, and which are payable in freely convertible foreign currency. Of great importance is the rule that the market value of the assets denominated in foreign currency other than the euro, which is included in the gross international foreign exchange reserves, cannot exceed by more than two percent the total amount of monetary liabilities of the central bank denominated in the said currency and respectively cannot be less than two percent of these liabilities.

The LBNB provides that the total amount of the liabilities on loans drawn by the BNB, which are denominated and payable in foreign currency, could not be increased if this increase would result in an amount in excess of 10% of the assets of the BNB as reported in the last balance sheet. This restriction is not applicable to any change in the amount of liabilities of the BNB to the International Monetary Fund.

With the coming into force of the new Foreign Exchange Law (2000) Art. 10. Par. 1 of the Law on the Contracts and Obligations was repealed, making contracting and payments in any other currency in addition to the lev legally possible. The policy of the BNB has ever been directed towards encouragement of concluding contracts and executing payments in the national currency on the territory of the country. That is determined by the stability of the currency and the currency board arrangements. Nevertheless, since the beginning of 2000 contracting and payment in any currency is allowed, if both parties consent to this. However, if the common consent is lacking, no person could be forced to accept payment in any other currency except the lev. That follows from the unambiguous statement of Art. 25, Par. 2 LBNB – the banknotes and coins issued by the BNB are legal tender and obligatorily and without any restrictions accepted as payment at their full face value.

The systemic crisis of 1996 proved the immense importance of duly and impartially exercised banking supervision. In Bulgaria the supervision of the banking system is concentrated within the scope of the central bank. One of its three basic departments is dealing exclusively with banking supervision. This department is headed by a Deputy Governor, elected by the Parliament on a motion by the Governor. The term of office of the Deputy Governor responsible for banking supervision is six years, like the term of all the other members of the Managing Board of the BNB. Although the Banking Supervision Department is within the structure of the central bank, the Deputy Governor is quite independent

in applying – separately and at his/her own discretion – the remedy actions and penalties as provided for by the Law on Banks. The granting and revoking of a bank license, however, requires a decision by the Governor. The motion for issuing such a decision should originate from the Deputy Governor, responsible for banking supervision.

The first stage of exercising the functions of banking supervision is the granting of a written permit for conducting bank activities. In addition, a written permission from the central bank is required if a local or foreign person, as well as related persons, is going to acquire in a local bank directly or indirectly shares assuring control over ten or more than 10% of all voting shares.

The central bank possesses wide prerogatives for gathering information. According to Art. 2, Par. 3 of the Law on the BNB, the central bank regulates and supervises other banks' activities in Bulgaria for the purpose of ensuring the stability of the banking system and protecting depositors' interests. In connection with the performance of its functions, the BNB may demand from banks to submit any documents and information, and may also carry out the requisite examinations (Art. 4, Par. 1 LBNB).

This provision is elaborated through the rules of Art. 62 of the Law on Banks. It stipulates that the central bank supervises the activities of the local banks and of the branches of foreign banks in Bulgaria. The BNB may require any accounting and other documents, as well as any information on their activities be submitted, and may conduct on-site inspections effected by officers and other persons authorised by it. In performing its supervisory functions, the central bank and the persons authorised by it are liable for damages only if they are proved to have been caused deliberately by central bank officers or persons authorised by the central bank.

Enterprises which may be assumed to be conducting bank operations without a permit, must submit upon demand from the central bank the required information and documents. For that purpose, the authorized persons may make on-site inspections.

Government authorities and officials are expected to cooperate, within their powers, with their powers, with the banking supervisory bodies in the performance of their functions.

When conducting on-site inspections, the banking supervisory bodies have the right to: 1) free access to the premises of persons conducting bank activity; 2) demand documents and collect information pertaining to the execution of the task assigned; 3) appoint experts; 4) conduct counter-inspections in other bank and nonbank enterprises on issues related to the inspection; 5) apply to a court of law to restrain or garnish the property of persons who have inflicted damages; 6) attend the meetings of the managing and controlling bodies of banks.

The BNB may execute a revocation of the banking license if the commercial credit institution has committed infractions of the Law on Banks, has not started the permitted bank operations within 12 months after the granting of the permit, or

if the license of a foreign bank with activity in Bulgaria by means of branch has been revoked by the competent authority in the country of domicile. In such cases a forced liquidation will be initiated.

The BNB, however, is obliged to revoke the license (i.e. there is no place for discretion in such cases) if the commercial bank fails to pay its obligation due for more than seven days or if the total of bank's liabilities exceeds the total of its assets. Only the central bank may determine the value of bank's assets and liabilities. This is to be done in accordance with the supervisory requirements and rules elaborated by the BNB. The bankruptcy court is obliged to institute bankruptcy proceedings in this situation and only the central bank may petition the court to institute such proceedings. The petition of the BNB must contain only a verified copy of its act for revoking the bank's license, as well as the grounds for revoking the license. If the petition of the central bank meets these requirements, the court should announce the bank's insolvency, institute bankruptcy proceedings, appoint an assignee in bankruptcy from the list at the central bank, etc.

Apart from the revoking of bank's license (which should be considered an ultimate measure), the BNB has at its disposal many other actions or penalties with respect to a bank found guilty of a violation of the Law on Banks or legislative or other acts and prescriptions of the central bank; of a breach of fiduciary duty; of prevention of exercising banking supervision; of effecting any transactions or operation representing money laundering; etc. In such cases the BNB may impose 15 different kinds of measures, commensurate with the seriousness of the bank's misconduct. These measures vary from issuance of a written warning to the bank, through imposing more stringent prudential requirements or forcing the bank to increase its capital, to the appointment of two or more conservators for a specified period of time and the revoking of bank's license. Acts of enforcement of these measures come immediately into effect and are not subject to court appeal.

The systemic crisis of 1996–1997 stressed the significance of central bank independence and demonstrated the undesirable consequences of its undermining. The new legal framework of 1997 established strong guarantees in this respect, in its four dimensions – institutional, functional, personal and financial independence. Relating to the institutional independence, Art. 44 of the BNB Statute clearly formulated the principle of independence: “in the performance of its functions, the Bank shall be independent from any directions of the Council of Ministers and from other state bodies”. This means that the Council of Ministers and other state organs do not have the right to approve, suspend or otherwise annul or defer Balgarska Narodna Banka's decisions. On the other hand, the BNB Statute established an accountability of the Balgarska Narodna Banka to the Parliament (see Articles 1(2), 50 and 51 of the BNB Statute). This form of accountability does not entail a right of the Parliament to give instructions or approve, suspend, annul or defer decisions of the BNB.

In the context of functional independence, Art. 2 (1) LBNB in its 1997 version stated that “the main task of the Balgarska Narodna Banka shall be to contribute to the maintenance of the stability of the national currency”.

The issue of personal independence was already addressed in the initial version of the LBNB by Art. 12 (4), according to which the National Assembly should appoint the Governor for a term of six years. The BNB Statute stipulates that only persons of the highest integrity and prominent qualifications in economics, finance or banking may be elected or appointed members of the Governing Council. Either the National Assembly or the President of the Republic, as appropriate, is bound to terminate the mandate of any member of the Governing Council before the set term on explicitly and strictly defined grounds. Nevertheless, for complete harmonization it was necessary that the BNB Statute ensured that only those grounds of dismissal as listed in Article 14.2 of the ESCB Statute were admitted.

Regarding the financial independence, Art. 16 (13) LBNB included among the prerogatives of the Governing Council to approve the annual budget. The annual budget, as approved by the Governing Council, was then submitted for adoption by the National Assembly (Art. 48 (1) of the BNB Statute). The administrative expenditure was made in accordance with a decision of the Governor or of a Deputy Governor authorised by him (Art. 48 (2) of the BNB Statute).

It was incumbent upon the Governing Council to approve the annual balance sheet and the annual report (including the budget report) to be submitted together with the annual financial statement and the international auditor’s report to the National Assembly. The reports on the budget outlays of the Balgarska Narodna Banka are examined by the National Audit Chamber, which prepares a special report on the results of the examination.

The outlined juridical regime for the functioning of the BNB has been in practice since 1997, ensuring to a great extent the needed degree of independence for the proper functioning of the central bank. The LBNB in its version of 1997 received positive assessments on the part of many international partners of Bulgaria (EU, IMF, World Bank, etc.). It was perceived as a modern source of law, assuring acceptable degree of autonomy for the central bank. Nevertheless, several legal provisions had still to be revised in order to achieve complete formal compliance with the requirements of the ESCB Statute. The process of elaborating the said norms – which culminated with the amendments to the LBNB of 2005 and will be the object of the following explanations – could not be entirely understood without this background in mind. The incorporation of the external recommendations within the already existing framework is instructive for the efforts of many Central and Eastern European countries in revising their banking legislation in view of acceding the EU.

