



OESTERREICHISCHE NATIONALBANK

Stability and Security.

WORKSHOPS

Proceedings of OeNB Workshops

*The European
Integration Process:
A Changing Environment for
National Central Banks*

October 21, 2005



No. 7

Checks and Balances for the European Central Bank and the National Central Banks

Carel C. A. van den Berg

De Nederlandsche Bank

1. Introduction

The purpose of this lecture is to give an overview of how one could look at the relationship between the European Central Bank (ECB) and the eurosystem National Central Banks (NCBs) from the perspective of Checks and Balances. While a number of today's audience know the practice of this relationship, I will take a step back and look at this issue from the perspective of the legal document on which the European System of Central Banks (ESCB) is based: the Statute of the European System of Central Banks and of the European Central Bank (the 'Statute').

I will proceed by presenting first a model defining a system of Checks and Balances. This model will be applied to the ESCB Statute. A description will be given of the Federal Reserve System and the Bundesbank to allow for a comparison. The description of these two other central banks will focus on the role of the centre versus the periphery. We will focus on the weaknesses in the Statute seen from the perspective of Checks and Balances. After drawing some conclusions, we end with a description of possible future developments in the relationship between the ECB and the NCBs, including the effects of enlarging Monetary Union (and therefore the eurosystem) with new Member States.

2. Checks and Balances

Checks and Balances are a familiar term when describing federal *political* systems, but for instance the American central bank system (the Federal Reserve) and the ESCB are also a federal systems.¹ There is no universal short description of

¹ Warburg in his description of the difficult conception and first years of the Federal Reserve points out that 'the office (of the Reserve Board) was burdened with the handicap, commonly imposed upon so many branches of administration in a democracy, of a system of checks and counter-checks – a paralyzing system which gives powers with

‘federal’ or ‘federal system’. However, Elazar and Greilsammer (1986, p. 90) have given a useful description of ‘federalism’:

‘In strictly governmental terms, federalism is a form of political organization which unites separate polities within an overarching political system, enabling all to maintain their fundamental political integrity, and distributing power among general and constituent governments so that they all share in the system’s decision-making and executing processes. (F)ederalism has to do first and foremost with a relationship among entities – and then with the structure which embodies that relationship and provides the means for sustaining it.’

It is clear that the concept of federalism has to do with the *relationship* among entities and the structure which embodies it and sustains it. But still federalism is not the same as ‘checks and balances’. The best known example of a successful system of Checks and Balances is the United States Constitution (USC). The American political system is federal.² The essential feature is that the departments (branches) of government are not just separate from each other (i.e. having their own functional jurisdiction and the absence of personal unions),³ but also exert limited control over each other, to the extent necessary for preventing departments (branches) from assuming authority in areas for which other branches are responsible. This philosophy was based on the experience that especially the legislature if left to itself could expand its powers in the field of the executive and in extreme cases even taking on judicial powers. Such an extreme case had been the Long Parliament, which governed England for a period of twenty years (1640–1660) following the Civil War by appointing a host of committees dealing with all the affairs of state, confiscating property, summoning people before them, and dealing with them in a summary fashion. A similar, though less extreme development took place in the early years of the United States (1776–1787), when the States established constitutions based on the concept of the separation of powers, but where in fact the State legislatures soon meddled in every type of

one hand and takes them away with the other. (...)’ and ‘(...) many attempts were made to find a satisfactory answer to the tantalizing puzzle of how to safeguard the autonomy of the reserve banks while giving, at the same time, adequate coordinating and directing powers to the Reserve Board’ (Warburg, 1933, p. 166 and 170).

² Unlike many people think, there is no hierarchy between the States and the Federal Government, the only difference being that the power of the Federal Government extends to a larger area than that of an individual state. One has to be aware that the Thatcherite definition of federalism is a totally different case: for her federalism stood for all power going to the centre (the ‘federal’ government). Instead, the American (and German) concept of federalism has to do with the prevention of concentration of power.

