

Dr Zoran RADIVOJEVIĆ*

UDK: 339.923:061EU
str. 51-76.
Review paper

EUROPEAN UNION FINANCIAL BODIES

Abstract

The complex institutional framework of the European Union includes also financial bodies that are without precedent in the area of international organizations, in terms of their composition and functions. These are the Court of Auditors, European Central Bank and European Investment Bank. Establishment and operations of these bodies result from development of European integrations in the area of budgetary, monetary and banking affairs. Establishment of the Court of Auditors as a body of financial control resulted from increasing independence of the Community sources of finance and replacement of the contribution of member states by own Community revenue. The European Central Bank was established in the last, third stage of the development of the economic and monetary Union. Ever since, it has been operating together with other national central banks of the member states within the European system of central banks. The European Investment Bank has been in place ever since the Community was established as a banking and financial institution making up the Group of the European Investment Bank together with the European Investment Fund.

Key words: budget, financing, institutions, monetary union, central banks, investment bank, auditing.

* Full-time Profesor, Faculty of Law, Niš.

I INTRODUCTION

The institutional system of the European Union represents a crucial innovation in the area of permanent organization of international cooperation. Its complex institutional mechanism is composed of specific bodies that, in terms of compositions and pertinent functions, are without precedent in the history of international organizations. In addition to the European Commission and Parliament, where the members are not representatives of member states, but international officials with independent status, i.e. directly elected representatives of the electoral body of the member states, the institutional framework of the Union comprises financial bodies, as well. These are the Court of Auditors, European Central Bank and European Investment Bank. Establishment and operations of these bodies result from development of the European integration processes in the areas of budgetary, monetary and banking affairs.

Establishment of the Court of Auditors resulted from gradually increasing independence of the Community sources of financing, i.e. replacement of the contribution of member states by own Community revenue. Also, its establishment coincides with the reform of budgetary procedure and strengthening of powers of the European Parliament in this area.¹ As a body of external financial control, the Court of Auditors was founded pursuant to the Treaty amending Certain Financial Provisions in 1975.² It was officially open in 1977 in Luxemburg, where its seat has remained ever since. The body took over the functions of the bodies of internal financial control (Control Commission of the European Economic Community,

¹ See Art.206b Treaty establishing the European Economic Community (hereinafter: EEC), amended Art.17 of the Second Treaty on Budget empowering the European Parliament to approve draft budget, including the clearance to the Budget Execution Commission.

² The Brussels Treaty was signed on 22 July 1975 and came into force on 1 June 1977. According to Art.15 some founding Treaty provisions were amended: see Art. 206 Treaty establishing the EEC, Art. 180 Treaty establishing the European Atomic Energy Community (hereinafter: EVROATOM) and Art.78e of the Treaty establishing the European Coal and Steel Community (hereinafter ECSC) See: R.Vukadinović, *Evropska ekonomska zajednica: institucije*, Beograd, 1991, p.63.

European Atomic Energy Community and European Coal and Steel Community).

The Treaty of Maastricht recognizes the Court of Auditors as one of the main Community bodies.³ Before that, the body was covered by the part of Treaty on the Communities budget. Decision enacted in 1994 renamed it into the European Court of Auditors,⁴ although the founding instruments do not justify the name. Treaties of Amsterdam and Nice substantiate its status as the main Union body.⁵ Pursuant to the Treaty of Lisbon the European Court of Auditors has remained a European Union institution incorporated into its institutional framework.⁶

The treaty of Maastricht stipulates the European Central Bank establishment in the last, third phase of establishment of the economic and monetary union. Before that, in the first phase, the Committee of (national) Central Banks Governors and European Monetary Cooperation Fund operated within the Communities.⁷ They were substituted by the European Monetary Institute founded at the beginning of the second phase as an embryo of the future European Central Bank. Its main task was to strengthen cooperation of the national central banks and streamline the

³ Article 4 Treaty establishing the European Community (hereinafter: EC). Detailed provisions on this body are stipulated in Art.188a-188v of the Treaty.