4. Constitutional Guarantees for Central Banks' Independence – on the Crossroad between Temptation for Juridical Perfection and Reality

When dealing with central bank's independence, one preliminary question springs up in mind as especially challenging: whether the autonomous status of a central bank is sufficiently protected by the provisions of an "ordinary" law – which could be modified at any moment in undesirable direction by an essentially politically motivated organ as the national Parliament? If enshrined in the Constitution (which in most countries is subject to quite cumbersome way of revising), the independence could become a far more secure "asset" of the central bank. Analyzing the Constitution of the Russian Federation, Barenboim (2001) even observes that the Central Bank of Russia is the only constitutional body, other than the courts, to which the term "independence" applied at all within the Constitution (as a matter of fact, it follows from the subsequent explanations of the author that this enviable constitutional status has not prevented the opposite situation – to have the provisions of Federal Law No. 394-FZ depriving the Bank of Russia of real independence in several important aspects).

The independence of the *Balgarska Narodna Banka* is clearly stipulated in Art. 44 LBNB. Before the revisions of 2005 this text stated: "In the performance of its functions, the Bank shall be independent from any directions of the Council of Ministers and from other state bodies."

A key issue in this context is whether the importance of a tenet like central bank's independence could not justify its "upgrading" also as a constitutional principle. At present the Constitution of the Republic of Bulgaria (CRB) allots quite a negligible attention to the BNB, mentioning it only while enumerating the competencies of the National Assembly – namely, its prerogative to "elect and dismiss the managers of the *Balgarska Narodna Banka* and other institutions, designated by law" (Art. 84, point 8 CRB). It should be noted, however, that with this particular wording the constitutional provision is somewhat ambiguous and creates certain collision with the LBNB of 1997. According to Art. 10 LBNB, on the first place among the managerial bodies of the BNB figures its Governing Council, although three of its members are not to be elected by the Parliament, but appointed by the President of the Republic. Does it mean that "managers of the BNB" according to the Constitution are only those elected by the Parliament – the Governor and the three Deputy Governors? Even if so (such interpretation seems logical), the employed constitutional terminology – "managers of the *Balgarska Narodna Banka*" – could hardly be defined as unambiguous.

In theory, there are several possible solutions for the concrete normative position and the adequate scope, through which the principle for independence of the central bank might be formulated:

1. The first approach is to retain the existing solution, the BNB's independence remaining only an object of the relevant statutory act. Such a treatment is not uncommon for the juridical frameworks of considerable number of countries – both “old” and “new” members of the EU. A negative aspect of this approach, however, is the potential possibility for the central bank independence to be encroached upon through routine changes of the statutory law, which could be executed just by means of a simple majority of one or another Parliament's composition. If enshrined in a constitutional provision, the independence principle naturally creates far more serious preventive mechanisms against its own infringement.

2. Another possible solution, already at the level of the Constitution itself, is to unambiguously declare the principle of independence, e.g. “The Balgarska Narodna Banka is the central bank of the Republic of Bulgaria and is independent in performing its activities.” The constitutional proclamation of the principle creates an obligation for observing it in the course of any subsequent change in the legal framework with regard to the central bank. This rather abstract statement of the independence principle, however, will predetermine also an active role of the institution engaged in assessing constitutionality – the Bulgarian Constitutional Court. Its will be the control over the observance of the basic principle in the context of one or another legislative solution concerning the central bank. The choice of such a strategy combines positive and negative aspects. Among the positive ones we could underline the flexibility in interpreting the independence postulate and assuring the “life” of the constitutional provision through its binding interpretation on the part of a respectable institution like the Constitutional Court. On the other hand, potential unfavorable results could stem from the intricate combination of juridical and political considerations in each interpretation on the part of the institution for constitutional adjudication, which is characteristic not only for the Bulgarian Constitutional Court and which acquires particularly significant dimensions in the case of generally formulated principles, whose interpretation requires quite specific knowledge. It is exactly in this category where falls the principle of the independence of the central bank.

3. A third solution to be put for consideration is to have a more detailed regulation of the BNB status within the frames of the Constitution itself. This would comprise not only the declaration of the independence principle, but also its elaboration by means of other constitutional provisions, related to the basic function of the central bank in the state, as well as to the four already mentioned dimensions of its independence – institutional, functional, personal and financial. Such an approach could be realized if a special chapter is devoted to the central bank (e.g. systemically situated after the present Chapter VI “Judicial Power” or after Chapter VII “Local Governance and Local Administration”), or at least a particular group of provisions (e.g. following the present Art. 19, Par. 1 – “The economy of the Republic of Bulgaria is based on the free economic initiative...”). The positive effects of such a solution are obvious – the central bank's status will

finally find more detailed treatment in the organic law of the state, restricting in this way the opportunities for eventual "inventive" interpretations both on the part of subsequent compositions of the legislature and of the Constitutional Court. It should be stressed, however, that one similar approach seems far from easy to be followed. On the first place, the very construction of the supreme law naturally represents a rather conservative system, characterized by high degree of normative generality which could not accept one such radical intervention, with the treatment of quite specific scope of problems. We should not forget that one similar solution can be considered as a risky precedent, allowing other institutions of comparable importance in the institutional mechanism of the state also to put forward pretensions for constitutional status – e.g. the Court of Auditors. It should be kept in mind that in comparative aspect the constitutional approaches with regard to the central bank are quite multifarious in different states – present or future members of the EU. As a whole, the detailed treatment of central bank's status on constitutional level is not a usual case. There are even constitutional documents of countries with durable and profound democratic traditions where the central bank is not mentioned at all – France, Germany, Italy, Spain, Greece... Where we find constitutional provisions regarding the central bank (in countries like Finland, Sweden, Lithuania, Poland, Hungary), the accent is put mainly:

- a) upon its basic functions (to formulate and implement the monetary policy, to realize its exclusive right of issuing money with the status of a legal tender);
- b) upon its structure of governance (with the prerogatives of the different bodies);
- c) upon the way of electing its management (with clarifications regarding the mandates' duration and sometimes regarding the conditions for their pre-term termination).

Almost universally in these cases the constitutional norms contain also a delegation for arranging the remaining elements of the bank's status through a special law.

In the final analysis, it should be accepted that if the national legislator wants to stress upon the special, *sui generis* position of the central bank within the system of state power – equally detached from the executive and legislative branches – its explicit constitutional treatment is highly desirable (Neumann, 1991). If, however, as in the case of Bulgaria, this approach proves unrealistic in a short to medium term, the "ordinary" statutory law provides sufficient basis for regulatory improvement in achieving adequate autonomy.

5. Formulating the Main Objectives of the BNB

Since the very beginning of the monitoring process on the part of the ECB legal team (in 2000), the LBNB faced certain criticism regarding the statement of its Art. 2, Par. 1: "The main task of the Balgarska Narodna Banka shall be to contribute to the maintenance of the stability of the national currency..." Although this declaration describes the real role – and in fact the only possible one - of the

Bulgarian central bank in the context of a strict currency board arrangement, it was underlined that such a formulation does not reflect unambiguously the primary position that should be accorded to the maintenance of **price stability** as a basic objective of any EU central bank.

The adduced arguments stressed upon the fact that the exchange rate stability represents only one element of the price stability, as envisaged in the Treaty on the establishment of the European Community. Only those countries may qualify for the adoption of the euro that have achieved stable value of money as expressed in goods (price stability in narrow sense), in foreign currencies (exchange rate stability), and in money itself (interest rate stability).

In order to fulfill the harmonization requirement, remaining at the same time in line with the real powers of the Bulgarian central bank at present (unable to develop full-scale monetary policy, apart from setting minimum reserve requirements), the Bulgarian legislator adopted the following wording of Art. 2, Par. 1 LBNB: “The primary objective of the BNB shall be to maintain price stability through ensuring the stability of the national currency and implementing monetary policy as provided by this Law.”

The accent upon price stability as a primary objective of the national bank is present in most legal acts, dealing with the status of central banks in Member States of the European Union (EU). In this sense are Art. 2 (2) of the Bank Act 1998 of the Netherlands; Art. 2 (2) of the Federal Act on the Oesterreichische Nationalbank; Art. 11 (a) of the Bank of England Act 1998; Art. 12 of the Statutes of the Banque Nationale de Belgique; Art. 1 (1) of the Greek Law No. 2548 – “Provisions relating to the Bank of Greece”; Art. 7 (2) of the Law of Autonomy of the Banco de España; Art. 3 of the German Bundesbank Act; Art. 2 (2) of the Law Concerning the Monetary Status and the Banque central du Luxembourg; Art. 2 of Act No. 214/1998 on Suomen Pankki; Art. 1 of the Statute of the Banque de France; Art. 2 of “The Sveriges Riksbank Act (1988:1385)”. As a matter of fact, the stressing upon price stability as main objective by statutory laws concerning the central bank seems to exclude the notion of “political independence” as understood by Grilli et al. (1991) and associated with the selection by the central bank itself of its policy objectives – they are pre-determined by the law.

