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Professor Dr. René Smits*

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Abstract

In this Essay, written for the Fifty Years of European Union ("EU") Law Conference organized by Fordham Law School, I intend to sketch the independent position of the European Central Bank ("ECB") in the context of economic policy making within the European Union. I will briefly describe the law and the practice in respect of independence and economic-policy making, both the internal (domestic policies) and the external aspects (international policies). The law is stated as of February 25, 2008.

THE EUROPEAN CENTRAL BANK'S INDEPENDENCE AND ITS RELATIONS WITH ECONOMIC POLICY MAKERS

*Professor Dr. René Smits**

*INTRODUCTION**

In this Essay, written for the Fifty Years of European Union ("EU") Law Conference organized by Fordham Law School, I intend to sketch the independent position of the European Central Bank ("ECB") in the context of economic policy making within the European Union. I will briefly describe the law and the practice in respect of independence and economic-policy making, both the internal (domestic policies) and the external aspects (international policies). The law is stated as of February 25, 2008.

I. *GENERAL FRAMEWORK OF MONETARY POLICY AND ECONOMIC POLICIES*

A. *A Single Monetary Policy*

The Treaty establishing the European Community, i.e., the EEC Treaty,[1] as amended, notably by the Treaty of Maastricht in 1992 ("EC Treaty"), provides that there is a single monetary policy for the EU whereas economic policies are the competence of the individual Member States.[2] Of course, those Member States which have not yet adopted the single currency maintain their (or rather, their central bank's) own monetary policies,[3] which are to be coordinated with that of the ECB in the General Council of the ECB.[4] Until the complete monetary unification of Europe, the federal competence for monetary policy only extends

* Jean Monnet Professor, Law of the Economic and Monetary Union, *Universiteit van Amsterdam* (University of Amsterdam).

1. *See* Treaty Establishing the European Economic Communty, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty].

2. *See* Consolidated Version of the Treaty Establishing the European Community art. 105(2), O.J. C 321 E/37, at 87 (2006) [hereinafter EC Treaty]; *see also* Protocol on the Statute of the European System of Central Banks and of the European Central Bank art. 3.1, O.J. C 310/225, at 226 (2004) [hereinafter ECB Statute].

3. *See* ECB Statute, *supra* note 2, art. 43.2, O.J. C 310/225, at 243.

4. *See* EC Treaty, *supra* note 2, arts. 117(2) & 124(2), O.J. C 321 E/37, at 94, 101; *see also* ECB Statute, *supra* note 2, arts. 44-47, O.J. C 310/225, at 244-45.

to the Eurozone.[5]

This means that monetary policy, with the overarching objective of price stability (and a secondary objective of "support[ing] the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 [of the Treaty]"),[6] is conducted centrally for the entire Union (Eurozone). The European System of Central Banks ("ESCB") is entrusted with defining and implementing monetary policy.[7] The institutions[8] also play their part but only in auxiliary roles. Notably, the Council of Ministers of Economic Affairs and Finance ("Ecofin Council"), is competent to lay down the framework for certain activities of the ESCB.[9] Both the Council President and a member of the Commission are authorized to be present during deliberations of the ECB's Governing Council and, thus, are present when decisions on monetary policy are taken.[10] Both also have a role to play in the external or exchange-rate policy for the euro. Yet, even in this area, the ESCB has a pivotal role, to be exercised in full independence, as will be explained in Part V below.

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5. *See* EC Treaty, *supra* note 2, arts. 122(3)-(5), O.J. C 321 E/37, at 99-100.

6. See EC Treaty, *supra* note 2, art. 105(1), O.J. C 321 E/37, at 87 for a mandate that the European System of Central Banks ("ESCB") is to act "in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 4 [of the EC Treaty]." *See also* ECB Statute, *supra* note 2, art. 2, O.J. C 310/225, at 225 (utilizing similar language). These principles include "stable prices, sound public finances . . . and a sustainable balance of payments." *Id.* art. 4(3), O.J. C 321 E/37, at 46.

7. *See* EC Treaty, *supra* note 2, art. 105(2), O.J. C 321 E/37, at 87; *see also* ECB Statute, *supra* note 2, art. 3.1, O.J. C 310/225, at 226. The Treaty of Lisbon ("Reform Treaty"), which is scheduled to enter into force on January 1, 2009, will rename the EC Treaty as the Treaty on the Functioning of the European Union ("TFEU"). Draft Treaty of Lisbon (Reform Treaty) art. 2(1), O.J. C 306/01, at 42 (2007), *opened for signature* Dec. 13, 2007 (not yet ratified) [hereinafter Reform Treaty].

8. Upon ratification of the Reform Treaty, I should say "other institutions . . ." as the ECB is to become an institution. *See* Reform Treaty, *supra* note 6, arts. 108, 114-15, O.J. C 306/01, at 59-60 (if the Reform Treaty is ratified, EC Treaty, *supra* note 2, arts. 108, 114-15, O.J. C 321 E/37 at 88, 91-93 will become arts. 130 and 134-35, respectively, in the TFEU. For extensive discussions of the ECB's constitutional status, see generally Chiara Zilioli & Martin Selmayr, *The Constitutional Status of the European Central Bank*, 44 COMMON MKT. L. REV. 355 (2007); Chiara Zilioli & Martin Selmayr, *Recent Developments in the Law of the European Central Bank*, 25 Y.B. EUR. L. 1 (2006).

9. *See infra* note 31 and accompanying text.

10. *See* EC Treaty, *supra* note 2, art. 113(1), O.J. C 321 E/37, at 91; *see also* Reform Treaty, *supra* note 6, art. 251, art. 294, at 126-28. O.J. C 306/01 at 115-17 (if the Reform Treaty is ratified, will become Art. 294 of the TFEU).

B. *Coordination of Economic Policies*

Economic policy, on the other hand, has remained predominantly a national competence. Within a European context, that means that the States are the primary actors and have remained largely sovereign in this area. Their freedom has been circumscribed by certain rules.

The prohibition of monetary financing and of privileged access for public bodies to financial institutions aside, the prohibition of excessive budget deficits ranks paramount among these rules. Whereas the former rules, laid down in EC Treaty Articles 100 and 101,[11] are maintained according to the usual system with the European Commission in its guardian role, a different procedure has been laid down for the prohibition of excessive deficits in EC Treaty Article 104.[12] Here, the Commission and the Ecofin Council play the leading role, with the European Court of Justice ("ECJ") being specifically excluded from finding whether an excessive budget deficit exists.[13] This is a political decision, to be made amongst peers in the Ecofin Council.[14] Even though the process may result in the imposition of formal sanctions against a deviant State, notably the imposition of a fine or a non-interest-bearing deposit, the more likely outcome is a recommendation to rectify the deficit or a formal notice for the State to put its fiscal house in order. The Treaty provision has been elaborated in a set of documents known as the Stability and Growth Pact ("SGP").[15] These contain details of the process of

11. EC Treaty, *supra* note 7, arts. 100-01, O.J. C 321 E/01, at 83-84 is unchanged by the Reform Treaty. If the Reform Treaty is ratified, these Articles will become Articles 122-23 of the TFEU.