⁴ European Commission Bulletin, 12, 1933, p.1.7.41.

⁵ Article 7 and Articles 246-248 Treaty establishing EC, 160a-160v Treaty establishing EVROATOM-u and 45a-45v Treaty establishing ECSC.

⁶ Article 13 Treaty establishing the European Union. Detailed provisions on this body are stipulated in articles 285 through 287 Treaty on the Functioning of the European Union. Interestingly enough, the Treaty establishing a Constitution for Europe, that was not adopted, does not include the Court of Auditors in the institutional framework of the Union, but preserves it as EU institution. See Articles I-19, I-39, III-384 and III-385 of the Treaty.

⁷ The first phase started in July 1990 and lasted to 31 December 1993. It was a preparatory phase during which all obstacles to free movement of capital among the member states were removed, with minor exceptions. Harmonization of economic policies of the Member States was accomplished by adoption of regulations providing for free movement of capital; prohibition of monetary financing of public debt; abrogation of mandatory loans to the financial sector; prohibition of issuance of state guarantees for financing of public entities; establishment of oversight and monitoring of convergence of economic policies of Member States. Cooperation among the central banks was established within the Committee of Governors and Monetary Cooperation Fund. For details, see: S.Zečević, *Evropska unija – institucije i pravo*, Beograd, 2001, p.134-135.

monetary policies of the member states.⁸ Functions of the European Monetary Institute ended with the establishment of the European Central Bank that commenced its operations on 1 January 1999.⁹

Although pursuant to the establishment treaties it is not included in the main Union bodies, the European Central Bank has the status of a Community institution. The Treaties of Amsterdam and Nice have taken over the basic provision on its establishment,¹⁰ while detailed rules on organization and tasks are elaborated in the part of the Treaty covering

⁸ The second phase started on 1 January 1994 and lasted to 31 December 1998. It was called the preoperational, since it marked the onset of more intensive preparations for the last, third phase. Countries with excessively high inflation rates and public debt were required to adopt multi-annual programs to rectify the weaknesses and get closer to the financially more stable countries. The member states also took over the obligation to undertake all available measures to avoid any extensive budget deficit and measures for gradual independence of national central banks. The European Monetary Institute replaced the Committee of Governors and European Fund (Art.117 – previous Art.109F – Treaty establishing EC) with the following functions: strengthening of cooperation among national central banks; increased streamlining of monetary policies of member states to enable price stability; control over the EU monetary system functioning; consultations on issues within the competence of the national central banks that affect stability of financial institutions and market; taking over the functions of the European Monetary Cooperation Fund within the European monetary system; facilitation of the use of Ecu (European currency unit) and oversight of its development, including successful compensation system functioning in this currency; preparation of necessary instruments and procedures for the common monetary policy during the third phase; promotion of harmonization of rules and practice covering collection, processing and distribution of statistical data within its competence; establishment of rules regulating operations of national banks within the European system of central bank; increased efficiency of cross-border payments; oversight of technical preparation of banknotes expressed in Ecu. Besides, the Institute was competent for opinion and advice on general trends in monetary and foreign currency policies, as well as pertinent measures introduced by the member states. It was also authorized to furnish recommendations or opinion to governments and the Council on policies that beneficially affect internal or external monetary policies of the Community, and in particular the European monetary system functioning. The institute was a legal entity with own financial resources generated from contributions of central banks of the member states. The Council composed of the Chairperson (appointment by agreement of the member states government) and governors of the national central banks (one of whom is appointed a vice-chairperson). Detailed rules on organization and operation of the Institute are stipulated in the Statutes that were adopted as a special Protocol (#19) to the Treaty. For details, see: V.Knežević-Predić, *Ogled o suverenosti: suverenost i Evropska unija*, Beograd, 2001, p.134-135; Ž.K. Zarka, *Osnovi institucija Evropske unije* (translation), Beograd, 2004, p.88-90.

⁹ Article 123 (previous Art.109L) Treaty establishing the EC. That is how the final operational phase of the monetary union establishment was initiated.

