



The acquis in the area of monetary policy, central banks and stability mechanisms

**European Commission
DG Economic and Financial Affairs**

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union'

OUTLINE

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- VI. Objectives and role ESCB/Eurosystem**
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I. Union *acquis*

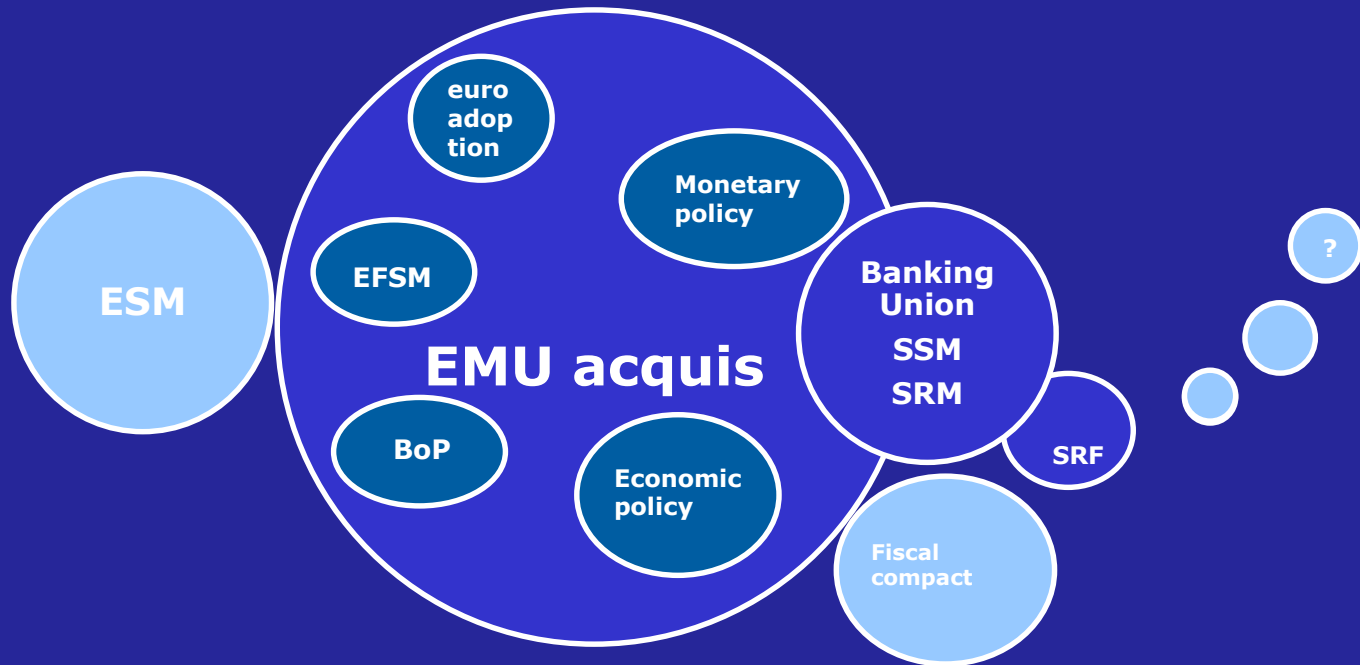


The law of the EU, including its interpretation by the Court of Justice of the EU, by which all EU Member States but also institutions are bound and which acceding MS have to take over.

The *acquis* in the area of Economic and Monetary Union (EMU) is governed, in particular, by Title VIII (Articles 119 to 144) of the TFEU and acts based on these provisions. In addition some intergovernmental texts are relevant (ESM Treaty, ERM II, Fiscal Compact, etc.)



MU architecture



Economic and monetary union: an objective of the Union

Article 3 of the Treaty on the European Union:

"The Union shall establish and **economic and monetary union** whose currency is the euro"

- Principle of conferral of powers
- Union exclusively in charge for monetary policy (Article 3 TFEU)

I. Principles

Principle of accession with a derogation

Article 139 of the TFEU: *"Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as **Member States with a derogation**".*

II. Principles

- Accession does not mean automatic adoption of the euro
- Legal obligation to adopt the euro in *Act of Accession*
- (New) Member States are committed to comply with the convergence criteria in order to be able to adopt the euro in due course after accession
 - Biannual assessment by Commission and ECB of convergence criteria, including legal compatibility of CB law and statutes of NCBs with Union law or ad hoc when Member State requests.
- Until then Member States will participate in the Economic and Monetary Union as a Member State with a derogation from the use of the euro; they shall treat their exchange rates as a matter of common concern

II. Principles

Principle of legal integration

Article 131 of the TFEU: *"Each Member State shall ensure that its national legislation, including the statutes of its national central bank is compatible with the Treaty and the Statute of the European System of Central*