12. EC Treaty, *supra* note 7, art. 104, O.J. C 321 E/01, at 84-86. This remains unchanged by the Reform Treaty. If it is ratified, EC Article 104 will become Article 126 of the TFEU.

13. EC Treaty, *supra* note 7, art. 104(10), O.J. C 321 E/01, at 85. This remains unchanged by the Reform Treaty. If it is ratified, EC Article 104(10) will become Article 126(10) of the TFEU.

14. *See* Mathieu Segers & Femke van Esch, *Behind the Veil of Budgetary Discipline: The Political Logic of the Budgetary Rules in EMU and the SGP*, 45 J. COMMON MKT. STUD. 1089, 1105 (2007).

15. *See* Council Regulation No. 1466/97, O.J. L 209/1 (1997), *amended by* Council Regulation No. 1055/2005, O.J. L 174/1 (2005)(on the Strengthening of the Surveillance of Budgetary Positions and the Surveillance and Coordination of Economic Policies); Council Regulation No. 1467/97 O.J. L 209/6 (1997), *amended by* Council Regulation No. 1056/2005, O.J. L 174/5 (2005)(on Speeding Up and Clarifying the Implementation of the Excessive Deficit Procedure).

overseeing budgetary discipline. They fill in some of the discretion that EC Treaty Article 104 leaves. I should add that the ECJ does have a role in overseeing whether EC Treaty Article 104 is being upheld in the political process of overseeing compliance with the prohibition of excessive deficits, a role which it wisely played when called upon to decide whether the Council's lack of enforcement with respect to Germany and France in 2003 was within the law.[16]

Apart from the rules just described, economic policy is the subject of an extended coordination mechanism, laid down in EC Treaty Articles 98 and 99.[17] Here, again, coordination is organized among peers with, at the most, a recommendation being issued to a Member State which does not follow Broad Economic Policy Guidelines ("BEPGs") adopted by the Ecofin Council. The picture, thus, is one of some rules and principles and several procedures but hardly any binding decision-making. There is the option to adopt Community measures of economic policy (EC Treaty Article 100). This is hardly used as States are jealously guarding their prerogatives.

The external policies with respect to the euro relate to the exchange-rate competences, which will be discussed in more detail in Part II below.

C. *Resulting Framework*

It follows that the ESCB operates in an environment in which it is the main policymaker for an important element of the economy, i.e., the stability of the currency in terms of domestic purchasing power, with other elements influenced by a variety of actors. In other jurisdictions, central banks are likewise faced with a variety of other players influencing economic outcome but, in Europe, the public actor pursuing economic policies is a pluralistic one, divided among twenty-seven Member States with, in some of these, regional authorities playing an important economic policy role. Thus, the ESCB faces a variety of public actors, bound to coordinate their policies but—as we will see—reluctant to do so fully. Although this state of affairs bodes well for the independence of the ESCB, with the other side of the

16. *See generally* Commission v. Council, Case C-27/04, [2004] E.C.R. I-6649.

17. EC Treaty, *supra* note 2, arts. 98-99, O.J. C 321 E/37 at 82-83. If the Reform Treaty is ratified, EC Treaty Articles 98 and 99 will become Articles 120-21 of the TFEU.

dialogue on the appropriate monetary policy/economic policy mix so dispersed and divided, it does not facilitate economic policy/monetary policy coordination, even with intricate arrangements in place on paper.

D. *Constitution and the Treaty on the Functioning of the European Union: No Fundamental Change*

The Treaty establishing a Constitution for Europe ("European Constitution") of 2004 would have maintained the same division of competences on monetary and economic policies between the federation and the States. Likewise, the Treaty of Lisbon (2007) does not amend European Monetary Union ("EMU") law basically. Thus, the Treaty on the Functioning of the European Union ("TFEU"), as the EC Treaty is to be called after ratification of the Treaty of Lisbon, by and large maintains the state of affairs described, albeit framed in differently numbered provisions.

II. *ECONOMIC POLICY COORDINATION: PRACTICE*

A. *Internally*

Without going into details, the practical application of the Treaty provisions on economic policy leaves much to be desired. The lofty wording of EC Treaty Article 98, according to which "Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community . . . and in the context of [Broad Economic Policy Guidelines],"[18] hardly translates visibly in day-to-day practice. Economic policies are framed within a national context, with national political exigencies predominant. When these policies are aligned, this is sometimes more a matter of coincidence or of the likeness of the economic debate across borders than the result of purposeful action. Especially, the prohibition of excessive budget deficits and the SGP are not popular with national politicians, to say the least. The full potential of the economic policy provisions adopted in Maastricht has yet to be realized. What we do see is an increased awareness of these provisions and real

18. *See* EC Treaty, *supra* note 2, art. 98, O.J. C. 321 E/37, at 82; *see also* Reform Treaty, *supra* note 7, art. 115a, O.J. C 306/01 at 75 (Eurozone-specific guidelines which may be adopted and strengthened surveillance which may be applied). If the Reform Treaty is ratified, this will become Art. 120 of the TFEU.

peer group pressure to abide by them. But, when it comes to enforcing compliance, the mechanisms are too weak, and politicians too much concerned with short-termism and populism, for the rules to be followed.

Even more worrying is the tendency of some of the Member States to coordinate on a bilateral or trilateral basis, or as a foursome. Recently, the four larger Member States came together to discuss the effects of the credit crunch that followed last summer's U.S. sub-prime crisis, which started to spill over into a global slowing of economic growth.[19] Even if some coordination is better than no coordination, the fact that some Member States think that they can speak for the whole without inviting all or without operating through the channels that the Treaty framework provides, is a worrying sign. It gives the impression that the political actors are somewhat indifferent to the rule of law and to the totality of the club to which they belong.