¹⁰ Article 8 (previous Art. 4A) Treaty establishing EC.

economic and monetary policy¹¹ and the Statutes adopted as a special Protocol.¹² However, the Treaty of Lisbon recognizes the CEB as one of the main EU bodies. It is one of the seven institutions of the Union¹³ that is regulated in greater detail in the Treaty on the Functioning of the European Union¹⁴ and the Statutes contained in the Protocol.¹⁵

The European Investment Bank was established by the Treaty of Rome,¹⁶ and has been operational since 1958 as a banking and financial organization within the European Community. Together with the Bank, the European Investment Fund founded in 1994 is also operational. The Bank and Fund make up the European Investment Bank Group.¹⁷

¹¹ Title VII (Economic and Monetary Policy – previous Title VI), Chapter 2 (Monetary Policy: Articles 105 to 111 – previous Art.105-109), Chapter 3 (Institutional provisions: Articles 112 to 115 – previous Art.109A-D) and Chapter 4 (Transitional provisions: Articles 116 to 124 – previous Art.109E-M).

¹² Protocol (no.18) on the Statutes on the European System of Central Banks and European Central Bank

¹³ Article 13 Treaty establishing European Union. Interestingly enough, pursuant to the unadopted Treaty establishing a Constitution for Europe the ECB was not included into the institutional framework of the Union (Art.I-19), but was a Union institution (Art.I-30) regulated under the third part of the Treaty and Statutes contained in the Protocol (Articles III-185-202 and III-382-383 and Protocol (no.4) on the Statutes on the European System of Central Banks and ECB).

¹⁴ Articles 282 to 284 Treaty of the Functioning of the European Union

¹⁵ Protocol (no.5) on the Statutes of the European System of Central Banks and European Central Bank.

¹⁶ Articles 129-130 Treaty establishing EEC. See: R.Vukadinović, *ibid.*, p.64.

¹⁷ The European Investment Fund was established on the basis of a political decision made at the Council of Europe summit in Edinburgh in 1992 and agreement concluded at the inter-governmental conference in Brussels on 25 March 1993 to amend the Protocol on the Bank Statutes with a provision (Art.30) empowering the Council of Governors to establish the Fund (Official Journal, no C115, 26.4.1993). The amendment came into force with the ratification date, 1 May 1994. The Fund was entrusted with the task of issuing financial guarantees for loans and participating in the company capital. Its aim was contribute to development of activities in the area of trans-European networks and development of small and medium enterprises. Founding members of the Fund are the European Community and a large number of financial institutions. The Fund bodies are: General Assembly, Supervisory Board and Financial Committee. In June 2000 the EIB became a majority shareholder of the Fund, establishing the European Investment Bank Group. For details, see: Ph.Manin, *L'Union européenne: institutions - ordre juridique - contentieux*, Paris, 2005, p.340; J.Rideau, *Droit institutionnel de l'Union et des Communautés européennes*, Paris, 1999, p.443; Ž.K.Zarka, *ibid.*, p.106.

Legal position of the bank is somewhere in between an independent bank and community institution. It is a legal entity with own administrative structure and decision-making bodies. Financially, it is fully independent and does not depend on the Community Budget. On the other hand, the Bank is linked to the European Community through provisions of establishment Treaties that stipulate its setup, organization and functioning. Besides, it closely cooperates with other bodies and participates in pursuing certain aims and tasks of the Community.¹⁸ The Court of Justice has defined its position as “ambivalent”¹⁹, finding that it is a “Community body with the capacity of a legal person”²⁰ whose “functional and institutional autonomy have been recognized”, but such independence “does not result in full separation of this institution from the Community”.²¹

II COURT OF AUDITORS

1. The Court of Auditors is composed of one representative from each of the member states. Thus, the Treaty of Nice²² formalized the previous practice that each member state delegates a judge to this Court. Members of the Court are chosen from the ranks of professionals affiliated with auditing bodies in their respective countries, or those recognized as outstanding experts in the area²³, they decide by a qualified majority,²⁴ on

¹⁸ J.Rideau, *ibid.*, p.440.