³ This is the so-called concept of the separation of powers, which aims at preventing a too large concentration of governmental power in one hand. (See Zijlstra, 1996, chapter 5.3) One could say the motto of this concept is: ‘division of power by separation of functions’. The branches are the Executive, the Legislative and the Judicial branch.

government business, including those normally reserved to the judiciary. This explains why the Constitution of the United States of 1787 is based on a combination of the ideas of the separation of powers and checks and balances.⁴

Checks and balances presuppose one is able to distinguish several functional powers,⁵ which can be separated without creating deadlock. These checks can take different forms. Examples (taken from the American Constitution) are: the president has a veto power over Congressional legislation (though he can be overruled),⁶ Congress has the power of impeachment,⁷ the president nominates (e.g. Judges of the Supreme Court, Ambassadors, important officials) but needs the assent of the Senate,⁸ the Supreme Court may invalidate legislation.⁹ Some define the bicameral character of Congress, consisting of a House of Representatives and a Senate, as another (internal) check and balance, as both chambers have to agree with legislation.

Checks and balances can be framed with different time horizons. For instance, the examples of checks and balances in the American Constitution listed above can be divided into two groups: checks which work immediately (e.g. veto, assent) and checks which work over time (appointments). Checks that work over time probably

⁴ Vile (1967), p. 43, 143 and 145–147.

⁵ The most famous distinction is the ‘Trias Politica’, developed by Montesquieu (1689–1755). Montesquieu did not want to rely upon a concept of negative checks to the exercise of power, i.e. checks dependent upon the mere existence of potentially antagonistic agencies, charged with different functions of government – he went further, and advocated placing positive checks by placing powers of control over the other branches in the hands of each of them. In his writings the judiciary was not given powers of control over the other branches. At the same time, the judiciary’s independence in trying individual cases was to be absolute, i.e. not subject to control by the other branches, directly nor indirectly. (Vile, 1967, p. 87ff)

⁶ United States Constitution (USC), Art. I, section 7, paragraph 2. The president does not have a line item veto. A line item veto is considered unconstitutional by the Supreme Court (*Clinton v. City of New York*, 1998).

⁷ USC Art. I, section 2, par. 5; Art. I, section 3, par. 6 and 7; Art. II, section 4. The House impeaches, the Senate tries the impeachment. The impeachment procedure relates to the president, vice-president and all civil Officers of the United States, which includes federal judges (see Boon, 2001, p. 103–104). It is a typical feature of the American system that the president (Administration) cannot be dismissed by Congress (indeed, impeachment has not to do with policy, but with ‘treason, bribery or other high crimes and misdemeanours’); likewise the president cannot dissolve Congress and call for elections.

⁸ USC, Art. II, section 2, paragraph 2 (‘by and with the Advice and Consent of the Senate’).

⁹ The Supreme Court has the power to assess the constitutionality of State laws (USC Art. VI, section 2) and of Federal laws (*Marbury v. Madison*, 1803). This deviates from Montesquieu (see above). In other words, the Court sees itself as guardian of the system of checks and balances. It should be noted however that the Court does not have the means to enforce its opinion (see Boon, 2001, p. 118).

take away tensions which would otherwise be fought out in a different way, possibly leading to a break-up of the system. In other words, the presence of such checks and balances adds a desired flexibility to the system. It means the system or – within its mandate – a regulatory body can adjust its views over time to external circumstances, while at the same time it introduces certain continuity over the short run.

A definition of ‘*a system of checks and balances*’ which covers both external and (in case of a federally designed organization also) internal aspects could thus be formulated as follows: “a rule-governed system for two or more public bodies with rules which prevent the concentration of too much power in one public body (or a part of that public body), basically by separation of functions,¹⁰ but combined with rules which *protect* each public body’s power, which allow for *influence* by and over the other public bodies, which *stimulate co-operation* among these public bodies and which *prevent the dominance* of personal interest over public interest, among others through public control mechanisms.”¹¹

On top of this, these rules of the game should allow for some *intertemporal flexibility* (to prevent the need to overhaul the framework, which could put several valuable characteristics of the institution at risk). Intertemporal flexibility will serve the longevity of the system, because it allows for different degrees of power concentration, which could serve possible changing circumstances.¹² This element is especially relevant for the relation of the ESCB vis-à-vis the political authorities.

The above definition is unwieldy. In order to make it operational, the general definition can however be broken down in five sub-categories, all of which are important and should be present in a mature system checks and balances.