B. *Externally*

A similar picture shows on the external side of economic policies, i.e., coordination with third countries and within international organizations. Member States are still used to conducting their own external commercial policies even though there is one Customs Code with the same tariffs and quota for the entire EU: they engage in trade missions, fostering economic cooperation with third countries as if there is no external tariff or common commercial policy. Similarly, States engage externally without full regard to their Community membership or obligations in the area of the EMU. The United Kingdom, France, Italy, and Germany take part in the Group of Eight industrialized nations meetings in which the President of the European Commission and the President of the ECB take part as well, largely unnoticed by the media or by their non-European coun-

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19. *See Four Major EU States to Discuss Global Economy*, EUOBSERVER.COM, Jan. 15, 2008, http://euobserver.com/9/25454 (noting that "the invitee list is notable for including only the major EU economic players, leaving out the 23 other member states as well as any representative of the European Commission."). The London "credit crunch summit" was held on January 29, 2008. European Commission President José Manuel Barroso warned the summiteers against "protectionism, or futile attempts to stem financial globalisation, or an artificial stimulus of the economy." Tony Barber, Bertrand Benoit, & George Parker, *Barroso Tells EU Leaders to Avoid Protectionism*, FIN. TIMES (London), Jan. 30, 2008, at 2.

terparts. If this may be forgivable for the United Kingdom, as an opt-out State,[20] it surely is not for France, Italy, and Germany. The latter three share the single currency with twelve other States. They should coordinate economic policies with the rest of the world acting together with their fellow members of the Eurozone and following the procedures described in the Treaty or developed in the so-called Eurogroup (this is the informal meeting of the Ministers of Finance of the euro area, whose status will be officially recognized in an otherwise empty Protocol attached to the TFEU).[21] Of course, prior consultations with the other euro area members and the ECB take place. Yet, the big four (three) represent the others and the whole as if they had been entrusted to do so by the Treaty, which is not the case. On the contrary, EC Treaty Article 111(4) calls for Community decisions on the EU's position at an international level, and on its representation "as regards issues of particular relevance to economic and monetary union."[22] The allocation of powers in Articles 99 (economic union, i.e., prevailing State competences) and 105 (monetary union, i.e., exclusive competences) is to be guiding.[23]

20. *See* Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, attached to the EC Treaty, adapted without material amendments by the Reform Treaty.

21. The Protocol on the Eurogroup states that the "Ministers of the Member States whose currency is the euro" are to meet informally to discuss "questions related to the specific responsibilities they share with regard to the single currency." The nature of these responsibilities is not specified. Apart from giving the Commission and the ECB the right to take part in the Eurogroup's meetings, in divergent wording ("The Commission shall take part in the meetings" versus "The European Central Bank shall be invited to take part in such meetings"), the Protocol codifies the current practice of the election of a chairman for the Eurogroup for 2.5 years. Reform Treaty, *supra* note 7, Protocol on the Euro Group, O.J. C 306/01, at 153.

22. EC Treaty, *supra* note 2, art. 111(4) O.J. C 321 E/37, at 90.

23. Article III-196 of the European Constitution would have taken over the role of Article 111(4) of the EC Treaty with a special provision on the euro's place in the international monetary system. *See* Draft Treaty establishing a Constitution for Europe, art. III-196, O.J. C 310/1, at 86 (2004) (not yet ratified) [hereinafter Draft Treaty]; EC Treaty, *supra* note 2, art. 111(4), O.J. C 321 E/37, at 90. Similarly, what will be Article 138(4) of the TFEU if the Treaty of Lisbon is ratified will replace Article 111(4) of the EC Treaty after ratification of the Reform Treaty. *See* Reform Treaty, *supra* note 7, art. 115c, at 76. The Article forms part of a new chapter 4 of Title VIII on economic and monetary policy containing "Provisions specific to Member States whose currency is the euro" and reads as follows:

1. In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for eco-

Moreover, even for the United Kingdom, the economic-policy coordination provisions of the Treaty require it to engage externally only within the context of a common format with its fellow EU States and the Commission.[24] Most markedly, the Community is not represented as such at the International Monetary Fund ("IMF"). There is close coordination among EU members of the Fund and the President of the ECB is an observer at IMF meetings. Yet, the bearer of monetary sovereignty[25] is not itself a member.[26] Of course, the existence of constituencies consisting of both EU and non-EU members does nothing to foster a European representation which, moreover, is excessive relative to the Union's economic weight compared to emerging economies. All of this is a rich source for a separate contribution.

III. *ECONOMIC POLICY COORDINATION: POSSIBILITIES*

A. *Ways of Improving EU Economic Policy-Making*

Recently, I have extensively discussed the details of economic policy coordination and the prospects for improvement.

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nomic and monetary union within the competent international financial institutions and conferences. The Council shall act after consulting the European Central Bank ("ECB").

2. The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

24. This follows from Articles 98 and 99, for economic policy, and from Article 124(2) for exchange rate policy whereas the coordination of monetary policies is based on Paragraph 9 of the United Kingdom Opt-out Protocol. *See* EC Treaty, *supra* note 2, arts. 98-99, 124(2), O.J. C 321 E/37, at 82-83, 101; Reform Treaty, *supra* note 7, Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom, O.J. C 306/01, at 156 (if the Reform Treaty is ratified, Articles 98-99 will become Articles 120-21 of the TFEU).

25. The sovereignty issue of sharing the single currency was emphasized recently by ECB Executive Director Jürgen Stark in a speech in Reykjavik (ISL), when he said: "The fact that a country must first join the EU before it becomes a member of the euro area is not a coincidence. It is a deliberate approach, which underlines the fact that *the EU is more than a mere economic undertaking*. After all, *a currency is a key attribute of sovereignty. Sharing a common currency implies sharing a common political destiny*." Jürgen Stark, Member of the Exec. Board of the Eur. Cent. Bank, Speech Delivered at the Icelandic Chamber of Commerce: The Adoption of the Euro: Principles, Procedures and Criteria (Feb. 13, 2008), http://www.ecb.int/press/key/date/2008/html/sp080213.en.html (emphasis added).

26. I have taken issue with this state of affairs in my thesis. *See* RENÉ SMITS, THE EUROPEAN CENTRAL BANK—INSTITUTIONAL ASPECTS 367-453 (1997).

The interested reader is referred to these other publications.[27] They focus on the internal aspect of coordination. There, I have indicated that the asymmetry in competences between monetary policy and economic policies has been exacerbated by the (lack of enforcement) practice and by the recent loosening of the SGP (2005). Also, I criticized the Treaty's system as "flawed in the basic structure of EMU, based as it is on the misconception that enlightened self-interest will ensure coordination of economic policies and make the participating States put them on a stability-oriented footing."[28] I have suggested solutions, some already potentially available under the current Treaty and others which would have to be based on newly acquired Community competences. The following paragraphs sum up these ideas.

B. *Options Under Present Law*[29]

Among the former class of possible improvements in economic policy coordination, I mentioned public adherence to the principles of economic union by the members of the monetary union,[30] followed up by strict adherence to the relevant rules. Also, imaginative use may be made of EC Treaty Article 100, the sole provision which specifically authorizes the Union to adopt economic policy measures.