¹⁹ Case no. 85/86, Commission v. European Investment Bank, European Court Report, 1988, p.1281, para.28-30.

²⁰ Case no. 110/75, Mills v. European Investment Bank, European Court Report, 1976, p.955, para.7-14.

²¹ Case C-370/89, SGEEM v. European Investment Bank, European Court Report, 1992, I, p.6211, para.12-17 i Case Commission v. European Investment Bank, *Ibid*, I, 2003, p.7281, para 101-110. For details, see: K.Lenaerts, P.V.Nuffel, R.Bray, *Constitutional Law of European Union*, London, 2005, p.468, note no 410.

²² Article 247 (previous Art.188b) Treaty establishing EC, amended by the Treaty of Nice. Before adoption of this provision, the establishing Treaties were “silent” as to the nationality of members of the Court of Auditors, but in practice, it has been accepted that each member State delegates one judge.

²³ In its Rules of Procedure (art.35) The European parliament regulated the consultation process which, inter alia, includes a hearing of proposed candidates for the Court of Auditors before the Budgetary Control Committee. On the occasion they give statements and respond to the questions asked, after which ha vote is taken on whether to accept such candidate or not. The result of the

the basis of a list of candidates proposed by the member states. The term of their office is six years, and they may be re-appointed. Members of the Court of Auditors elect the Court President²⁵ from their own ranks for a three year mandate. The President may be re-elected.

Members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

The members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits, after they have ceased to hold office.²⁶

Apart from normal replacement, or death, the duties of a member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice. A member of the Court of Auditors may be deprived of his office only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.²⁷

In general, position of the members of the Court of Auditors corresponds to that of the members of Commission and Court of Justice. The provisions of the Protocol on the Privileges and Immunities of the European Communities applicable to the Judges of the Court of Justice shall also

vote is furnished to the Council on the form of an opinion of the European Parliament. For details, see: J.Rideau, *ibid.*, p.422; Ph.Manin, *ibid.*, p.340.

²⁴ Pursuant to previous provisions (paragraph 3 art.247 Treaty establishing EC) The unanimous vote of the Council was required for appointment of members of the Court of Auditors.

²⁵ His task was, as the previous Court President, Mr Fridman, used to say, to be "the last lawyer of a European tax payer"; cited acc. to : Ž.K.Zarka, *ibid.*, p.84.

²⁶ Paragraphs 4 and 5 Article 247 (previous Art.188b) Treaty establishing EC, amended by the Treaty of Nice.

²⁷ Paragraphs 6 and 7.

apply to the members of the Court of Auditors. The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.²⁸

2. Operations of the Court of Auditors follow the principle of collegiality. The Court shall adopt its annual reports, special reports or opinions by a majority of its members. It does not, however, rule out the possibility to set up internal panels for adoption of certain types of reports and opinions.²⁹ The Court members are assisted by the staff (comptrollers, auditors, administrative clerks, translators)³⁰ that are appointed by the Court. Detailed rules on operation are established by the Court in the Rules of Procedure approved by a qualified majority of the Council.³¹

3. In spite of its name, the Court of Auditors is not a judiciary institution and has no judicial powers in the narrow sense.³² It has no competence to institute proceedings and enact rulings in cases of financial violations, fraud and abuse of power. The acts passed by this Court have no binding nature and may be subject to evaluation of legality before the Court of Justice. However, the Court of Auditors may file for annulment of acts of other EU bodies if they are under its competence.³³

The main task of the Court of Auditors is to control the financial operations of the Union. The control shall also include examination of the accounts of all revenue and expenditure of all bodies set up by the Community in so far as the relevant constituent instrument does not preclude such examination. In addition to the budgetary funds, the Court of Auditors examines the

²⁸ Paragraphs 8 i 9.

²⁹ Paragraph 4 article 248 (previous Art.188c) Treaty establishing EC, amended by the Treaty of Nice.

³⁰ The Court of Auditors currently employs about 760 staff. For more information about the body, see: www.eca.eu.int.