II. Principles

1. All incompatibilities of national law with Union law need to effectively removed,
2. Primacy of Union law over national law,
3. Compatibility of national legislation does not mean harmonisation of the central bank law.
 - **National particularities and specificities may continue to exist insofar they do not infringe Union law.**



III. Economic convergence criteria

What is measured	How it is measured	Convergence criteria
<i>Price stability</i>	Harmonised consumer price inflation rate	Not more than 1.5 percentage points above the rate of the three best performing Member States
<i>Sound public finances</i>	Government deficit as % of GDP	Reference value: not more than 3 %
<i>Sustainable public finances</i>	Government debt as % of GDP	Reference value: Not more than 60 %
<i>Durability of convergence</i>	Long-term interest rate	Not more than 2 percentage points above the rate of the three best performing Member States in terms of price stability
<i>Exchange rate stability</i>	Deviation from a central rate	Participation in ERM for two years without severe tensions

III. Legal convergence criterion

Conformity with Treaty provisions on EMU (Articles 119 to 144 TFEU and several other provisions) and with the ESCB and ECB Statute (Protocol No 4 to the TFEU).

Key provisions concern:

- Central bank independence (Article 130 TFEU)
- Prohibition of monetary financing (Article 123 TFEU)
- Prohibition of privileged access of public bodies to financial institutions (Article 124 TFEU)

IV. Which rules apply as from when?

Two sets of rules under the EMU chapter of the TFEU can be distinguished:

1. Obligations applicable **as from EU accession**:
 - Central bank independence (Art. 130 TFEU)
 - Prohibition of monetary financing and privileged access (Arts, 123-124 TFEU)
 - Principle of price stability (Art. 119 TFEU)
2. Obligations applicable **as from euro adoption**:
 - Integration into the Eurosystem
 - Secondary objective of the ESCB



! Central Bank Act / Statutes to be adapted preferably **as from EU accession**

V. Role of Commission and ECB

Two interlocutors for central bank legislation:

1. Commission: during accession negotiations and euro adoption questions
2. ECB: duty of consultation on any draft text amending the central bank legislation after EU accession (Article 127(4) TFEU)

V. Infringement powers under TFEU

Two sets of infringement powers:

1. Commission towards the Member States (Article 258 TFEU) (e.g. in case of violation of independence by the State)
2. ECB towards the national central banks (Article 271 TFEU (e.g. in case of monetary financing of the State by the NCB)

VI. Objectives of the Eurosystem/ESCB

- Price stability as primary objective (Article 119 and 127 (1) TFEU)
- Support of the general economic policies in the Union (secondary objective)
- Contribute to the smooth conduct of policies pursued by competent authorities relating to prudential supervision of credit institutions and financial stability



VII. Central Bank Independence

- **Legal Basis:** Articles 130, 282 (3) TFEU and Article 7 of the Statute of the ESCB and the ECB
- **Rationale:** Independence of Central Banks prevents fiscal policy from interfering with monetary policy decisions; enables Central Banks to carry out the tasks and duties under the Treaty for realising the overriding objective of price stability

VII. Central bank independence

*"When exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty and the Statute of the ESCB, neither the ECB, **nor a national central** bank, nor any member of their decision-making bodies **shall seek or take instructions** from Union institutions or bodies, from any government of a Member State or from any other body.*

*The **Union** institutions **and** bodies and the Governments of the **MS** undertake to respect this principle and **not to seek to influence** the members of the decision making bodies of the ECB or of the NCBs in the performance of their tasks"*

VII. Central Bank Independence

Article 130 TFEU contains a twofold prohibition:

- Central Banks are obliged to refrain from exposing themselves to political interference by seeking or taking instructions from political authorities at EU or national level in the performance of their tasks under primary EU law
- Principle also prohibits political authorities at EU or national level from interfering when the ECB and NCBs perform their tasks provided for in EU law

VII. Aspects of central Bank independence

1. Functional independence
2. Institutional independence
3. Personal independence
4. Financial independence

VII. Functional/operational independence

Meaning: full autonomous power of the central bank to activate the instruments necessary to conduct monetary policy in order to achieve its objective of price stability

Points for attention in Central Bank Act / Statutes:

- *Phrasing of objectives*
- *Multiple or conflicting objectives*
- *Lack of instruments/means necessary to achieve the objective independently*

VII. Institutional independence

Meaning: refers to the Central Bank as an entity which is legally separate from the State

Points for attention in Central Bank Acts/Statutes:

1. Third parties giving instructions to NCBs, their decision-making bodies or their members (e.g. participation with a right to vote)
2. Third parties to approve, suspend, annul or defer NCB decisions as far as ESCB related tasks are concerned
3. Bodies other than independent courts to censor, on legal grounds, decisions relating to the performance of ESCB related tasks since the performance of these tasks may not be reassured at political level
4. Express statutory obligations for an NCB to consult third parties ex ante
5. Discharge for duties of the members of NCB decision making bodies