C. *Options Requiring Treaty Amendments*

Further-reaching measures would require Treaty amend-

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27. René Smits, *The Impact of EMU Law on National Budgetary Freedom—An Inquiry into the Limits of State Sovereignty in Economic Policy Matters*, *in* INTERFACE BETWEEN EU LAW AND NATIONAL LAW 131 (D. Obradovic & N. Lavranos eds., 2007); René Smits, *Some Reflections on Economic Policy*, 34 LEGAL ISSUES ECON. INTEGRATION 5 (2007).

28. Smits, *Some Reflections on Economic Policy*, *supra* note 27, at 14.

29. Included among these options is the idea of agreed overruling, as was the case with Germany in 2006 when it did not resist being sent a notice pursuant to EC Treaty Article 104(9), the last step in the excessive deficits procedure before the imposition of sanctions. Only Germany and Greece have seen this provision applied against them. Germany could have mustered enough votes of (larger) fellow States to defeat the Commission's recommendation to this effect, as it did in November 2003 but, this time, indicated its readiness to be censored.

30. Included among the measures that can be taken in the current Treaty context is the acceptance by the States of the loss of sovereignty in respect of the *size* of their budget deficits, although not of their power to decide on individual budget items. This acceptance of Union pre-emption of fiscal parameters was put forward by De Nederlandsche Bank (Dutch Central Bank) President Dr. Wellink in the 2003 Annual Report of DNB. *See* DE NEDERLANDSCHE BANK, ANNUAL REPORT 2003, at 1 (2004), http://www.dnb.nl/dnb/home/file/ar03_tcm47-146939.pdf.

ments which, unfortunately, neither the European Convention leading up to the European Constitution nor the Intergovernmental Conferences of 2004 and 2007 have been bold enough to adopt. The increased role for the European Commission in the multilateral surveillance of economic policies where it may adopt a warning to a State whose policies are inconsistent with the economic policy guidelines,[31] and in excessive deficit procedure, where it may likewise itself address an opinion to a State on the slippery path to fiscal imbalance,[32]—tasks now reserved for the Council—and the possibility for Eurozone-specific measures[33] are hardly steps forward. Options that would require EU constitutional amendments range from making the Commission the sole arbiter of budgetary discipline, not allowing States with an established excessive deficit to vote in the excessive deficit procedure, and giving the European Parliament a say in the overall budgetary discipline in the Eurozone.

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31. The Reform Treaty art. 99(4) (which would become TFEU Article 121(4), if ratified) would make the Commission competent to issue a warning to a Member State whose economic policies are inconsistent with the Broad Economic Policy Guidelines ("BEPGs") or risk jeopardizing the proper functioning of European Monetary Union ("EMU"), after which the Council can address a recommendation to this Member State, whereas its predecessor, EC Treaty, Article 99(4) only permits a recommendation by the Council. *See* EC Treaty, *supra* note 2, art. 99(4), O.J. C 321 E/37, at 831; Reform Treaty, *supra* note 7, art. 99(4), O.J. C 306/1, at 71-72.

32. The Reform Treaty, art. 104(4), *supra* note 7, O.J. C 321 E/37, at 71, would allow the Commission to address an opinion to a Member State with a (threatened) excessive deficit, whereas EC Treaty Article 104(5) provides that the Commission is to address such an opinion to the Council which can then take action in the form of a recommendation. *See* EC Treaty, *supra* note 2, art. 104(5), O.J. C 321 E/37, at 83; Reform Treaty, *supra* note 7, art. 104(5), O.J. C 306/1, at 72. A Council recommendation is still the follow-up under the Reform Treaty, with the Council's recommendations being based on a Commission *proposal* rather than *recommendation* (as now under EC Treaty Article 104(6)) and with further follow-up being sped up ("without undue delay") as introduced in Reform Treaty Article 104(7), which is absent in EC Treaty Article 104(7). The European Constitution would have brought the same changes in Articles III-184(5)-(6). If the Reform Treaty is ratified, this would become Art. 126(6)-(7) of the TFEU. *See* EC Treaty, *supra* note 2, arts. 104(6)-(7), O.J. C 321 E/37, at 83; Draft Treaty, *supra* note 21, art. III-184(5)-(6), O.J. C 310/1, at 79 (2004).

33. The Reform Treaty Article 115a makes the Council competent to adopt, following the procedures of Reform Treaty Articles 99 and 104, measures specific to the Member States whose currency is the euro in order to strengthen economic-policy coordination and surveillance of budgetary discipline and to adopt euro area-specific BEPGs which should be compatible with the Union-wide Broad Economic Policy Guidelines. *See* Reform Treaty, *supra* note 7, arts. 99, 104, O.J. C 306/1 at 71-73 (if the Reform Treaty is ratified, will become arts. 121 and 126 of the TFEU). Pursuant to its Article III-194, the European Constitution would have provided the same. *See* Draft Treaty, *supra* note 21, art. III-194, O.J. C 310/1, at 85 (2004).

IV. *INDEPENDENCE: LAW*

A. *Principle*

Europe's law on the independence of the central bank is the strictest set of rules possible. Drawing inspiration from the template of the *Bundesbank*, Germany's post-war fiercely independent monetary authority, and written with the intention of fending off intervention into monetary policy by politicians from Member States with less of a tradition of central bank independence, the Treaty and Statute downright prohibit influencing those entrusted with setting and implementing Europe's monetary policy.[34] The central banks and the members of their governing bodies are not only prohibited from seeking or taking instructions from Community institutions or bodies, Member State governments "or from any other body," the latter are also to refrain from "seek[ing] to influence" these members.[35] Wider still, the independence prerogative extends to all tasks and duties exercised by the ECB and the National Central Banks ("NCBs").[36] Thus, apart from monetary policy, the other "basic"

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34. The ESCB's independence is further guaranteed by the provisions on institutional independence (the independent legal personality for the ECB), on financial independence (the independent resources of the ESCB outside the EU budget and the aloof position of the European Court of Auditors in verifying the ECB's books), on personal independence (the appointment procedures and the guarantee against dismissal on policy grounds) and on functional independence (the absence of any requirement to obtain approval for actions or measures beyond the involvement of the Ecofin Council, the Commission and the European Parliament in the adoption of enabling legislation, discussed below). *See* ECB Statute, *supra* note 2, O.J. C 310/225. Also, the requirement of compatibility of national legislation with central bank independence, applicable in all States except the United Kingdom, and counting as a convergence criterion for the adoption of the single currency, serves the ESCB's (for the NCBs') independence. *See* EC Treaty, *supra* note 2, arts. 109, 121(1), O.J. C 321 E/37, at 89, 97; Reform Treaty, *supra* note 7, arts. 109, 117a, O.J. C 306/1, at 74, 75, 77, 80 (if the Reform Treaty is ratified, this will become Arts. 131, 140 of the TFEU). Here, only the main provision on independence is discussed.