Under the adopted revision of Art. 2, Par. 1 LBNB, the maintenance of price stability is linked with ensuring the stability of the national currency, since as a consequence of the currency board regime the central bank’s monetary policy is expressed just in preserving the exchange rate stability. Under the present arrangement – established through nothing else but the LBNB and planned to continue being into force not only until the accession of Bulgaria to the EU, but also until joining the Economic and Monetary Union (expected to happen at a later stage) – the BNB is incapable of employing the traditional instruments of a central bank for fully-fledged “maintenance of price stability”.

In the course of revising Art. 2 LBNB a necessity arose even at this relatively early stage to establish a link between the BNB functions as a national institution and its role in the context of the common policy pursued by the EU. It is underlined that the BNB will support the general economic policies of the European Community with a view to contributing to the achievement of the objectives of the Community as laid down in Art. 2 of the Treaty establishing the European Community. The latest version of the LBNB underlines that the central bank will act in accordance with the principle of the open market economy with free competition, favoring an efficient allocation of resources and will follow the principles laid down in Art. 4 of the Treaty. This formulation coincides with Art. 2 of the ESCB Statute. This text identically enumerates the objectives of the ESCB. It is natural to have this formula reproduced in a comparable way (or to have an explicit reference to it) in the statutory acts of the central banks composing the ESCB. Similar is the wording of Art. 2 (2) of the Federal Act on the Oesterreichische Nationalbank; Art. 12 of the Statutes of the Banque Nationale de Belgique; Art. 3 of the German Bundesbank Act; Art. 1 (2) of the Greek Law No. 2548 – “Provisions relating to the Bank of Greece”; Art. 7 (2–3) of the Law of Autonomy of the Banco de España; Art. 41 of the Statute of the Banca d’Italia; Art. 2 of the Law Concerning the Monetary Status and the Banque central du Luxembourg; Art. 1–3 of Act No. 214/1998 on Suomen Pankki; чл. 1 of the Statute of the Banque de France.

Of course, the introduction of such a text in the LBNB imposes the need to have its actual entering into force moved forward in time, up to the moment of accepting Bulgaria in the EU. This is possible as a legal technique, moreover having in mind that a similar approach has been chosen for instance by the Greek legislator, which stipulates in Art. 1 (2) of Law N 2548; “As from the adoption of the single European currency (euro) as the national currency of Greece, the National Bank of Greece, as an integral part of the European System of Central Banks and in accordance with the terms set out in Article 105, Par. 1 of the Treaty on European Union, shall pursue the primary objective of maintaining price stability.” Much in the same way the norm of the LBNB provides that it would be applied “...from the date of accession of the Republic of Bulgaria to the European Union...”. Thus the new Paragraph 2 of Art. 2 LBNB has now the following wording:

“(2) The Balgarska Narodna Banka shall act in accordance with the principle of the open market economy with free competition, favoring 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 Balgarska Narodna Banka 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 Art. 2 of the Treaty establishing the European Community.”

The above formulation is almost identical with the text of Art. 2 (2) of the Banking Law of the Netherlands (1998). This legal act traditionally is highly esteemed as reflecting with maximal precision the requirements of the ESCB Statute within a national juridical framework. That is why the Dutch law is usually pointed out as a model for the accession countries in their efforts to adapt central bank statutes.

A very important feature of the structuring of Art. 2 LBNB is the prioritization of central bank's goals. Following the insistence of some members of the Parliament, the Law explicitly stipulated that the BNB shall support the policy of sustainable and non-inflationary growth. There are researchers who believe that in formulating and implementing monetary policy any central bank should pursue "its twin goals of promoting domestic price stability while stimulating real growth". As Cecchetti (1999) explains, these goals remain at the core of any central bank's policy in a representative democracy. Nevertheless, the Bulgarian legislator clearly prioritized the objectives of the BNB, underlying in the third paragraph of Art. 2 LBNB that the support of policy of sustainable and non-inflationary growth must be without prejudice to the objectives under Paragraph 1 (maintenance of price stability as a primary objective) and Paragraph 2 (acting in accordance with the principle of the open market economy with free competition, favoring an efficient allocation of resources) of the same article. It is to be believed that this prioritization reflects a clear policy choice in favor of the price stability, even if sometimes at the expense of the "sustainable growth", which should in addition be always "non-inflationary" in order to benefit from the support of the central bank.

The formulation of the central bank's main objective is directly related with the issues regarding its autonomy. The central bank should be independent not because some theory declared that as the optimal way for its existence, but because abundant empirical studies (MAE Operational Paper, 1998; Webb and Neyapti, 1992; Guitian, 1996) have convincingly demonstrated that this particular main objective of price stability is best achieved by an independent central bank. Miller (1998) has elaborated a fascinating "interest-group theory of central banks' independence", whereupon with an independent central bank in place, politicians provide assurance that they will not induce an inflationary burst that unravels deals previously negotiated with the interest groups. With these groups politicians conclude an *ex ante* deal for support in exchange of preserved expectations regarding all social contracts based on the assumption of predictable inflation. Gabilondo (2005) rightly adds an important caveat to this theory, considering as mandatory precondition for its application the entrenchment of a private creditor class capable of pressing demands on government officials. Without the existence of private rent-seeking economy it would be completely futile to recommend government action to increase formal independence of the central bank (as the case of the established in 1997 Banco Central de Cuba convincingly demonstrates).

Whether or not we accept the “interest-group theory” as a real incentive for creating independent central banks or just as an intriguing intellectual exercise, we can completely sign the conclusion of Miller that the institution of the independent central bank becomes attractive as a means whereby the government can “tie its hands” by giving control over price levels to an institution without the same perverse incentives for *ex post* monetary expansion; institution which is insulated from political forces and which has conservative (that is, anti-inflationary) attitude towards monetary policy.

6. Creation of Additional Safeguards for the Independence of the Central Bank

6.1 Institutional and Functional Independence

With the purpose to additionally accentuate upon the functional independence of the BNB, the national legislator adopted a new construction of the key Art. 44 LBNB:

“Art. 44. When exercising their powers and carrying out their duties under this Law, the Balgarska Narodna Banka , the Governor and the members of the Governing Council shall be independent and neither the Bank, nor the Governor, nor the members of the Governing Council shall seek or take any instructions from the Council of Ministers or from any other bodies and institutions. The Council of Ministers and other bodies and institutions shall not give instructions to the Balgarska Narodna Banka , the Governor or the members of the Governing Council.”

This wording precisely reflects the content of Art. 7 of the ESCB Statute, dealing with the independence of the national central banks participating in the ESCB. In comparison with the previous version, enlarged is the scope of those “other bodies and institutions” which cannot exert influence over the decision-making process of the BNB. Not only national (both state and municipal), but also international and supra-national institutions are already included among them.

The prohibition for monetary financing on the part of the central bank is usually considered as an essential element of its functional independence. One of the key rules of the LBNB in its 1997 “currency board version” was Article 45. This provision was considered as a consequence of one of the most dramatic events in the development of the 1996 systemic crisis, when the Parliament forced the BNB to extend a direct credit to the government totaling over 6% of GDP to meet all its financial needs pushed to the end of the fiscal year. According to Balyozov (1999), this step finally monetized the cash deficit in the budget and practically pushed the country to hyperinflation. Under the then existing Law on the BNB, the only available defense of the central bank seemed to be a desperate letter that the BNB sent to the Chairman of the National Assembly Budget Commission expressing the

central bank's disapproval in principle with the inflationary mode of budget deficit financing.

According to Art. 45 LBNB in its initial version, the central bank might not extend credits in any form whatsoever to the State or to any state agency. The only exception covered credits against purchases of special drawing rights from the International Monetary Fund. Indeed, Article 3 (5) of the Law on the State Budget Procedures stated that "the Balgarska Narodna Banka may extend credits to the state budget under the terms and according to a procedure established by the Law on the Balgarska Narodna Banka" (this very procedure is contained in Article 45 LBNB). This exception, however, has ever been construed in a restrictive manner, as the law stipulated exceptionally strict conditions for extending such credits – the decision of the Managing Board of the Balgarska Narodna Banka should be taken no later than seven days after the date of the relevant purchase of special drawing rights, the State must utilise the credit within 90 days after the date of the relevant purchase (if not, the right on the unutilised part of the credit shall be extinguished), a complete synchronisation must be achieved between the payments of principal and interest on the part of the State and the date whereon the Balgarska Narodna Banka must effect the relevant payments to the IMF.

After the revisions executed in 2005, the prohibition of Art. 45 LBNB is more encompassing. The norm already stipulates that the BNB may not extend credits 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. The only exception are the credits to the government against purchases of Special Drawing Rights from the International Monetary Fund (Art. 45, Par. 3). According to the opinion of the European Commission, this exception – while closely connected with the currency board system – provides opportunity for the central bank to extend credits to government which are not exclusively in the context of respective government's obligations towards the IMF and consequently suspect to represent a form of monetary financing. Due to this reason, it was decided and proclaimed in a special final provision of the revised law that the exception will cease to exist from the date of the real accession of Bulgaria to the EU, without releasing the state from the obligation to effect all remaining principal and interest payments due to the central bank no later than the dates whereon the BNB is to effect the relevant payments to the IMF and up to amounts required for these payments.