This leads to the following five categories of checks and balances:

- a. those which *protect* a body’s independence and competences;¹³

¹⁰ Usually a distinction is made between executive, legislative and judicial functions. A separate category are independent (regulatory) commissions/independent public agencies or organs established by or pursuant to public law and invested with any public authority. Such organs usually have a hybrid character (combining some regulatory and executive power). In these cases it is important to allow for enough distance between rule-making and the application of policy to individual cases.

¹¹ The checks and balances determine the rules of the game. These rules undoubtedly leave room for strategic behaviour of the parties involved. However, we do not look into this, as we look into the rules of the game themselves, which should ensure that powers do not become concentrated into the hands of one party.

¹² The importance of institutions being adaptable is also made by Douglass North, i.e. especially in complex environments characterized by non-efficient markets and incomplete information. Rigid institutional structures are not equated with success (North, 1994, p. 359–368).

¹³ This is a wide category covering inter alia the endowment of *exclusive* competences and mechanisms that shield from political pressure.

- b. *controlling* (or blocking) mechanisms (which give a branch the power to prevent the build-up of uncontrolled power by one of the other branches);¹⁴
- c. *consultation* mechanisms (either voluntary (i.e. at one's own initiative) or obligatory, i.e. when prior consultation is required);¹⁵
- d. *accountability* mechanisms;
- e. some degree of *flexibility* over time.

In a balanced system one would expect to find all categories of checks and balances to be reasonably represented.

3. Applying the Concept to the ESCB

3.1 Legal Description

The next step is to apply the concept of Checks and Balances to the ESCB. In fact, it can be applied at two levels:

1. The *external* level, which covers the relation between the ESCB and the political authorities.¹⁶
2. The *internal* level, which relates to the ECB and NCBS.

The internal level can be divided into two sets of relationships:

- a. One set covering the relationship between the NCB Governors and the Executive Board. This relates to the decision-making process and checks and balances within the Governing Council, and in other words to the voting system.
- b. Another set covering the relations between the ECB and the NCBS. This pertains to the division of labour between the centre and the regional central banks – the topic of this paper.

As a next step, all articles which describe operational powers have been identified. There are twenty-two articles of the Statute which define operational (non-decision-making) powers of the ECB and/or NCBS. These are: Art. 5, 6, 9.2,

¹⁴ Examples are the right of the U.S. president to veto budget proposals by Congress and the requirement of Senate consent for the presidential appointment of new members of, for example, the Supreme Court and the Board of Governors. Such mechanisms ensure that no power can fulfil its tasks in an efficient way without at least the assistance of one of the other powers, thus controlling the use which the first power makes of its authority (Lenaerts, 1991, p. 11).

¹⁵ A difference between consultation and accountability is that consultation takes place *ex ante* and accountability *ex post*.

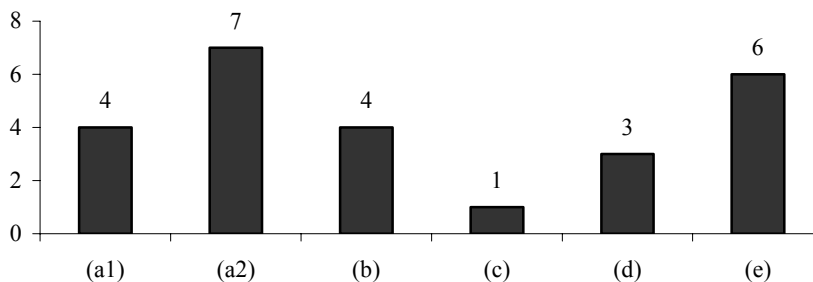
¹⁶ The external relation is usually described in terms of independence and accountability. However, the concept of Checks and Balances is wider, because it also looks at interdependencies and cooperation mechanisms.

12.1c, 12.3, 14.3, 14.4, 16, 17, 18, 19, 21, 22, 23, 24, 25.2, 26, 30.1, 30.5, 31, 32, 33.