35. EC Treaty, *supra* note 2, art. 108, O.J. C 321 E/37, at 88.

36. EC Treaty Article 108 reads as follows:

> 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 Community institutions or bodies, from any government of a Member State or from any other body. The Community institutions and bodies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

tasks of the ESCB (foreign-exchange operations, foreign reserves management, payments system oversight)[37] and its other tasks (the issue of euro banknotes,[38] the approval of the volume of the States' issue of coins,[39] the consultation on draft legislation within its fields of competence,[40] the auxiliary tasks in the area of prudential supervision of banks and financial system stability[41] and the collection of statistics[42]) are all free from political influence. On paper, that is.

B. *Interpretation*

Before discussing the practice since 1998, when the ESCB was established, I note that the wording of the Treaty and Statute leaves room for maneuver. The very same wide scope of the protection from political influence allows, nay necessitates an interpretation which acknowledges the normal interplay between elected politicians and appointed central bankers. In a self-professed democracy,[43] the idea of central bankers not being influenced by Community and State government members is absurd. The very notion of an adequate economic and monetary policy mix requires consultations, for which the Treaty provides the

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EC Treaty, *supra* note 2, art. 108, O.J. C 321 E/37, at 88; *see also* ECB Statute, *supra* note 2, art. 7, O.J. C 310/225, at 227 (having same contents). The Reform Treaty leaves these provisions untouched. *See* Reform Treaty, *supra* note 7, O.J. C 306/1. Similarly, the European Constitution did not amend the provision on independence. *See* Draft Treaty, *supra* note 21, art. III-188, O.J. C 310/1, at 83 (2004).

37. EC Treaty, *supra* note 2, art. 105(2), O.J. C 321 E/37, at 87; ECB Statute, *supra* note 2, art. 3.1, O.J. C 310/225, at 226.

38. *See* EC Treaty, *supra* note 2, art. 106(1), O.J. C 321 E/37, at 88; ECB Statute, *supra* note 2, art. 16, O.J. C 310/225, at 232.

39. *See* EC Treaty, *supra* note 2, art. 106(2), O.J. C 321 E/37, at 88.

40. *See* EC Treaty, *supra* note 2, art. 105(4), O.J. C 321 E/37, at 87; ECB Statute, *supra* note 2, art. 4, O.J. C 310/225, at 226.

41. *See* EC Treaty, *supra* note 2, art. 105(5), O.J. C 321 E/37, at 87; ECB Statute, *supra* note 2, art. 25.1, O.J. C 310/225, at 235; *see also* EC Treaty, *supra* note 2, art. 105(6), O.J. C 321 E/37, at 87 (providing for the potential supervisory task); *see also* Reform Treaty, *supra* note 7, art 105(6), O.J. C 306/1, at 73 (amending the activation procedure in that the European Parliament's consent will no longer be necessary but keeping the outdated exclusion of insurance undertakings from any operational tasks in the area of prudential supervision of credit institutions and other financial institutions.) If the Reform Treaty is ratified, this will become Article 127(6) of the TFEU. ECB Statute, *supra* note 2, art. 25.2, O.J. C 310/225, at 235.

42. ECB Statute, *supra* note 2, art. 5, O.J. C 310/225, at 226-27.

43. *See* Consolidated Version of the Treaty on European Union art. 6, O.J. C 321 E/1, at 12 [hereinafter TEU] and Article 2 TEU inserted by the Reform Treaty; *see also* Draft Treaty, *supra* note 21, art. I-2, O.J. C 310/1, at 11.

mechanisms. The (Ecofin) Council and the Commission are present (without a vote, naturally) when monetary policy decisions are taken in the ECB's Governing Board, the ECB President is invited in Ecofin Council sessions devoted to topics "relating to the objectives and tasks of the ESCB," and the ECB President is to report before (the relevant committee of) the European Parliament.[44] The Treaty's provisions on mutual consultation provide food for the liberating thought that EC Treaty Article 108 should not be read too literally. This liberal reading is underpinned by the provisions[45] empowering the Ecofin Council to adopt rules within which the central bank is to operate autonomously when conducting certain operations, such as imposing reserve requirements,[46] applying sanctions,[47] acting in a consultative capacity[48] or assembling statistical data.[49] The conclusion should be that the independence provisions, though very strictly formulated and written in stone,[50] leave scope for a process of open influencing of the monetary authority, stopping short of instructions or megaphone diplomacy. Beyond discussions behind closed doors, an open debate is possible between ECB and its economic policy-makers and lawmakers. Just as the ECB regularly admonishes the politicians in the area of budget-

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44. *See* EC Treaty, *supra* note 2, art. 113, O.J. C 321 E/37, at 91; Reform Treaty, *supra* note 7, art. 245c, O.J. C 306/1, at 75, 112 (if the Reform Treaty is ratified, will become Art. 294 of the TFEU); Draft Treaty, *supra* note 21, art. III-383, O.J. C 310/1, at 164.

45. EC Treaty, *supra* note 2, arts. 107(6), 19.2, 34.3, 4, O.J. C 321 E/37, at 45, 50, 55, 88 (minimum reserves, fines and periodic penalty payments, consultation on draft national legislation in the ECB's fields of competence); ECB Statute, *supra* note 2, art. 5.4, O.J. C 310/225, at 227 (collection of statistical information); *see also* ECB Statute, *supra* note 2, art. 42, O.J. C 310/225, at 243 (parallel provision to EC Treaty Article 107(6)).

46. *See* Council Regulation No. 2531/98, O.J. L 318/1 (1998), *amended by* O.J. L 24/1 (2002)(concerning the application of minimum reserves by the European Central Bank).

47. *See* Council Regulation No. 2532/98, O.J. L 318/4 (1998)(concerning the powers of the European Central Bank to impose sanctions).

48. *See* Council Decision No. 98/415/EC, O.J. L 189/42 (1998)(consultation of the European Central Bank by national authorities regarding draft legislative provisions).

49. *See* Council Regulation No. 2533/98, O.J. L 318/8 (1998)(concerning the collection of statistical information by the European Central Bank).

50. Meaning that any amendment requires the alteration of the Treaty, which is a cumbersome procedure and requires the consent of all Member States rather than the mere involvement of the legislature, as would be the case with amendments of central bank Acts in other jurisdictions.

ary restraint, the politicians can express their ideas about the correct approach to monetary policy and exchange rate policy, always respecting the independent decision-making of the ECB. But any formal calls for a specific course of action, the adoption of a resolution,[51] or the exercise of pressure through other means would be in contravention of EC Treaty Article 108.