³¹ Paragraph 4 article 248 (previous Art.188c) Treaty establishing EC, amended by the Treaty of Nice.

³² Since it is not a judiciary institution, but a body of external audit, the Court of Auditors is actually in the service of open and transparent financial operations of the EU, and it is frequently referred to as “financial conscience of Europe”. Accordingly, see: Ph.Manin, *ibid.*, p.341, J.Shaw, *Law of European Union*, Basingstone, 2002, p.150, N.Misita, *Osnovi prava Evropske unije*, Sarajevo, 2002, p.623; Ž.K.Zarka, *ibid.*, p.84-85; S.Zečević, *ibid.*, p.141.

³³ Article 230 (previous Art.173) Treaty establishing EC, amended by the Treaty of Nice.

funds beyond the budget plan of the Community. These include the functional budget for the European Coal and Steel Community, supply resources of companies and common enterprises of European Atomic Energy Community and the European Development Fund resources. Besides its competence includes control of expenditures relating to the common foreign and security policy and to cooperation in the fields of justice and home affairs when they are charged to the budget.³⁴

The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In the course of such examination it shall furnish a special report on any identified irregularity. Thus, a comprehensive examination is conducted covering all kinds of violations against legality, regularity and economic soundness that may adversely affect the revenue and expenditures of the Union. The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community, while the audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.³⁵

The audit is usually conducted *ex post*, i.e. after the close of each financial year. These audits may also be carried out before the closure of accounts for the financial year in question in order to avoid delay or ineffectiveness of the audit. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community in the premises of any Community body that manages revenue and expenditures on behalf of the Community, including the premises of any natural or legal person that receives funding from the Budget. They shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. This cooperation should be based on mutual trust and respect for their independence. These bodies or departments shall inform the Court of Auditors whether they intend to

³⁴ Article 268 (previous Art.199) Treaty establishing EC.

³⁵ Paragraph 2 art.248 (previous Art.188c) Treaty establishing EC, amended by the Treaty of Nice.

take part in the audit. Their cooperation, however, is not mandatory or necessary, so that the Court may conduct such examination independently. In respect to the European Investment Bank, the right of the Court of Auditors to access to information is regulated by a special agreement between the Court, Bank and Commission. If there is no such agreement, the Court is entitled to access to the information necessary to examine the revenue and expenditures of the Community managed by the Bank.³⁶

The results of the auditing examination are annual and special reports, opinions and statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.³⁷ The Court of Auditors shall draw up an annual report after the close of each financial year which shall be forwarded to the other institutions of the Community. It shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Communities. In addition to the general reports summarizing the results of examination, the Court of Auditors may also submit special reports on the extra-budgetary funds, *inter alia*, company of the European Atomic Energy Community and European Development Fund.

The Court of Auditors has the right and duty to adopt special reports on specific issues at any time, and at own initiative.³⁸ It is also empowered to issue opinion upon request of any of the Community bodies.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions. Besides, the court is competent for providing assistance to these bodies in their budget execution control.³⁹ Opinions, comments and statements of the Court of Auditors play an important role and impact. The European Parliament, acting on a recommendation from the Council which shall act by a

³⁶ Paragraph 3.

³⁷ Paragraph 4.

³⁸ Thus, e.g. in 1993 the Court of Auditors submitted special reports on milk quotas, funding traffic infrastructure and European strategic program of IT research and development. In 1998 the Court submitted a report on excessive daily allowances of the members of the European Parliament, and in 2000 a report on disputed financial practice of caucuses. For details, see i: Ž.K.Zarka, *ibid.*, p.86-87.

³⁹ Paragraph 4 article 248 (previous Art.188c) Treaty establishing EC, amended by the Treaty of Nice.

qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget.