As regards the prohibition of privileged access of public authorities to financial institutions, another important dimension of the currency board arrangement in fact contributes to achieving this goal. Indeed, under the general principle enshrined through Art. 33 LBNB, the Balgarska Narodna Banka may not extend credits to banks (private as well as public banks), whatever their financial situation. There is an exception to this rule, according to which, upon emergence of a liquidity risk that may affect the stability of the banking system, the Balgarska Narodna Banka

may extend to a solvent bank lev-denominated credits with a maximal maturity of 3 months, provided they are fully collateralised 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 liquidity risk, are determined in details by Regulation No. 6 of the Balgarska Narodna Banka on Extending Collateralised Lev Loans to Banks (March 1998). That was the way of inducing commercial banks to take only market principles into consideration when extending credit to the public sector.

Nevertheless, a problematic rule still existed – Art. 9 LBNB, which provided that where the BNB's balance sheet indicates that the amount of its assets is less than the amount of its liabilities and the statutory fund, the Minister of Finance should concede the BNB negotiable, interest-bearing securities issued by the Council of Ministers to the amount necessary to cover the deficit. The securities conceded were to be redeemed from the annual excess of the BNB's revenue over expenditure prior to deduction of the amount for the reserve fund. It is clear that such a provision – albeit quite unusual for the established orthodoxy in drafting central banks laws – is vital for filling an inevitable gap associated with the severe currency board mechanism: in the unusual case when the hypothesis of Art. 9 actually happens, the central bank merely does not possess any other source for filling the gap, since it has no recourse to the traditional behavior that any “classic” central bank would adopt in this situation – namely, to issue money whose exclusive issuer it is by the law.

However, according to the views expressed by the assessment teams of certain European institutions, the provision of negotiable securities to the BNB on the part of the Minister of Finance (who according to the Law on the State Debt meanwhile had become the sole body empowered to issue government securities) and the requirement for subsequent reimbursement of these securities to the Treasury could be regarded as a mechanism that might be used for extending a cleverly dissimulated credit on the part of the central bank to the government in the sense of Art. 101 of the Treaty Establishing the European Community. Since it was imperative to avoid any possible interpretation of Art. 9 LBNB as a hidden mechanism for crediting the government, several changes were introduced in the new version of the Law.

The requirement for conceding government securities is now repealed. The Law stipulates only that the Minister of Finance must replenish the statutory fund of the BNB to the amount necessary to cover the deficit, without specifying the type of contribution – money or securities. In this way a greater flexibility is provided for the Ministry of Finance to take into consideration the particular features upon the occurrence of the exceptionally extraordinary situation under Art. 9 LBNB. It should be borne in mind that the Law on the BNB imposes very conservative principles for the management of the international reserves of the central bank, which renders as purely theoretical the possibility of realizing losses triggering the

mechanism described in Art. 9. In addition, the adopted change did not modify the existing norm of Art. 9, Par. 2 LBNB, which stipulates that the regime under Art. 9, Par. 1 can be applied only in exceptional cases, when the resources of the Reserve Fund and on the BNB's Special Reserve Account under Art. 36, Par. 1 have been exhausted.

The present version of the Law envisages that the Minister of Finance will replenish the statutory fund of the BNB to the amount of the deficit. The rule is connected to the role of the BNB as the central bank of the country, which requires in the event of a loss exceeding the amount of the statutory fund and the reserves the intervention of the State represented by the Minister of Finance for assuring the resources necessary to replenish the gap.

6.2 Financial Independence

Another recommendation of the European institutions that had to be faced in the course of the LBNB revision concerned the adoption of the budget of the central bank. It was rightly pointed out by the observers of the ECB that the initial concept of the law, providing in Art. 48, Par. 1 that the expenditure of the Balgarska Narodna Banka shall be made in accordance with the annual budget *adopted by the National Assembly*, contains the potential to substantially encroach on the autonomy of the BNB. A change was needed, allowing the central bank to receive independent access to sufficient financial means, permitting it to fulfil its mandate and be conducive to the achievement of the common objectives upon joining the ESCB. It was not justified for a third person – neither the government, nor the Parliament – to be in a position to determine the budget of the central bank or the allocation of profits. Only a subsequent check of the financial reports of the BNB was recommended, and that solely to an extent not undermining its independence. Norms with similar meaning were already existent in the LBNB – Art. 50 and 51. It is incumbent upon the Governing Council to approve the annual balance sheet and the annual report (including the budget report) to be submitted together with the annual financial statement and the international auditor's report to the National Assembly. The reports on the budget outlays of the Balgarska Narodna Banka are examined by the National Audit Chamber, which prepares a special report on the results of the examination.

As an additional drawback of the solution to have the central bank's annual budget adopted in advance by the Parliament was considered also the lack of special arrangements, treating the case when the budget, already approved by the Bank's Governing Council, does not gather the necessary support in the National Assembly.

The comparative analysis of legal acts concerning EU central banks demonstrates that in these laws the budget issue is treated most frequently in the sense to have it included among the competencies of the bodies of the central bank

itself. Thus according to Art. 19 (2) of the Articles of Association of De Nederlandsche Bank, its Governing Board compiles a budget of the Bank's expenditure before January 1 of the year to which the budget relates, while this budget requires the prior consent of the Supervisory Board. Under Art. 54 of the Statute of the Banca d'Italia expenditure comprises the amounts spent on ordinary administration, replenishing the gold reserve and the issue of banknotes and the like, taxes and other charges prescribed by law and amounts disbursed for purposes of charity or for contributions to works of public interest within the limits established annually by the Board of Directors. The General Council of the Banque de France decides on the allocation of the Bank's own funds, draws up the Bank's expenditure estimates and amendments, makes up the Bank's balance sheet and accounts, and proposes the appropriation of net profit and the dividend to be paid to the State (Art. 11 of the Statute of the Banque de France). A decree of the Conseil d'Etat lays down the procedures for drawing up the Bank's annual budget. Among the powers of the Parliamentary Supervisory Council of Suomen Pankki exists the prerogative to "decide, upon proposal of the Board, on measures concerning the Bank's profit or loss for the financial year". According to Chapter 10, Art. 2 of "The Sveriges Riksbank Act (1988:1385)" each year prior to the end of December the Executive Board drafts a budget for the Riksbank's administrative activities during the following accounting year. Then the Executive Board submits the budget to the Parliamentary Standing Committee on Finance, the Office of the Parliamentary Auditors and the Governing Council for their attention. Art. 29 of the Law of 23 December 1998 Concerning the Monetary Status and the Banque Central du Luxembourg stipulates that no later than the end of each financial year the Board of Directors submits to the Council for approval the income and expenditure budget for the forthcoming year. An integral part of it is a report by the staff representatives, the organization chart including tables showing the number of all current and planned staff, as well as guidelines on certain remuneration supplements.

The implementation of schemes as discussed above relating to budget adoption (with its typical sanctioning on the part of at least two different management bodies) was not applicable to the BNB due to the typical for it over-simplified system of governance – with a sole collective management body: the Governing Council.

Somewhat contradicting to the described independence relating to budget adoption seems the practice existing in Spain and Portugal. According to Art. 4 (2) of the Law of Autonomy of the Banco de España: "the Bank's draft budget for operating expenses and investments, once approved by its Governing Council... shall be forwarded to the government, which will submit it to Parliament for approval." Art. 52 of the Organic Law on Banco de Portugal proclaims that "1. An operating budget shall be drawn up every year. 2. The annual budget shall be forwarded to the Finance Minister not later than November 30 of the preceding

year.” It could be observed that despite the membership of Spain and Portugal in the ESCB, the cited legal provisions appear to be in even greater contradiction with the independence requirement as per the ESCB Statute than Art. 48, Par. 1 LBNB, since a role of the government, the parliament or only of the Minister of Finance (if in the latter case this role is not restricted solely to the execution of the budget) is envisaged in the process of budget adoption.

The explanation for the lack of treatment relating to the budget issue in the central bank’s legislation of certain EU Member States should be found in the fact that several banks are incorporated as independent joint stock companies. In this case the question for defining a “budget” on the part of some body external to the central bank is virtually non-existent. As a matter of fact, in an historical aspect we could discover even attempts for normative reorganization of the Balgarska Narodna Banka as a privileged shareholding bank (through the BNB Statute, adopted by the National Assembly and promulgated by Decree No. 100 of February 11, 1883, but never applied). However, at the moment it was not realistic to think about such a solution – the LBNB is drafted in close cooperation with the International Monetary Fund and the World Bank, it functions properly and nobody questions its statutory arrangement. Nevertheless, one should admit that even at present the BNB is a “*sui generis*” legal entity – a body corporate with a unique position within the structure of State governance. The central bank is not a “governmental institution” in the proper sense; but it is neither an ordinary commercial company. If we pose the question who is the owner of the BNB’s basic capital (called “statutory fund” by the LBNB), we should accept that the owner is no one else but the BNB itself, since in its statutory act there is no provision similar, for instance, to Art. 6 of the Statute of the Banque de France (“The Banque de France is an institution whose capital is owned by the State.”), or to Art. 2 of the German Bundesbank Act (“...its capital, amounting to five billion Deutsche Mark, is held by the Federal Government.”).