C. *Externally*

Moreover, in the area of external representation and action, the dividing lines are not as clear as in respect of domestic monetary policy. Thus, as we will see, politicians have focused partially on the exchange rate policy for the euro when trying to influence the ECB. The EC Treaty draws a distinction between "formal agreements on an exchange-rate system for the European Currency Unit ("ECU") in relation to non-Community currencies" which the Ecofin Council can conclude, "after consulting the ECB in an endeavor to reach a consensus consistent with the objective of price stability," and the absence of any Bretton Woods-like arrangements.[52] In the latter case, i.e., in a global system with floating currencies, the Ecofin Council "may formulate general orientations for exchange-rate policy in relation to [non-community currencies]."[53] However, the European Council, when setting out prior to the beginning of EMU how the Ecofin Council would make use of its competences, has declared that, "[w]hile in general exchange rates should be seen as the outcome of all other economic policies, the Council may, in exceptional circumstances, for example in the case of a clear misalignment, formulate general orientations for exchange-rate policy in relation to non-EC currencies." It added that "[t]hese general orientations should always respect the independence of the ESCB and be consistent with the primary objective of the ESCB to maintain price stability."[54] The quoted passages make clear

51. Submission of a motion for deliberation at the meeting of the Governing Council is a prerogative of the President of the Ecofin Council and, thus, is within the scope of permitted influencing. *See* EC Treaty, *supra* note 2, art. 113(1), O.J. C 321 E/37, at 91.

52. EC Treaty, *supra* note 2, art. 111(1), O.J. C 321 E/37, at 89.

53. EC Treaty, *supra* note 2, art. 111(1)-(2), O.J. C 321 E/37, at 89-90. If the Reform Treaty is ratified, these articles will be included in Article 219 of the TFEU, the new location of Articles 111(1)-(3), (5). EC Treaty Article 111(4) would become TFEU Article 138. *See* Reform Treaty, *supra* note 7, art. 188, O.J. C 306/1 at 99.

54. Resolution of the European Council, of 13 December 1997, on economic pol-

that the politicians imposed upon themselves restraint in the external area.[55] They do not give clear guidance on the precise demarcation line between what belongs to the ECB and what to the politicians when it comes to deciding on exchange rate influencing measures. However, it is clear that the ECB has quite some room for maneuver and may validly say that the politicians have imposed on themselves a fair measure of self-restraint from the outset.

V. *INDEPENDENCE: PRACTICE*

A. *Overview*

There is no lack of public utterances by economic policymakers on their desired outcome of monetary policy decisions. Sometimes, a State's Minister of Economic Affairs or Finance will publicly call for a lowering of the ECB's interest rates. At other times, presidential candidates openly state that the ECB's rule book should be rewritten if it does not heed popular pressure for economic stimulation. The same person may also question whether important decisions of economic policy belong to an independent institution. In that regard, Nicolas Sarkozy is an adept of his predecessors. Neither François Mitterand who, defending the Maastricht Treaty in a televised debate in 1992, implied that monetary policy will be set by the politicians and executed by the technicians, nor Jacques Chirac who thought that he could rewrite the Treaty rules on the duration of the appointment of the first President of the ECB when he sought to see the Frenchman Jean-Claude Trichet appointed rather than the Dutchman Wim Duisenberg, seem to have believed in the value of independent central banks.

B. *External Representation Issue*

The question whether, externally, the President of the ECB or the chairman of the Eurogroup is the person to represent the Eurozone was fought out in public between Jean-Claude Trichet and Jean-Claude Juncker, Luxembourg's Prime Minister and chairman of the Eurogroup.

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icy coordination in stage 3 of EMU and on Treaty Articles 109 and 109b of the EC Treaty, O.J. C 35/1 (1998).

55. They also make clear their great caution in the external representation of the Community after the transfer of monetary sovereignty to EU level.

In the summer of 2006, the European Finance Ministers making up the Ecofin Council and the Eurogroup publicly quarreled with the ECB about who has primary responsibility for the euro's exchange rate and about the adequate level of interest rates in the euro area. The two "Jean-Claudes," Jean-Claude Trichet, President of the ECB, and Jean-Claude Juncker, Chairman of the Eurogroup, vied for the title "Mr. Euro." Mr. Juncker publicly said he had only accepted his reappointment as Chairman of the Eurogroup, after his fellow Finance Ministers supported his plan for "intensified dialogue" with the ECB. Mr. Trichet publicly quoted the EC Treaty's provision which makes it unlawful to give instructions to, or try to influence, the ECB. He drew attention to the fact that his signature is on euro bank notes (and, I should add, that of his predecessor for older bank notes).[56] In spite of the ending of the public spat in an apparently conciliatory tone, the argument between the Eurogroup and the Commission, on the one hand, and the ECB, on the other, seemed serious enough. Apparently, Mr. Juncker and Economic and Monetary Affairs Commissioner Joaquín Almunia had written a letter to Mr. Trichet requesting "enhanced dialogue."[57] As reported in the press, this letter had gone unanswered with Mr. Trichet even making clear he had better things to do than to listen to politicians telling the central bank how to conduct monetary policy.[58]

C. *Influencing Interest Rate Decisions*

Earlier, Eurozone ministers had publicly called on the ECB to keep interest rises to a minimum and to be "cautious" not to harm the economic recovery. The latter was imputed to Germany's Finance Minister Peer Steinbruck.[59] As far back as November 2005, Mr. Juncker had said that it was not essential to

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56. *See* George Parker, *ECB Chief Fends Off Politicians' Demands for More Dialogue*, FIN. TIMES (London), Sept. 9, 2006, at 6; George Parker, *Call to End Public Currency Squabble*, FIN. TIMES (London), Sept. 11, 2006, at 6.

57. Ralph Atkins & George Parker, *Trichet Snubs Calls to Listen to Politicians*, FIN. TIMES (London), June 9, 2006, at 5.

58. *Id.*

59. *See* Ralph Atkins & George Parker, *Ministers Urge ECB to Limit Rate Rises*, FIN. TIMES (London), June 8, 2006, at 5. Please, note that, on June 8, 2006, the euro/dollar exchange rate stood at: 1.2735. *See* Commission Notice, O.J. C 135/1 (2006)(euro exchange rates)(as of June 8, 2006). The USD/EUR exchange rate is currently 1.4656. *See* Commission Notice, O.J. C 48/5 (2008)(euro exchange rates as of Feb. 8, 2008). It

raise interest rates as the ECB was then ready to do. "Inflation indicators are not so worrying as to trigger a monetary policy reaction," he was quoted as saying before the European Parliament, while emphasizing the ECB's autonomy in setting interest rates.[60] As this was a statement based on an assessment of economic data, issued by the chairperson of the group of Finance Ministers of the euro area, I consider this a valid exercise of political influencing by the economic-policy makers, not prohibited by the Treaty, especially since it acknowledged the monetary authority's independence.