These articles are then divided over the five categories of checks and balances, i.e. each article is allocated to at least one of these categories. This gives the following the result:

Chart 1: Internal Checks and Balances – ECB versus NCBS

Number of checks and balances per category



Legend: (a1) Checks and balances protecting the prerogatives of the ECB
 (a2) Checks and balances protecting the prerogatives of the NCBS
 (b) Controlling (or blocking) mechanisms
 (c) Consultation mechanisms
 (d) Accountability mechanisms
 (e) Checks and balances allowing for flexibility over time

Note: Some articles are relevant for more than one category, while Art. 17–24 have been counted as one article because these articles all represent open market and other monetary instruments.

Source: Van den Berg (2005).

Some examples might help to explain chart 1: (a1) contains inter alia the article according to which the ECB has the exclusive task to see to it that the System performs its tasks (Art. 9.2); (a2) Art. 5.2 and 12.1c introduce a decentralization preference – but not an absolute one; (b) contains i.a. the right of the ECB to impose restrictions on NCBS' behaviour; (c) the most important consultation mechanism (and only one) is through the ESCB committees, established under art. 12.3 (Rules of Procedure); (d) refers to information requirements; (e) contains articles allowing monetary operations to be conducted by *both* ECB and NCBS. A full description is given in *Appendix 1*.

The main result of this exercise, though it is simplified because of un-weighted totals, seems to be an unusual high score for the category of checks and balances relating to flexibility (e).

3.2 Federal Reserve¹⁷ and Bundesbank

To get an impression of how unique (or not) this high degree of flexibility in the area of operational functions is, we describe shortly the American and German central bank systems.

All *operational* powers of the *Federal Reserve*, established by the Federal Reserve Act (FRA) of 1913, are vested in the twelve Federal Reserve Banks (FRBs). Each of them operates a discount window, they have functions in the area of cash and payment systems, they hold assets, they supervise state member banks and foreign banks (the latter a delegated function by the Board) and are allowed to conduct open market operations (OMOs), which initially were not seen as monetary policy instruments, but as possibilities to generate income, e.g., in periods when discount loans were low. Over the years the FRBs recognized the monetary impact of the OMOs and they started to coordinate their open market operations. The OMOs became concentrated in New York, where they were conducted by the Federal Reserve Bank of New York, also on behalf of a number of other FRBs, because the market of government securities was by far deepest in New York. This explains why the Federal Open Market Committee (established in 1933), which each year elects the manager of its OMOs, always elects the New York Fed as the manager of the System Open Market Account. The FRBs are privately owned (the member banks being the shareholders). The Board of Governors (initially called Federal Reserve Board) has no monetary assets and no operational competences. It decides on regulations (e.g. collateral, supervisory policy), approves discount changes proposed by FRBs, sets reserve requirements within limits (since 1935 without Presidential approval), approves the appointment of the FRB presidents (1935), oversees the FRBs' activities and controls their budgets, controls the international representation (1933), forms a majority in FOMC (1935) (before 1933 OMOs were coordinated voluntarily).

At this place we already note that the Board of Governors of the FRS has more own powers than the ECB's Executive Board – see also *Appendix 2*.

An interesting aspect of the Bundesbank is in fact that its direct predecessor (and therefore also to a considerable degree itself) is of American design.¹⁸ In 1948

¹⁷ The word *System* (FRS) was introduced in the FRA only in 1935, when the Federal Reserve Board was renamed the 'Board of Governors of the Federal Reserve System' (FRA Section 10) and the Board members became member of the FOMC. The FRA of 1913 only mentioned the establishment of the FRBs and the Board, and their respective powers.

the Bank deutscher Länder (BdL) had been established as a *federal* central bank system, because the Americans, who dominated the Allied Bank Commission, wanted to prevent the re-creation of a unitary central bank, like the Reichsbank, which could more easily be misused by a nationalistic government. The board of the BdL was also a regulatory agency (like the Board of Governors) without operational functions, which functions belonged to the regional central banks. The Americans also introduced a minimum reserve system. In 1957 the Bundesbank became the successor of the BdL. After intense debate in the German government and parliament,¹⁹ it was decided that the Landeszentralbanken would become branches of the Bundesbank, but would retain their seat (and vote) in the Zentralbankrat. The Head Office (in Frankfurt) received operational capacities. It would conduct all open market operations, all foreign exchange transactions and transactions with foreign countries, credit operations with federally relevant banks and would be fiscal agent for the Federal Government. The (initially eleven) Landeszentralbanken could perform transactions with local governments and local banks – under instruction from the centre.