The drafting team, working on the revision of the LBNB, has obviously faced the need to liberate an important element of the central bank functioning from the influence of a politically motivated body as the Parliament. That is why several possible solutions were evidently considered.

A/ According to the first variant, it could have been possible to bind the annual budget with some objective criterion, a strictly fixed numerical factor, that will not be dependent on the will of a particular body, but only on an explicit legal provision. Theoretically, such a factor could be the statutory fund of the BNB – 20,000,000 leva under the present version of the LBNB. If juxtaposed, the annual budgets of the BNB for the period 1997–2001 did not exceed the statutory fund more than three to four times. A provision with the following content could have been considered: “*The annual expenses of the BNB cannot exceed... times its statutory fund.*” It was possible also to additionally broaden the basis with the inclusion in it of the Reserve Fund (according to Art. 8, Par. 2 LBNB) - “*The*

annual expenses of the BNB cannot exceed... times its statutory fund plus the Reserve Fund". There were several drawbacks stemming from such an approach – it was not usual for the existing legislative practice; it could not boast of quite an appealing wording; it lacked the needed flexibility in case when a necessity emerged for more substantial investment expenses on the part of the BNB during a particular period.

B/ The second variant initially seemed quite radical – to empower the Governing Council of the BNB with the adoption of its annual budget. Since the National Assembly is by definition a politically driven institution, the Bulgarian legislator faced the somewhat paradoxical need to release from its own discretion one so important element for the proper functioning of the central bank as its budget.

That is why the adoption of the annual budget of the BNB was inserted among the prerogatives of its Governing Council. On the part of the drafting team this should have been a brave, but well motivated strategy. It was completely dependent on the authority and respect, already acquired by the central bank: should any doubts in this sense existed among the Parliament members, the autonomy in budget adoption would not gather the necessary approval in the plenary hall. However, the proposed decision had the advantage of organically combining the present organizational model of the Bulgarian central bank with the unambiguous requirements of the ESCB Statute and the analytical reports of EU institutions.

By the way, such an approach was not unfamiliar from the legal history of Bulgaria. It was just the Managing Board of the Bank that approved the annual budget of the BNB after 1928. According to Art. 49 of the then Law on the Balgarska Narodna Banka (version published in "State Gazette", N 189 of November 20, 1926): "The expenses of the Bank are to be made by the order of its Managing Board, in accordance with the annual budget that the Governor has presented for approval to the Managing Board." The context of adopting this solution in 1926 is quite instructive, since until then the budget had to be approved by a member of the executive (the Minister of Finance according to the laws of 1906 and 1924). The reform with the LBNB of 1926 aimed at nothing else but strengthening the independence of the central bank and again was imposed under external pressure – being based on the recommendations of the Financial Committee of the League of Nations in relation to the negotiation of the so-called "Refugee Loan" of 1926.

Clear indication for the need to follow this particular direction for legal reform were the changes adopted in 2002 in Law N 9/1993 of December 17, 1992 on Česká národní banka (amendments introduced with the obvious purpose of meeting all requirements associated with the future membership of the Czech Republic in the EU). According to Art. 5, Par. 2, point "b" of the law in its latest version, as an explicit prerogative of the Banking Board (the highest management body of the central bank) is stipulated "to approve the budget of Česká národní banka".

6.3 Personal Independence

Another cluster of problems that the revision of the LBNB had to address was connected with the mandate of the members of the BNB Governing Council. Several changes were proposed for restricting the reasons leading to premature termination of their prerogatives.

Upon comparing the regime adopted by the LBNB with Art. 14.2 of The ESCB Statute, legal specialists of the EU institutions formulated two mutually related recommendations. The first one concerned the inclusion in the Bulgarian law of only those grounds for dismissal that appear in Art. 14.2 of the ESCB Statute. The second advice was to provide an opportunity for judicial appeal of the decision for dismissal. It is instructive to analyze what were the opportunities for realizing these two recommendations and how the Bulgarian legislator faced the challenge.

A/ According to Art. 14.2 ESCB Statute “A Governor may be 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...”

With a view of adopting the requirement for restricting the grounds for dismissal, it was imperative to revise the initial construction of Art. 14 LBNB, which contained in its first paragraph five different hypotheses mandatory leading to dismissal, while the next paragraph envisaged four more such grounds, whereupon the elective body possessed the discretion to relieve from office the relevant member or not. Thus, according to Art. 14, Par. 1 LBNB (preceding the reform), the competent authority was bound to terminate the mandate before the set term on the ground of resignation, practical inability to perform the assigned functions for more than six months, enforcement of an imprisonment sentence for a premeditated crime, adjudication in bankruptcy in a capacity of a sole proprietor or general partner in a commercial company or cooperative which has been dissolved by bankruptcy. In contrast, under Art. 14, Par. 2 the competent authority *might*, but was not obliged to terminate the mandate of a member of the Governing Council before term's expiration, if the member in question had been involved in certain activities prohibited to him (through Art. 12, Par. 5 & 6 LBNB), if he had not attended without due grounds three or more consecutive sessions of the Governing Council, if he was guilty of serious misconduct in office, if by action or inaction he had caused a failure to fulfil any task of the BNB as provided by the law. Whether to terminate the mandate under these circumstances or not depended exclusively on the concrete assessment of the electing institution – should it be the National Assembly or the President.

According to Art. 14.2 ESCB Statute, “a Governor may be 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...” The difference in the approaches embraced by the ESCB Statute and the LBNB could be discovered immediately. Under the Statute, enforced guarantees are provided solely for the Governor of a

national central bank. On the contrary, the Bulgarian Law treats in a completely identical way all the members of the Governing Council regarding the question of their premature dismissal. This should not be considered a drawback in the light of the EU legislation. To have in place identical guarantees for non-infringement of the mandate of all members of the central bank management body is helpful for the independence of the central bank. If this idea is not followed in the ESCB Statute, this is perhaps due to the fact that many European central banks have a rather complicated and multi-layered management structure. For example, the Banque Nationale de Belgique possesses four organs – Governor, Board of Governors, Council of Regency and Board of Censors. Comparable is the composition of the Banco de Portugal – its organs include the Governor, the Board of Directors, the Board of Auditors and the Advisory Board. The management of Deutsche Bundesbank comprises the Central Bank Council, the Directorate and the Executive Boards of the Land Central Banks. The Oesterreichische Nationalbank has a General Meeting of shareholders, a General Council and a Governing Board. In the Bank of Greece the responsibility is shared among the General Meeting of shareholders, the General Council, the Governor and the Deputy Governors, as well as the Monetary Policy Council. The management of the National Bank of Denmark is committed to a Board of Directors, a Committee of Directors and a Board of Governors. The bodies of the Banco de España are the Governor, the Deputy Governor, the Governing Council and the Executive Commission. The powers the Banca d'Italia are vested in the General Meeting of Shareholders, the Board of Directors and the Committee of the Board of Directors, as well as the Directorate, which is composed of the Governor, the Director General and two Deputy Directors General. The Council and the Board of Directors are the bodies of the Banque central du Luxembourg. Suomen Pankki also has two government bodies – the Parliamentary Supervisory Council and the Board. In the organizational structure of the Banque de France we find a Monetary Policy Council, a General Council, a Governor and Deputy Governors. The Dutch central bank comprises the Governing Board (consisting of a President and between 3 and 5 Executive Directors), the Supervisory Board and the Bank Council. The management of the Swedish Riksbank is in the hands of the Governing Council and the Executive Board. More extensive review of central bank institutional arrangements, not restricted exclusively to the EU context, could be found in Lybek and Morris (2004).

A system of governance, comparable to the Bulgarian one, exists in the Bank of England (Court of directors of the Bank, consisting of a Governor, 2 Deputy Governors and 16 directors of the Bank). Important functions are delegated to a sub-committee, composed only of the directors of the Bank.

With a view of adopting the requirement for restricting the grounds for dismissal, it was imperative to revise the initial construction of Art. 14 LBNB, which contained in its first paragraph five different hypotheses mandatory leading

to dismissal, while the next paragraph envisaged four more such grounds, whereupon the elective body possessed the discretion to relieve from office the relevant member or not. In fact, only the existence of the second way of action was justified, since it presupposes undertaking the responsibility for each and any particular decision on the part of a supreme institution of state governance as the Parliament or the President. The lack of the previous grounds under Art. 14, Par. 1, points 3–5 (imprisonment and adjudication in bankruptcy) is now treated as a condition for the very fulfillment of duties by a member of the Governing Council. This was reflected in the new version of Art. 11, Par. 4 of the LBNB:

“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.”