VII. Personal independence - Governor

Meaning: rests mainly on safeguards pertaining to:

1. Appointment of Governor
2. Term of office (minimum term not less than 5y)
3. Dismissal grounds, including right of judicial review by the ECJ
 - **No longer fulfils conditions required for performance of duties**
 - **Have been guilty of serious misconduct**
4. Avoidance of conflict of interests

VII. Financial independence

Meaning: refers to the necessity to have sufficient operational and financial resources to carry out its tasks (not only ESCB related but also other tasks)

Points for attention in Central Bank Act/Statutes:

1. MS cannot put the NCB in a difficult financial position.
2. MS are under an obligation to step in when absolutely needed to support the NCB financially (?)

VII. Financial independence

3. central bank should have the power to decide its **budget** independently: If a third party has the power to determine or influence an NCB's budget, this will be deemed incompatible with financial independence

4. the **accounts** should be drawn up either in accordance with general accounting rules or in accordance with rules specified by an NCB's decision-making bodies. If instead such rules are specified by third parties, then the rules must at least take into account what has been proposed by the NCB's decision-making bodies

5. **On the distribution of profits:** The NCBs' decision-making bodies should be able to decide on their profit calculations independently and professionally. With regard to profit allocation, an NCB's statutes may prescribe how profits are to be allocated

VII. Financial independence

6. A Member State may not impose reductions of capital on an NCB without the *ex ante* agreement of the NCB's decision-making bodies, which must aim to ensure that it retains sufficient financial means to fulfil its mandate under Article 127(2) of the Treaty and the Statute as a member of the ESCB.
7. As regards financial provisions or buffers, NCBs must be free to independently create financial provisions to safeguard the real value of their capital and assets.
8. Member States may also not hamper NCBs from building up their reserve capital to a level which is necessary for a member of the Eurosystem to fulfil its tasks.

VII. Financial independence - audit

9. Where NCB operations are made subject to the control of a state audit office or similar body charged with controlling the use of public finances:

- the scope of the audit should be clearly defined by the legal framework;
- the activities of the NCB's independent external auditors, as laid down in Article 27.1 Statute should not be prejudiced;
- the audit should comply with the prohibition on giving instruction to the NCBs and their decision-making bodies;
- the audit should not interfere with the NCB's ESCB-related tasks;
- the audit should be performed on a non-political, independent and purely professional basis.

VIII. Prohibition of monetary financing

" Overdraft facilities or any other type of credit facility with the ECB or with the central banks of the Member States in favour of Union institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions."

VIII. Prohibition of monetary financing

- Laid down in Article 123(1) of the Treaty
- Of essential importance to maintain price stability
- Prohibition must be interpreted extensively in order to ensure its strict application
- Definition of terms laid down in Regulation (EC) Nor 3603/93

IX. Prohibition of privileged access

- Article 124 of the Treaty provides that
'[a]ny measure, not based on prudential considerations, establishing privileged access by Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.'
- As public authorities, CBs may not take measures granting privileged access to financial institutions by the public sector if such measures are not based on prudential considerations



X. Stability mechanisms

European Financial Stability Mechanism (EFSM) (May 2010)

- **Legal Basis:** Article 122(2) TFEU
- **Instrument:** Council Regulation (EU) 407/2010
- **Rationale:** Possibility to issue temporarily (*ad hoc*) financial assistance backed by the EU budget to all MSs (incl. non EA MS)
- **Conditions:**
 - Commission initiative + decision by Council (QMV)
 - Conditionality attached to support
 - The recipient MS have to be in difficulty or threatened by severe financial or economic difficulties

X. Stability mechanisms

Balance of Payments assistance facility (BoP)

- **Legal Basis:** Article 352 TFEU (for the facility); Article 143 (providing for the possibility of mutual assistance)
- **Instrument:** Council Regulation (EC) 332/2002
- **Rationale:** Possibility to provide financial assistance backed by the EU budget to non EA MSs (MSs with derogation) facing balance of payment problems
- **Conditions:**
 - Commission initiative + Council QMV
 - Conditionality
 - The recipient MS have to be in difficulty or threatened by severe difficulties in the BoP

X. Stability mechanisms

ESM (2012)

- International Organisation establishing a permanent assistance mechanism for EA MSs
- European Council Decision 2011/199 and Article 136(3) TFEU: confirms the possibility for its establishment
- Pringle (C-370/12): Court validation of ESM and 136 TFEU
- **EMF Proposal (2017)** Incorporation of the ESM in the EU under 352 TFEU



**Thank you for your
attention !**