These examples show that several models are possible. However, an important aspect of the American and German models is that in terms of division of labour their models are *stable*, while the ESCB Statute is relatively open-ended. This leads to the question, why the ESCB Statute is as open-ended as it is. To answer that question we turn to the *genesis* of the Statute of the European System of Central Banks and of the European Central Bank. For this purpose we go back to the time the Statute was drafted.

3.3 Genesis of the Wording of the Statute²⁰

The Statute of the ESCB and of the ECB was drafted by the Committee of Governors (CoG) of the Central Banks of the Member States of the European Community (EC) in the period May – November 1990. They proposed drafting it once the Heads of State had decided to start an Intergovernmental Conference (IGC) on Economic and Monetary Union at the latest at the end of 1990. The CoG then consisted of twelve governors, among them the governor of the Bank of England. They based themselves on the Delors Report on Economic and Monetary Union in the EC (April 1989), written by a committee in which all of them had participated as well. The Delors Report, however, was short on the design of the System, except that it would have a federal character, i.e. the NCBs would continue to exist, a federal ESCB Council would decide on the main policy issues and a

¹⁸ Von Bonin (1979), p. 81.

¹⁹ See also von Bonin (1979), p. 79–82 and Buchheim (1999), p. 67 and 73.

²⁰ Based on van den Berg (2005).

central institution could be established (with its own balance sheet). In the Delors Report the tasks of the System were ascribed to the System.

In the Committee of Governors three issues stood out as being difficult to agree upon: (1) the division of tasks between the ECB and the NCBS, (2) the division of tasks between the governors and the Executive Board, and (3) the relation between the ECB and the other Community institutions. As regards the division of labour two opposed views within the CoG became apparent: the Bundesbank versus the Banque de France. Bundesbank president Pöhl favored a *strong federal centre* which should be more than a token institution, inter alia because such a strong centre would better be able to withstand political pressures. On the other hand, the governor of the Banque de France, de Larosière, referred to the principle of subsidiarity (in fact meaning: decentralization). He was supported by basically all other governors.²¹ Given these opposing views, the Secretariat of the CoG tried to accommodate both sides: it drafted a text according to which the ECB would be endowed with operational competences, but operations would *normally* be executed by NCBS.

The discussion subsequently focused on *who* should decide the degree of decentralization. The debate heated when it was decided for legal reasons to substitute the words ESCB/System for 'ECB and NCBS' in all cases of operational tasks, because the System did not have legal personality. (Another argument used in favour of mentioning the ECB in these operational articles was that in this way one would avoid having to go the Council of Ministers for approval of an amendment of a part of the Statute, in case one wanted to give the ECB operational competences it did not have according to the Statute.) Tietmeyer (deputy governor of the Bundesbank) wanted the centre to decide on the degree of centralization. This led to a stalemate and the IGC was given two alternative options. The IGC would decide not to follow the German position. It left it to the ECB (read: GovC) instead of to the Executive Board of the ECB to decide on the degree of decentralization, with Article 12.3, third paragraph²² reading:

'To the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the ECB shall have recourse to the NCBS to carry out operations which form part of the tasks of the ESCB.'

Relevant here is that in another article the ECB has been given the task to ensure that the decisions of the GovC are implemented (Art. 9.2).

Noteworthy is also that the IGC in its search for a compromise text had left out the word 'full' in 'full extent possible' in the non-German alternative.

²¹ In line with these conflicting views, no one but the Bundesbank wanted to give the Executive Board independent (i.e. not only delegated) policy-making or regulatory tasks. Bundesbank lost in the CoG, but won in the IGC though the Executive Board's powers are encapsulated in a framework set and defined by the GovC under Art. 12.1 (first paragraph).

²² At other places denoted as 'Art. 12.1c'.