It is possible to observe in what direction has been changed the wording of the previously existing ground for mandate termination in the repealed Art. 14, Par. 1, point 5 LBNB: “...adjudication in bankruptcy in a capacity of a sole proprietor or general partner in a commercial company or cooperative which has been dissolved by bankruptcy”. This text was capable of leading to a situation when a Governing Council member should be dismissed because he or she had occupied such position in a commercial company or cooperative for instance 10 years before his/her election as a member of the BNB’s collective management body and 15 years before the company in question was declared insolvent. Quite obviously, in this case the insolvency could not in any way be triggered by the activities of the relevant member. Nevertheless, the previous rule of Art. 14, Par. 1, point 5 LBNB required for the mandate to be terminated, even without providing any right of the elective body to assess the concrete situation. In order to avoid this incongruity, the new version cited above binds the membership in a managing or supervisory body of a company or cooperative with a reasonable term (2 years), counted back with regard to the date of adjudicating the said company or cooperative in insolvency. Similar solution could be found in Art. 234, Par. 2, point 1 of the Bulgarian Commercial Code (where the membership in the managing body of a joint stock company is prohibited for persons that during the last 2 years preceding an insolvency have been members of a managing or supervisory body of a company affected dissolved for this reason), as well as in the Bulgarian Law on Banks (preventing from membership in the managing board or the board of directors anybody, who has participated in the management or control of a commercial bank for the last 5 years preceding its declaration in bankruptcy).

Another two reasons for dismissal, envisaged by what was formerly Art. 14, Par. 1, points 1–2 (filing a resignation and practical inability to perform the

required functions for more than six months), seemed irrelevant at all in the particular context. Both Art. 14 LBNB and Art. 14.2 ESCB Statute are obviously keen to restrict solely the grounds for unilateral dismissal on the part of the elective body, and not the mandate termination following the member's own will (resignation), or the occurrence of certain objective circumstances (practical inability to perform the required functions for a substantial period).

Brought in compliance with the sense of Art. 14.2 ESCB Statute, at present Art. 14 LBNB states the following: "The competent authority... 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 Art. 11, Par. 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."

As seen from the new text, the only grounds for premature termination of the mandate remain non-compliance with the conditions for fulfillment of duties and serious misconduct. However, if the first hypothesis is defined in a relatively clear way (the conditions for performing the duties of a member of the Governing Council are enumerated in Art. 11, Par. 4), the second one seems rather loosely formulated. The one side of the problem is finding the most relevant translation in Bulgarian or in the languages of other "new Member States" of the authentic term used in the ESCB Statute – "serious misconduct". The question remains: what is the exact content of this "serious misconduct"? Is it equal to infringement of the laws and other legal acts? To breach of the specific professional duties? To non-compliance with the work discipline? To contradiction with morals and ethics? With all the due respect to the ESCB Statute, it should be recognized that its approach in this particular case does not seem unambiguous enough. Two cumulative explanations for this are available – that the idea had been to provide for greater flexibility in the assessment of the elective body, as well as that the more general wording is balanced through the possibility for seizing the court regarding the decision for dismissal before the set term.

Nevertheless, the new version of the Bulgarian law reduces to a maximal extent the grounds for premature termination of the mandate of a Governing Council member, while the existence of these reasons (incompatibility under Art. 11, Par. 4) is submitted to strictly objective determination. This issue is closely connected to the possibility for judicial appeal of the decision for premature termination of the mandate.

B/ The already discussed hypothesis for involving the issues concerning the BNB in the context of eventual amendments to the Bulgarian Constitution provides also the opportunity to put forward one more specific problem, indirectly connected with the problem of central bank's independence in the context of joining the Economic and Monetary Union. If, however, we could discuss at length whether the BNB independence should at all be envisaged on constitutional level,

or its framework within the special law is sufficient, the issue to be discussed merely requires to be thought of in constitutional context.

This issue is connected with the explicit requirement of the ECB in its annual assessment of the financial legislation of accession countries that the national law should provide the opportunity for judicial review of the decision for pre-term dismissal of members of management bodies of the national central bank, engaged with tasks connected with the ESCB. Formulated in this way, the requirement for judicial review constitutes in fact a latitudinarian interpretation of the ESCB Statute, which is made part of the Treaty establishing the European Community through a special protocol. Art. 14.2 of the Statute envisages the right of the governor of a national central bank (constituting part of the ESCB), who is relieved from office before the expiration of his mandate, to seek judicial protection if he considers that his rights have been infringed. Art. 14.2 of the Statute is explicit, however, on the judicial body that could be seized by the Governor. The question is about the “Court of Justice” – one of the institutions of the EU. Moreover, the latter could be seized not in the case of any decision for dismissal, but solely on grounds of infringement of the Treaty or of any rule of law relating to its application.

Two conclusions stem from this construction.

- a) First, it is not possible at present for the Bulgarian law to reproduce the content of Art. 14.2, sentence two of the ESCB Statute and to provide that if the BNB Governor is dismissed before the end of his mandate, he could appeal before the Court of Justice of the European Communities. Before Bulgaria becomes a full member of the EU, the Court of Justice does not possess and could not possess any jurisdiction over the country. It is not possible through a national law of a particular state – moreover still outside the institutional structure of the EU – to assign prerogatives to a supra-national institution for adjudication as the Court of Justice of the European Communities.
- b) Second, even if Bulgaria were already a Member State of the European Union, it would hardly be necessary to reproduce the provision for appeal before “the Court of Justice” in the national law. As already mentioned, the right of the Governor of a national central bank to attack his pre-term dismissal before the Court of Justice is envisaged by Art. 14.2 of the ESCB Statute. The provisions of the Statute constitute an integral part of the Treaty establishing the European Community. This Treaty becomes part of the internal legal order of each country that is a member of or accedes to the EU. From the moment when the Republic of Bulgaria joins the European Union, all the provisions of the Treaty will acquire direct effect for the country – including the provision of Art. 14.2, sent. 2 of the ESCB Statute. This norm will become an entirely sufficient legal basis for appeal before the Court of Justice in Luxembourg. Probably from systemic point of view the rule then could be reproduced also in the Law on the BNB, but such an approach is not mandatory. In support of this view we could

adduce the fact that in the statutory acts on central banks of EU Member States explicit provisions for judicial appeal could be found quite rarely.

One example for such a norm is the new version of Art. 6, Par. 13 of Law N 6/1993 of December 17, 1992 on Česká národní banka (the revision dates from the end of 2002 and is executed with the obvious intention to meet all the requirements connected with the expected accession of the Czech Republic to the EU). According to this text, the Governor shall be relieved from office by the President of the Republic if he already does not meet the conditions for exercising his duties or if he is guilty of serious misconduct. The President of the Republic might relieve the Governor from office also if he is incapable to fulfil his duties for a term longer than six months. This decision could be referred to the Court of Justice by the Governor concerned or by the Governing Council of the ECB on grounds of infringement of the Treaty establishing the European Community or of any rule of law relating to its application.

Another similar example is provided by the provision of Art. 16 (2) of Law N 214/1998 on Suomen Pankki: “Any member of the Board, apart from the Chairman of the Board, can appeal the decision for pre-term dismissal before the Supreme Administrative Court, as provided in the relevant norms of the Law on the Application of the Administrative Law (586/1996). The ESCB Statute provides for the right of appeal of the Chairman of the Board.” As could be seen from this provision, the accent is upon ensuring the right of judicial protection against pre-term dismissal of other members of the Bank’s executive body, save the Chairman, since his right of appeal stems directly from the ESCB Statute, to which the national legal act refers.

That is why the recommendation of the EU institutions should be interpreted in the direction of guaranteeing the possibility for judicial appeal of the decision for premature termination of the mandate also of all the other members of the central bank’s managing body, and not only of the Governor. The introduction of the right of judicial appeal before a national court would be justified also by the fact that during the period preceding the accession of Bulgaria to the EU the Governor will not be capable of using the opportunity provided by Art. 14.2 of the ESCB Statute for direct appeal before the Court of Justice of the European Communities.

The introduction of judicial control over the decision for premature termination of the mandate of a member of the BNB Governing Council proved to be, however, the recommendation most difficult to fulfil under the actual state of the Bulgarian Constitution and the separation of powers envisaged by it. At present, four amongst the members of the BNB Governing Council are elected (and eventually dismissed) by the National Assembly, while the remaining three are appointed and respectively relieved from office by the President of the Republic. An especially serious question seems to be is it admissible at all to have a judicial appeal of acts, through which the Parliament and the President exercise the above prerogatives.

It should be underlined that the possibilities for a positive answer to the above question under the present version of the Constitution are rather slight.

In theory, two solutions could be considered – to give the judicial control over acts for premature dismissal either to the Bulgarian Supreme Administrative Court (SAC), or to the Constitutional Court.