The discussion during the French presidential election campaign focused on the ECB's role in foreign exchange policy, as well as on interest rate decisions. Already in December 2006, then Prime Minister Dominique de Villepin called for a clarification of roles of the ECB, especially its responsibilities in the area of foreign exchange policy. He called for better coordination between the Eurogroup and the ECB.[61] Some time before, then Finance Minister Thierry Breton called upon the ECB not to raise interest rates further.[62] Although clearly trying to influence the ECB's course of action, such statements, when uttered occasionally, should be considered permissible, although the lack of coordination with fellow members of the Eurogroup or the Ecofin Council and the repetition of such statements do not help to qualify them as normal in the context of discussions about the appropriate policy mix.

Recently, the debate about the confines of the ECB's independence raged again, often fueled by remarks by the French President. Also after being elected, Nicolas Sarkozy has repeatedly called for a reduction of interest rates. He has been quoted as suggesting in September 2007 that the European Central Bank should follow the U.S. Federal Reserve by cutting interest rates, saying, in an interview on French television (TF1 and France 2 channels), "[w]hen the US central bank lowers its rates,

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should be noted that the average exchange rate against a basket of currencies is more indicative of the euro's strength than the dollar/euro exchange rate.

60. Press Release, European Parliament News Press Service, Juncker: Rate Rise Not Essential—Alumnia Emphasises Structural Reforms (Nov. 11, 2005).

61. *Villepin Wants Clarification of ECB Role*, CENTRALBANKNEWS.COM, Dec. 12, 2006, http://www.centralbanknews.com.

62. *See Roep om matiging rentebeleid ECB* [Call For Moderation of ECB's Interest Rate Policy], HET FINANCIEELE DAGBLAD [THE FINANCIAL DAILY] (Neth.), Nov. 28, 2006.

everything picks up; when we don't lower ours, we go down," adding "I'm telling Mr. Trichet, look at what others are doing."[63] In a clear rebuke, Jean-Claude Trichet, during the press conference of September 6, 2007, said, in answer to a journalist's question on European politicians claiming credit for the decision to hold rates that day, with French President Sarkozy calling the rate decision small progress and saying that debating about the ECB can bring about results:

> We are independent. We are independent because the Treaty calls upon us to be independent. By the way, the Treaty calls upon all executive branches in Europe not to seek to influence the central bank: Article 108 of the Treaty. The world over, nobody thinks that we could be influenced. But those who are claiming that they are influencing us are placing themselves outside the Maastricht Treaty. And I draw your attention to the fact that it is very telling to read Article 108 . . . . And if such calls that are contrary to the provisions of the Treaty were to have any influence, it would be in the reverse direction, for obvious reasons. But it is not the case, precisely because everybody knows that we are fiercely independent and that there is not the slightest doubt that we decide in this totally independent way. If we were not deemed by the market to be totally independent, I draw your attention to the question of what market interest rates would be for bonds issued on a 50-year basis. Some governments are borrowing through 50-year bonds. If the signature of government A, B or C was substituted for our own ECB signature as regards the credibility of the currency, I let you draw your own conclusions in terms of market interest rates on a 50-year basis. We are deemed by the market to be able to deliver price stability during the next 50 years. And it is because we are deemed to be able to do that that the market interest rates have a low level taking into account our credibility, this level of credibility. So thank you again for your question.[64]

Prior to this press conference, President Trichet had already said that he was "inflexibly attached to the strict interpretation of the

63. Finfacts Team, *Sarkozy Tells ECB to Follow Fed and Cut Rates; Merkel and Trichet Strongly Defend the Central Bank's Independence*, FINFACTS, Sept. 21, 2007, http://www.finfacts.com/irelandbusinessnews/publish/article_1011229.shtml.

64. Press Conference, Jean-Claude Trichet, President of the Eur. Cent. Bank, Introductory Statement with Q&A (Sept. 6, 2007), http://www.ecb.int/press/pressconf/2007/html/is070906.en.html (quote from transcript of the press conference).

Treaty," referring to EC Treaty Article 108.[65]

I would prefer a somewhat more flexible interpretation of EC Treaty Article 108 which allows for politicians' occasional assessment of the monetary policy stance needed, preferably in a coordinated manner and based on research rather than short-term electioneering, and provided these utterances do not amount to an attack on the institution whose mandate is being undermined. The latter is the case, and EC Treaty Article 108 impinged upon, when these statements are frequent, come just before and just after the policy-decision making in Frankfurt and clearly misconstrue the ECB's mandate which is not linked to employment, as that of the Federal Reserve System in the USA,[66] but to price stability only.[67]

German Chancellor Angela Merkel has consistently stepped in to defend the ECB's independence, both during the French presidential election campaign and afterwards, even though her Minister of Finance was among those calling for restraint in respect of interest rate rises in the summer of 2006. Frau Merkel was quoted as saying, "I will, on behalf of the whole German government, commit myself to the ECB's independence and stop those who impose their political influence."[68] More recently,

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65. *Trichet: "Inflexibly Attached" to ECB Independence*, CENTRALBANKNEWS.COM, Feb. 9, 2007, http://www.centralbanknews.com.

66. The Federal Reserve Act requires the Federal Reserve System to achieve maximum employment, stable prices and moderate long-term interest rates.

> The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.

12 U.S.C.S. §225a (2008)(codifying the Federal Reserve Act, Section 2A).

> 67. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 4.

EC Treaty, *supra* note 2, art. 105(1), O.J. C 321 E/37, at 87.

68. *See Merkel Defense ECB's Independence*, CENTRALBANKNEWS.COM, Sept. 21, 2007, http://www.centralbanknews.com; *Trichet Responds to Sarkozy Criticism*, CENTRALBANK NEWS.COM, Sept. 24, 2007, http://www.centralbanknews.com; *Spain's Solbes Supports Trichet on Sarkozy Debate*, CENTRALBANKNEWS.COM, Sept. 28, 2007, http://centralbank news.com. On July 12, 2007 already, the Financial Times quoted Frau Merkel as saying when asked on German TV whether she supported calls by the new French President