The fact that Article 12.1c introduces a bias towards recourse to the NCBs does not take away that there is hardly any operational task of the System *exclusively* reserved for the NCBs. One of the persons involved in writing the Statute for the CoG later said that changing ‘ESCB’ into ‘ECB and NCBs’ was a *coupe* in favour of the future ECB, as it opened all kinds of possibilities for the centre, including in theory full centralization.²³

3.4 Criticism

Art. 12.1c in combination with the other articles would seem to be too open-ended. It allows ‘winner takes all’. Although for all practical reasons only a remote possibility, it still is a possibility and this is not productive, because it could make NCBs suspicious of the intentions of the ECB (Executive Board) and uncertain about the final division of labour. This is not optimal for the cooperative attitude within the System. If the Board were ever to dominate the GovC (in terms of members or votes), like happened in the FOMC in the United States, the risk is that the NCBs would lose gradually their operational activities, because the Board could interpret Art. 12.1c (and especially the clause ‘where appropriate’) in a different way than a GovC dominated by governors. There is also a link between the division of labour and the System’s independence. If NCBs would lose their operational tasks, the role of the national governors in the GovC would diminish and their participation could be at risk in the long run, in which case the System’s independence would weaken, because a smaller less diverse committee would succumb more easily to external pressure. In the European context the case for a strongly independent ESCB is stronger than at the national level where better mechanisms exist to prevent abuse by the Executive.

In sum, there are checks and balances between the ECB and the NCBs (see chart 1). At present the balance is in favour of the NCBs (see below), but this balance is in the hands of the GovC, and not in the hands of a legal document as immutable as a Statute. Indeed, based on the ESCB Statute the position of the NCBs as operational eurosysteem entities is weaker than the position of the Federal Reserve Banks and even than that of the Landeszentralbanken under pre-EMU Bundesbank.²⁴ The division of labour seems to be too open-ended: the Statute

²³ One additional observation is that Art. 12.1c refers explicitly to ‘recourse to the NCBs’ (and not ‘recourse to NCBs’). During the IGC Spain made explicit it supported these texts only because ‘the’ referred to “*all*” NCBs (and not to a few NCBs). This means the GovC cannot impose specialization without every NCB agreeing.

²⁴ We abstract from changes in the Statute itself, which is always possible. Vide for instance the change in the Bundesbank structure following its accession to the eurosysteem. The Bundesbank president is an independent member of the GovC à titre personnel and could not be bound anymore by the Zentralbankrat (ZBR). The reduced

could and should have provided for, e.g., standing facilities and payment accounts to be attached *exclusively* to NCBS (leaving open possible specialization among them), while for instance the ECB should unequivocally have been allowed to manage the pooled foreign reserves by itself (naturally within the restrictions set by the GovC) without using – as is presently the case – the NCBS as agents. In the early years this may have made sense, because the ECB has been enjoying full immunity status in the U.S. as an international organization only since May 2003.²⁵

Below we will describe the actual division of labour and then discuss several possible future scenarios.

4. Present Situation and Future Developments

4.1 Present Division of Labour

The present division is based on the so-called *General Documentation*, which describes the procedures within the eurosystem and which is approved by the GovC. In the General Documentation one finds a strong emphasis on decentralization. Most operational tasks fall onto the NCBS. By contrast, the ECB only deals directly with market participants in case of foreign exchange interventions; furthermore it has a high profile in international meetings; it provides payment services to a few international organisations; it is involved in payment systems oversight; it is allowed to perform bilateral open market operations in specific exceptional circumstances (which until now never occurred). The question could be raised already now: is the present division of labour (i) effective and (ii) stable?

4.2 Future Developments

(i) In general, one should say that the present division of labour is effective, as the ESCB has been able to implement its monetary policy in a smooth and effective way – even though gradual improvements are possible and are also continuously being made. (ii) Another question is whether there are factors which could lead to a shift of operational tasks to the ECB. We will deal with possible future developments, which might affect the current division of labour.

1. Are there not efficiency reasons to centralize Open Market Operations (the weekly tenders) in an NCB or the ECB? The answer is no, because Information

role of the ZBR led to an overhaul of the Bundesbank structure: the LZB presidents lost their seat and vote in the ZBR.