According to the Constitution of the Republic of Bulgaria (Art. 125, Par. 2) and the Law on the Supreme Administrative Court (Art. 5, point 1 *in fine*), those acts that could be appealed before the SAC include decisions of the Council of Ministers and the individual ministers, “as well as other acts, envisaged by law”. A question arises whether among these acts “envisaged by law” (in the present case the LBNB) could fall also decisions for relieving a member of the BNB Governing Council, adopted by the National Assembly or by the President. If we are more inclined to give a negative response to this question, it is due to the very nature of the administrative adjudication, being concentrated upon the control over the Executive. Neither the Parliament, nor the President is part of the executive branch. One additional argument is also the complete absence of precedent in this respect in the existing Bulgarian legislation. We could adduce managerial positions, where the requirements for independence are comparable with those relating the managers of the central bank – e.g. the management of the Court of Auditors. Nevertheless, there is no possibility for judicial appeal against decisions by means of which the elective body relieves the members of the Court of Auditors from office.

The second hypothesis also seemed impossible until recently. The Bulgarian Constitution has opted to explicitly enumerate the prerogatives of the Constitutional Court in itself. Among these prerogatives we cannot find the possibility for appealing decisions related to the election or dismissal of the central bank management. Moreover, Art. 149, Par. 2 of the Constitution explicitly prohibits the assignment *through a law* of additional powers to the Constitutional Court. Another serious obstacle is the lack of possibility for claim on the part of an individual before the institution for constitutional control (the Constitutional Court could be seized only by certain number of parliamentarians, the Council of Ministers and some highest magistrates). Consequently, appeal before the Constitutional Court could be envisaged only through an amendment to the Constitution.

Such amendment might theoretically be drafted in two ways.

- a) According to the first alternative, there will be two revisions in Chapter VIII – “Constitutional Court”. Apart from adjudicating on legality of election of Parliament members, the Court could pronounce its binding opinion on the legality of premature termination of the mandate of a manager of the Balgarska Narodna Banka. This power will be developed through enlarging the list of subjects that could seize the Constitutional Court. Thus the initiative for constitutional procedure may stem not only from one fifth of Parliament members, the President, the Council of Ministers, the Supreme Court of

Cassation, the Supreme Administrative Court and the Attorney General, but also – with respect to the legality of pre-term dismissal of a manager of the BNB – from the respective manager.

- b) Under the second option, instead of amending the chapter on the Constitutional Court, it would be possible to further develop the only text in the present version of the Constitution related to the central bank. Thus point 8 in Art. 84 (enumerating the powers of the Parliament), in parallel with the prerogative of the National Assembly to elect and dismiss the managers of the BNB, will include a statement that their mandate can be terminated prematurely only if the respective manager does not fulfil anymore the conditions required for the performance of his duties or if he has been guilty of serious misconduct.

In this way the only two grounds for premature dismissal of the Governor of a national central bank as per Art. 14.2 ESCB Statute (with its meaning widened through the discussed latitudinarian interpretation as being applicable also with regard to the other members of the management body of the central bank) would be enshrined in the Constitution itself. In this way we could build a bridge to the already existing power of the Constitutional Court to adjudicate on the constitutionality of laws and *other acts* of the National Assembly, as well as of acts of the President. A premature dismissal, which is not based on one of the two reasons in the extended version of Art. 84, point 8 of the Constitution of the Republic of Bulgaria (CRB), would already represent an infringement of the Constitution and accordingly would be submitted to the control of the Constitutional Court.

One drawback of this variant is the systemic place of the reasons for dismissal – in Art. 84 CRB, which deals exclusively with the powers of the Parliament. A question may arise whether the dismissal of a member of the Governing Council, belonging to the Presidential quota, on a basis different from those explicitly envisaged could also be submitted to control over its constitutionality.

Taking into consideration the complicated procedure for amending the Bulgarian Constitution, the realization of the above options remains a question for the future, probably in package with other constitutional revisions, imposed by the imperatives of the European integration. For the moment, the revised Law on the BNB reproduces the right of the Governor to appeal the decision for his dismissal before the Court of Justice of the European Communities (starting from the moment of accession of Bulgaria to the EU). What about the other members of the BNB Governing Council?

After a thorough interpretation of the Bulgarian Labor Code, one could reach the conclusion that its Art. 360 in fact is capable of providing the necessary protection. Here we have the general clause, stipulating that **all** labor disputes are to be dealt with by the courts. Of course, there are exceptions to this rule, enumerated in the second paragraph of the cited article, but it is just this drafting that in the final account provides the basis for the proposed interpretation. Par. 2 of

Art. 360 excludes from the scope of judicial control those labor disputes that are related to the dismissal of elective officials in the Executive, in non-governmental organizations, in political parties and movements, as well as members of the so-called “political cabinets” of the ministers. Since the enumeration is meant to be explicit and exhaustive, *per argumentum a contrario* it could be seen that the members of the BNB management do not fall in any of the above categories – consequently, their claims for illegal premature dismissal could be brought to the attention of the district courts on the basis of the general clause of Art. 360 of the Labor Code. Of course, it would be unusual (to say the least) to have the decisions of the Parliament or the President controlled by the district courts, but the subject matter of the dispute (a labor relationship) predetermines this curious outcome.

C/ It is again in line with the engagements undertaken by Bulgaria in its accession negotiations with the EU regarding the personal independence of the members of the BNB Governing Council that a revision of Art. 12, Par. 5 & 6 was executed – aiming to create similar guarantees against a conflict of interests for *all* the members of the Governing Council. According to the newly introduced construction, the Governor and the Deputy Governors may not engage in any other activity, other than teaching, or as members of the bodies in companies where the BNB participates, or in international organizations related to the BNB activities. They may perform a non-remunerative activity following a unanimous decision of the Governing Council insofar as there is no conflict of interest. The other three members of the Governing Council (the so-called “external members”) may not engage in any other remunerative activity at the BNB, work for banks, insurance companies, other financial institutions or in the executive, as well as perform any other activity which may create a conflict of interest. It could be seen how – despite the fact that the status and role of the two composing elements of the BNB Governing Council are not equal, since the “external members” have more or less inherited the function of the previously existing “Plenary Council” of the central bank, meant to express the public interest in the governance of the BNB – the “least common denominator” for all is now the absence of conflict of interest, while the restrictions for other occupations of the Governor and the three Deputy Governors are naturally stricter, because theirs is a full-time job with the central bank (the external members in principle participate only two times per month in the sessions of the Governing Council).

7. Practically Imposed Amendments

The initiatives for revising the statutory law of any central bank should be rare enough in order to ensure legal stability and certainty in this sensitive area. That is all the more important with respect to an act like the LBNB, which since 1997 fulfills – at least in the eyes of the general public – the prestigious role of something like an “economic constitution” of the country, guaranteeing

perseverance in pursuing financial stability and commitment to necessary, if sometimes painful, reforms. Just because it is not probable that the chance for another revision will come in near future, any legislator should use the opportunity to address through the amendments some less fundamental, but still important issues. The Bulgarian experience is not an exception in this sense.

1. In the context of the latest revision of the LBNB it was decided that the elaboration of special texts in the Law is needed for the sake of creating an appropriate regime for the detection of non-genuine or counterfeited banknotes and coins by the financial system and the role of the central bank in this process.

The creation of a National Analysis Center within the central bank fulfils one of the basic requirements of Regulation No. 1338/2001 of the EU Council, laying down measures necessary for the protection of the euro against counterfeiting. Closely related is also the requirement for all countries acceding to the EU to undertake the necessary measures for active participation in the efforts for preventing the circulation of counterfeit money on the part of credit and other institutions, engaged in accepting and distributing banknotes and coins as a professional activity. This could be achieved through the creation of a legal obligation for financial institutions to withdraw from circulation all received banknotes and coins regarding whose authenticity they have reasonable doubts, and to submit them to the competent national institutions empowered to identify, collect and analyze the technical and statistical information concerning the counterfeiting of money, in particular the euro. Essential composing element of these competent institutions (whose list should be brought to the attention of the ECB and the European Commission) is also the National Analysis Center.

Closely related to the provisions of Regulation 1338/2001 is the ECB Decision of November 8, 2001 on certain conditions regarding access to the Counterfeit Monitoring System (ECB/2001/11). In compliance with this Decision, Member States are expected to establish their own national centers on counterfeits within the relevant central banks and to create the function of a security administrator of the national center. This center must administer the access to the established by the ECB Counterfeit Monitoring System of the national analysis center and other competent authorities of the relevant Member State. On the basis of an arrangement with the ECB, the national centers on counterfeits will authorize the different levels of access to the Counterfeit Monitoring System. With this purpose the security administrator should create the necessary user names, different categories of users and different levels of access among the users of the Counterfeit Monitoring System.