France's Minister of Finance, Christine Lagarde, publicly called for temporarily higher inflation and higher growth and uttered the hope that this view would be communicated to the ECB.[69] (Incidentally, doing so, she not only showed an inclination to curb the central banks' autonomy and misread its mandate but, also, appeared to suffer from the same delusion of policy-makers and media across the Northern Hemisphere who fear a drop in gross domestic product growth rates or, worse, recession, as if the levels of output in Europe, the U.S., Japan and Canada were a reason for deep concern. Growth is crucial for the countries where billions live in abject poverty and where hunger and curable disease kill infants and adults without access to adequate food and medical care. For nations that have long left these conditions behind them, a realistic assessment of the "danger" of slackening economic growth is long overdue). At about the same time as Mme Lagarde's interview, calls by President Sarkozy for a summit of Eurozone leaders were rebuffed by Chancellor Merkel out of concern for the message such a gathering would send in respect of the ECB, whose independence she again robustly defended.[70]

It would be wrong to depict interference as coming from one Member State only or the discussion being between Germany, supported by the Netherlands, and France, supported by

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for a weaker euro, "absolutely not. I would definitively object to this and so would the entire government." Ralph Atkins & Bertrand Benoit, *Merkel Rounds on Paris over Euro and ECB*, FIN. TIMES (London), July 12, 2007, at 6. She was further quoted as follows: "The population should be protected against inflation. This is very important. That is why the independence of the European Central Bank is the alpha and omega. And that is why Germany will not budge on this." *Id.* Already in January 2007, she said in an interview with the French newspaper *Le Monde* that the debate in France about the strong euro and ECB policies worried her. *See Merkel Worried by Debate on ECB Independence*, CENTRALBANKNEWS.COM, Jan. 15, 2007, http://www.centralbanknews.com.

69. On January 9, 2008, she was quoted by Centralbanknews.com as saying in an interview to the International Herald Tribune on January 7, 2008: "If we have to choose between high inflation and high growth, or stable inflation and lower growth, I certainly have a preference for temporarily higher inflation and higher growth", adding: "I hope this view is shared by some of our European partners and communicated to the European Central Bank." *See* France's Lagarde pushes preference for growth, REUTERS, Jan. 7, 2008, http://uk.reuters.com/article/oilRpt/idUKPAB00371820080 107.

70. "The euro is not a national currency. Its acceptance depends on the assurance that monetary policy remains independent, which is a completely different situation to that of the US." Bertrand Benoit, *Merkel Rejects Eurozone "Summit"*, FIN. TIMES (London), Jan. 16, 2007, at 7 (quoting Merkel).

Italy.[71] As indicated before, the prospects of interest rate rises and the perceived threat to Eurozone exports from the rising euro had given rise to public spats between the Eurogroup and the ECB in 2005 and 2006. In 2007, the EU managed to get its act together and sent both men, plus European Commissioner Joaquín Almunia, to Beijing to discuss the renminbi exchange rate.[72] The discussions on the responsibilities in the area of the euro's exchange rate are less of a threat to the ECB's independence because of the lack of clarity of the Treaty in this respect. Some posturing may be necessary in order for the right balance to be struck here.

CONCLUDING REMARKS—INDEPENDENCE AND ECONOMIC POLICY COOPERATION: PROSPECTS

The legal situation and developments in practice pictured above show that the strict and widely-drawn legal guarantee of independence has been adhered to in a less than rigid way by Europe's politicians. Their inclination to call for interest rate cuts, or moderation in interest rate hikes, has often taken over the respect they are due to have for the ECBs' independence. These instances sometimes were clear violations of EC Treaty Article 108 whilst in less serious cases, they can be said to fall within the permitted range of influencing of the central bank by policymakers. The public statement on the collective assessment of the dangers of inflation while emphasizing the central bank's autonomy in taking decisions comes to mind as an example of the latter; repeated public calls for certain behavior by some French politicians, by a former Italian Prime Minister (for good measure adding a threat of mandate change) and the insistence that he is "Mr. Euro" by the Chairman of the Eurogroup ("the other Jean-

71. Then Prime Minister Silvio Berlusconi was quoted to have said on October 27, 2005, after a European Council meeting, that "inflation is not a fear anymore. I talked about the need to change the ECB's mandate today." *Berlusconi Suggests New Mandate for ECB*, CENTRALBANKNEWS.com, Oct. 28, 2005, http://www.centralbanknews.com. Such an utterance, coming from a Prime Minister and threatening mandate change is clearly incompatible with EC Treaty Article 108, at least in the absence of manifest errors (on the side of conservatism) by the ECB when conducting monetary policy. The recent rise in inflation shows that the brusque statement that inflation is no longer to be feared was a politician's wishful thought, not a statement based on analysis.

72. *See* Wolfgang Munchau, *Early Steps Towards an Assertive Eurozone*, FIN. TIMES (London), Nov. 19, 2007, at 11 (calling the trip of a Luxembourger, a Spaniard and a Frenchman to China the first big attempt at high-level macroeconomic dialogue).

Claude") are clear examples of the former. The lack of precision in the division of competencies in the external sphere, i.e., on exchange rate policy, may explain and even excuse the politicians' overstepping the rigid limits of the wording of EC Treaty Article 108.

An equally lackluster implementation of the provisions on economic policy coordination, with an occasional direct flouting of the rules on national budgetary restraint and less than enthusiastic policy coordination in general, aggravates the situation. With the independence guarantee potentially eroded by a practice of megaphone diplomacy or audience-driven monetary-policy "bashing" and the economic policy plank of EMU not being given its full potential, the EC Treaty's balanced provisions are being undermined by the States' political actors. The tendency to act in smaller groups, both internally (the "credit crunch summit" of the Big Four) and externally (the Big Four's insistence on taking part in G8 summits and the European reluctance to accept unified representation at the IMF), exacerbates this. Europe's single currency and the economic health of the EMU would be better served by more closely abiding by the rules and an embracing of the opportunities of monetary union, also on the economic side. The consistent French calls for economic governance of the Eurozone may be seen as a veiled attack on the ECB's independence but it also contains the seeds of better alignment of policies on the national side of EMU, the supranational side enjoying single policy-setting for the euro area as a whole. Only if the States let go of their mutual distrust[73] and egoistic pride, will they be able to reap the full benefits of the merging of interest and destiny which monetary union entails. A stronger economic-policy arm of the Union would not have to undermine the ECB's independence when Eurozone politicians see their enlightened common interest in a stable monetary environment in which their joint policy measures may take effect. This will probably require a further anchoring of stable price expectations and a build-up of the ECB's reputation for delivering stable prices and financial stability. Also on the external side, a joint representation and common position, truly speaking

73. "It will be a long time before the eurozone manages to represent its interests effectively. Mistrust, unfortunately, still governs relations among member states, and between member states and the central bank." *Id.*

with one voice, would help Europe make the best of its economic power, which the single currency both epitomizes and underpins. This power could be put to good use to tackle the major challenges we are all facing, in Europe and beyond, in the areas of climate change, energy supply and conservation, development of the part of the world population living in unacceptable circumstances, peace, and coexistence in a global village with many religions and cultures.