²⁵ At present the interpretation of the Statute is that even Art. 30.1 falls under the decentralization principle (Art. 12.1, third paragraph), because the pooled reserves can be considered as a policy ‘instrument’ (intervention policy).

and Communication Technology (ICT) has made same-time operations at different locations possible.²⁶ Also, there still exist local legal differences, making local approaches more apt, but even harmonization of systems and national idiosyncrasies would not make centralization or specialization necessary or desirable. Many small banks would like to retain direct local access to their NCB. Also, local contacts support supervisory effectiveness and efficiency by local NCBs with supervisory functions.

2. What were to happen if the UK joined and major banks relocated their front and/or head offices to London? In that case volume might move to London, but not all OMOs. Will that not lead to a primary dealer system? No, not necessarily, because repurchase operations by the eurosystem would remain directly open to each monetary financial institution.
3. The ECB (Executive Board) could try to centralize the international representation more and more. In fact, this is already happening. However, there are limits to this, because NCBs have non-System functions, which give them a reason to stay active internationally. Nonetheless, a logical area for further consideration.
4. Some *informal* specialization could take place, with some NCBs gradually specializing, e.g., in certain areas of statistical expertise or research (organic model). This would require support from the ECB, which again stresses the importance of cooperative attitudes.
5. Will this process change with *enlargement*? I see four possible developments with enlargement of the euro area:
 - a. Enlargement of the euro area could very well lead to more *specialization*, in a *voluntary* fashion. But most likely ECB support is needed for this to happen, because central banks might be reluctant to give other NCBs specific tasks.
 - b. After enlargement of the euro area I see an increased role for ESCB Committees, but they should be smaller structured and probably meet less frequently. Smaller sized committees would lend themselves better for chairmanships by NCBs. At present most committees are chaired by a person from the ECB, which in a number of cases is seen by the NCBs as a way by the ECB to orchestrate and regulate too much.
 - c. Because of the diversity of membership and the number of member central banks, an increased role for Executive Board in international representation would seem natural and inevitable.

²⁶ The NCBs collect the bids of their banks to the tender, send them to the ECB (Frankfurt), which takes the allotment decision (percentage) and announces the allotment result, staying within the decisions of the GovC.

- d. The importance of non-System tasks for NCBS will not diminish, but *increase*, if only in order to stay an attractive employer.

The biggest potential threat for NCBS arising from enlargement (a reduced Governing Council with a majority for the Executive Board) did not materialize, but this option is never completely from the table.

5. Conclusion

The objective of the presented paper is to develop a view on the relative roles of the ECB on the one hand and of the NCBS on the other hand as operational entities of the ESCB. We did not base this on the actual division of labour, which can evolve over time, but on the roles and competences as described in the legal document on which the ESCB is based, i.e. the Statute of the European System of Central Banks and of the European Central Bank. In order to be able to evaluate the relationship between the ECB and the NCBS as operational entities within the ESCB and detect possible inherent tensions between them, we looked at their roles from the perspective of checks and balances. We found evidence of a too open-ended division of labour, which became even more evident when compared to the legal situation in the Federal Reserve System and the pre-EMU Bundesbank. The direction of the future development lies in the hands of the Governing Council and its voting rules, which is subject to change and with it possibly the interpretation of the non-absolute decentralization bias.

Though no changes are expected or needed for the near future, the long-term outcome is uncertain. While flexibility in the relative operational roles in itself is desirable, the degree of flexibility contained in the Statute is unnecessarily large, creating unnecessary uncertainty and possible tensions among the components of the ESCB.

References

- Van den Berg, C. C. A. (2005), *The Making of the Statute of the European System of Central Banks – An Application of Checks and Balances*.
- Von Bonin, K. (1979), *Zentralbanken zwischen funktioneller Unabhängigkeit und Politischer Autonomie*.
- Boon, P. J. (2001), *Amerikaans staatsrecht*.
- Buchheim, C. (1999), *The Establishment of the Bank deutscher Länder and the West German Currency Reform*, in: *Deutsche Bundesbank (1999), Fifty Years of the Deutsche Mark*, pp. 55–102.
- Delors Committee (Committee for the Study of Economic and Monetary Union) (1989), *Report on Economic and Monetary Union in the European Community (Delors Report)*, Office for Official Publications of the European Communities.