The recent amendments to Art. 27 LBNB aim at building the precise normative mechanism for cooperation between the central bank and the other financial institutions relative to withdrawing from circulation of all Bulgarian or foreign banknotes and coins which have come under their control in whatever way and which are suspected of being non-genuine or having been counterfeited. This

regime has the advantage of being based on the already gathered informal practice for such cooperation (until recently the suspect money were retained by the commercial banks or exchange bureaus and sent with an accompanying protocol to the Issue Department of the BNB for analysis), as well as to create the needed legal ground for successful functioning of the National Analysis Center and of the future National Center on the Counterfeits.

According to the established procedure, the BNB, banks, financial houses, and exchange bureaus are required to retain for verification upon issuing a written document all Bulgarian and foreign banknotes and coins which have come under their control in whatever way which are suspected of being non-genuine or having been counterfeited. The BNB is proclaimed as the only competent authority for conducting verification and completing an expert assessment. If as a result of this assessment it has been established that the banknotes or coins are non-genuine or counterfeited, they are retained by the BNB without being redeemed or returned. The Law provides a normative delegation for the central bank to issue a by-law dealing with these issues in detail. The delegation was materialized through the new Regulation N 18 of the BNB on the Control over the Quality of Banknotes and Coins in Circulation.

2. Following the introduction of the euro, the obligation of the BNB under Art. 30 is reformulated – on demand, the central bank is bound to sell and purchase already not German marks, but *euro* against levs up to any amount within the territory of Bulgaria on the basis of spot exchange rates, which shall not depart from the official exchange rate by more than 0.5%, inclusive of any fees, commissions and other charges to the customer. A refined formulation of Art. 31, Par. 3 is adopted, providing that the lev equivalent of the gross international reserves (with the exception of the reserves under Art. 28, Par. 3, items 3 and 6), denominated in currencies other than euro cannot deviate by more than two per cent, both plus or minus, than the lev equivalent of the total monetary liabilities of the BNB.

3. Clearly accentuated are the functions of the BNB as overseer of the payment systems (Art. 2, Par. 4), as supervisor of other banks' activities in the country (Art. 2, Par. 6), as fiscal agent and depository of the State (Art. 43, Par. 1), as provider of bank service of the accounts and payments included in the single account system, on behalf and for the account of the Ministry of Finance (Art. 43, Par. 2). Art. 43, Par. 1 stipulates that the Ministry of Finance will pay the services under Art. 43, Par. 1–3 by virtue of concluded contracts at market conditions and prices of services – this highlighting another dimension of the central bank's independence from the Executive.

4. The revised Law introduces the notion for internal audit of the BNB and the prerogatives of the Chief Auditor are elaborated in compliance with the latest trends in audit practice (Art. 22). Art. 16 creates a new power for the Governing Council of the BNB – to be responsible for establishing and maintaining an

efficient internal control system at the BNB and its subsidiaries adequate to the inherent risks to its activities.

5. A correction was needed also in the existing wording of Art. 61 LBNB – “Administrative Penal Liability”. The clause envisaged liability only for “individuals having breached this Law...”. Thus it was not provided for an identical sanction in case of breach of the *by-laws* governing the Law’s enactment. In addition, due to the inflationary processes characteristic for the beginning of 1997 (when the initial version of the Law was drafted), the sanction’s amount was defined through reference to the minimum monthly salaries as determined by the Council of Ministers by the date of committing the violation of the LBNB – the fine was up to the amount of 6 to 35 minimum monthly salaries. Taking into account the achieved financial stabilization, the normative practice in Bulgaria adopted lately the approach to directly fix the amount of pecuniary liability. In addition, the new version aims at differentiating between the pecuniary liability of natural persons, on the one hand, from that of legal entities and sole proprietors, on the other. That is why the following wording could be found now in Art. 61:

“*Art. 61* Whoever commits or permits the commitment of a violation of this Law or legislative acts governing its enactment shall be fined in the amount of BGN 500 to 3000, unless this violation constitutes a criminal offence. If the offender is a sole proprietor or a legal entity, a property sanction shall be imposed in the amount of BGN 5,000 to 30,000.”

8. Some Lessons to Be Learnt from the Reform

On the background of the explored Bulgarian reform concerning the central bank’s statutory law, one should be able to reach several conclusions.

First, to formulate legal guarantees for central bank independence – and to pass them through the national legislature – appears slightly easier when the right of the central bank to conduct monetary policy is initially restricted (e.g. by means of a currency board arrangement). That is nothing to do with the somewhat cynical wisdom that independence is easily granted to an entity on which nothing really depends. Just on the contrary – the case of Bulgaria proves that the real autonomy should not come as a “gift” to the central bank, but as a duly, hard-earned remuneration for its performance.

If compared in this sense with the independence of the judiciary, several interesting conclusions could be drawn – some in broadly theoretical, some in purely national context. Friedman (1962) compares the role of an independent central bank in the economic system to the role of an independent judiciary in a legal system. The judiciary is isolated from the ever-changing political pressures in order to ensure the impartial interpretation of legal acts according to their proper sense and long-term purposes (Landes and Posner, 1975). The same is the ideology behind the creation of independent central banks – to assign the determination and

exercise of monetary policy to an institution with a long time horizon that is not subject to short term political influence (Miller, 1998). All the said being very convincing, one should also be aware of some national peculiarities. Immediately after the liberalization of political life in 1989–1990, one of the first tasks of the Bulgarian legislator was to create (through the Constitution of 1991) iron-clad guarantees for the independence of judges. Still, the judiciary of the Communist system had not provided any especially conclusive evidence for its maturity, authority or competence. The independence came as something of a wind-fall for the judicial system, just because that was the case in those Western countries whose example Bulgaria was determined to follow. The result was that 15 years later the greatest challenge for Bulgaria in its way towards EU membership is how to create legal safeguards for the proper functioning of the judiciary, whose frequently capricious decisions and sluggish adjudication (there are precedents of ordinary civil cases having to wait between 5 and 7 years for the final decision) are in deep contrast with – and perhaps an unexpected and bitter fruit of – the easily accorded independence and immense power. That represents merely another proof of how apt is the maxim adduced by Reader (2004) that “power corrupts, and absolute power corrupts absolutely”. The case with the Bulgarian central bank is just the opposite: it received its independence after 15 years of incessant efforts for defending the basic principles of market economy, after a serious systemic crisis and especially after its overcoming through the uncompromising discipline of the currency board. This should be one of the basic lessons for any reforming legal system – to implement the sacrosanct tenets of EU Law regarding independence only when the relevant institution and the society itself are mature enough to face the incredible challenge of freedom.

An important aspect of this bold endeavor is the strict accountability. It is the transparency of the highly independent central bank that appears as the optimal way for achieving the delicate balance between the two apparently disparate goals of independence and accountability. Cechetti (1999) stresses upon the fact that when central banks announce targets for monetary policy or explain their policy before an elected body, their behavior is conducive to transparency in policy and accountability to the public.

At the same time, we must remember the conclusion of several researchers (Miller, 1999; Hadjiemmanuil, 1997) that the independence should be full only with regard to monetary policy. Other usual fields of central bank’s activity – banking supervision, payment systems oversight, control over the foreign exchange regime – cannot be completely insulated from the scope of some external control (notably, on the part of the judiciary).

When envisaging the primary objective of the central bank, the legislator naturally should follow the common model of the ESCB Statute, but without forgetting to implicitly link this main purpose with the real central bank’s prerogatives provided by the law in force. Otherwise, a deep gap might occur

between the stated purpose and the available tools for its achievement, which could trigger certain legal nihilism.

Even so politically motivated and usually jealous for its prerogatives institution as the national Parliament could be convinced to abandon voluntarily an important lever of influence over the central bank as the adoption of its annual budget, if the bank has already gained the public confidence with proper managerial decisions and has balanced the autonomy in defining its own expenses with ensuring a maximal degree of transparency and responsibility.

The revision of the law on the central bank, while engendered by the imperatives of the integration with the EU, should be responsive to the day-to-day practical needs of the institution and “pack” those amendments with the general reform that is in line with the EU legislation.

Finally, no one should forget that legal regulation is an ever developing notion, even in the conservative area of central banking. If the achievement of normatively protected central bank’s independence is considered as a prerequisite for joining the EU, the following challenge already emerges on the horizon – the adherence of a “new” EU member state to the Economic and Monetary Union. In his thoroughly researched paper Fatur (2004) outlines a possible procedure for such a country to join the third stage of the EMU and an eventual time schedule for the fulfillment of the convergence criteria in the new Member States. This process will inevitably require further revisions in the legal framework applicable to the central bank. It will be a challenging, but rewarding effort.

Given the fact that we already addressed the role of the central bank in the context of a systemic crisis through a literary analogy (the novel of Mario Vargas Llosa), this paper may be concluded in the same way. Leo Tolstoy included in his famous novel “Ana Karenina” the memorable phrase that “All the happy families are similar, all the unhappy ones are unhappy in their own way.” This maxim is applicable also to central banks. Each of the crises they have to survive has its unique peculiarities, while the solutions are quite similar. They always lead to ensuring real independence of the central bank. Perhaps that is not the best approach, but at any rate nothing better has been invented up to now.

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