- Elazar, D. J. and Greilsammer, I (1986), *Federal Democracy: The U.S.A. and Europe Compared – A Political Science Perspective*, in: Cappelletti et al. ed., *Integration Through Law*, Volume 1.
- European Central Bank (1998), *The Single Monetary Policy in Stage Three, General Documentation on ESCB Monetary Policy Instruments and Procedures (General Documentation)*, first published in September 1998 and regularly updated.
- Lenaerts, K. (1991), *Some Reflections on the Separation of Powers in the European Community*, CML Review 11.
- North, D. (1994), *Economic Performance Through Time*, *American Economic Review* Volume 84, Issue 3, p. 359–368.)
- Vile, M. C. J. (1967), *Constitutionalism and the Separation of Powers*.
- Warburg, P. M. (1930), *The Federal Reserve System, Its Origins and Growth*.
- Zijlstra, S. E. (1996), *Zelfstandige Bestuursorganen in een Democratische Rechtsstaat*.

List with Abbreviations

BdL	Bank deutscher Länder
CoG	Committee of Governors of the Central Banks of the EC Member States
EC	European Community
ECB	European Central Bank
ESCB	European System of Central Banks
FOMC	Federal Open Market Committee
FRA	Federal Reserve Act
FRB	Federal Reserve Bank
FRS	Federal Reserve System
GD	General Documentation on ESCB Monetary Policy Instruments and Procedures
GovC	Governing Council of the E(S)CB
IGC	Intergovernmental Conference
LZB	Landeszentralbank
NCB	National Central Bank
OMOs	Open Market Operations
RoP	Rules of Procedure
USC	United States Constitution
ZBR	Zentralbankrat

Appendix 1: Allocation of the Operational Articles over Five Categories of Checks and Balances (C&Bs)

(Numbers refer to articles of the ESCB Statute)

- (a1) covers the C&Bs that protect the prerogatives of the *ECB*: the ECB has the task to see to it that the System performs its tasks (9.2) and has the full right to hold and manage the pooled foreign reserves (30.1) and IMF reserve tranche positions (30.5); it has the right to accept invitations to participate in (the capital of) international monetary institutions (6).
- (a2) covers the C&Bs that protect the prerogatives of *NCBs*: 5.2 (collection of statistics) and 12.1c (monetary instruments) contain the decentralization *preference* (i.e. no hard protection); 14.4 safeguards the right of NCBs to perform non-System tasks; 31, 32, 33 protect the NCBs' financial rights (3.3 protects the NCBs as it limits the ECB's supervisory powers).
- (b) covers blocking mechanisms: the ECB may *impose restrictions* on the behaviour of NCBs (6, 14.3, 14.4 and 31), though in these cases the GovC has to approve. There are no mechanisms for NCBs to *block* the ECB from undertaking certain actions.
- (c) The Statute does not provide directly for *consultation* mechanisms, but the Rules Procedure (based on 12.3) do (through the establishment of ESCB committees in art. 9-RoP).
- (d) *Accountability* mechanisms are contained in 14.3 (information duty of NCBs) and 26 (ECB reporting). Art. 12.3 (RoP) can also be used for this purpose.
- (e): *flexibility* category: all operational tasks can be performed by *both* the ECB and the NCBs (16, 17–24). Flexibility (with respect to the ECB) is also contained in 25.2 (prudential supervision), 6 (external representation) and 5.2 (collection of statistics).

Appendix 2: Some Facts about the Federal Reserve System

- Main feature of the Federal Reserve Act (1913) was to provide for the establishment of *Federal Reserve Banks* (and to furnish an elastic currency through discounting commercial bills and to establish better supervision). Federal Reserve Banks hold assets and conduct all operations (and not the Board). Each FRB has legal personality. Specialization developed later (not in FRA).
- *Board of Governors* has no operational powers, but has a strong grip on FRBs (oversight). Also through its independent decision-making in certain areas and its majority in the FOMC, the Board of Governors of the FRS seems stronger than the ECB's Executive Board.

- *FRBs* do not have non-system functions (eurosystem NCBS do).
- The *Board of Governors* approves the FRB's budgets. In contrast, in Europe the GovC approves the ECB's budget. The ESCB's NCBS own the shares of the ECB.