III EUROPEAN CENTRAL BANK

1. The European Central Bank operates within the European System of Central Banks which was established at the same time as the Bank,⁴⁰ The system comprises national central banks of the member states of the monetary union.⁴¹ It means that the European Central Bank has not abolished or replaced the national central banks, but represents an integral, though the key and most influential part of a broader system.⁴² Accordingly, the national central banks shall act in accordance with the guidelines and instructions of the European Central Bank and furnish all necessary information. It may also resort to assistance of national banks for the operations within the competence of the European System of Central Banks.⁴³

National central banks continue performing the functions in their respective countries that do not collide with the objectives and tasks of the monetary union. Although they are included in the European system of central banks, their position is still unregulated in the internal law of the member states. They have the status of legal entity and subjectivity recognized in national regulations.⁴⁴ However, being integral parts of the European system, they have their autonomy and independence guaranteed in respect to the bodies of member states and Community bodies. Each Member State shall ensure that its national legislation is compatible with this Treaty and the Statute of the ESCB.⁴⁵ Statutes of the national central banks should include special provisions on protection of independence of

⁴⁰ 1 June 1998. See: article 8 (previous Art.4A) Treaty establishing EC.

⁴¹ Article 107, paragraph 1 (previous Art.106) Treaty establishing EC.

⁴² N.Misita, *ibid.*, p.634; S.Zečević, *ibid.*, p.137.

⁴³ Article 14 of the Statute.

⁴⁴ F.Amtenbrink, *The Democratic Accountability of Central Banks*, Oregon, 1999, pp.125-127.

⁴⁵ Article 109 (previous Art.108) Treaty establishing EC.

the Governor.⁴⁶ The national central bank, or any member of their decision-making bodies shall not seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body.⁴⁷

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 in accordance with the principle of an open market economy with free competition, favoring an efficient allocation of resources. Thus, the system contributes to the leading principles of Community economic and monetary policies (price stability, sound public finances, stable currency and sustainable balance). The basic tasks to be carried out through the ESCB shall be: to define and implement the monetary policy of the Community; to conduct foreign exchange operations; to hold and manage the official foreign reserves of the Member States; and to promote the smooth operation of payment systems.⁴⁸

The European system of central banks has no legal personality, or own managing bodies. It is only a structure or institutional framework integrating the European and national central banks.⁴⁹ That is why the European system of central banks shall be governed by the decision-making bodies of the European Central Bank.⁵⁰

2. The European Central Bank has legal personality.⁵¹ It is fully independent from the governments of the member states of the monetary

⁴⁶ Statutes must contain provisions on duration of Governor's mandate which may not be less than five years. The Governor may be relieved only if he no longer fulfils the requirements for the office or he has been guilty of serious misconduct. A decision to this effect may be referred to the court of Justice by the Governor concerned or the Governing Council on grounds of infringement of this Treaty. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff (see article 14, paragraph 2 of the Statute). In the doctrine (Ph.Manin, *ibid.*, pp.324-325) it is believed that in this way the Court of Justice is given the right to control legality of national legal acts, which is undoubtedly a novelty in the EU legislation.

⁴⁷ Article 108 (previous Art.107) Treaty establishing EC and article 7 of the Statute.

⁴⁸ Article 105 Treaty establishing EC and articles 2&3 of the Statute.

⁴⁹ D.Chalmers, E.Szysczak, *European Union Law*, Vol.II, Aldershot, 1998, p.145.

⁵⁰ Article 107, paragraph 3 (previous Art.106) Treaty establishing EC and article 8 of the Statute.

⁵¹ Article 107, paragraph 2 (previous Art.106) Treaty establishing EC. The Bank shall enjoy in each Member State the most extensive legal capacity accorded to legal persons under its law: it may, in particular acquire or dispose of movable and immovable property and may be a party in legal proceedings (article 9 of the Statute).

union and Community bodies. When exercising the powers and carrying out the tasks and duties conferred upon them no member of 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 exert such influence.⁵² The European Central Bank has its own capital, resources and sources of revenue. The capital comprises amounts subscribed by the national central banks following the distribution key based on the gross domestic product and population.⁵³

3. The European Central Bank is governed by the Governing Council and the Executive Board.⁵⁴ The General Council is a transitory body,⁵⁵ while the Economic and Financial Committee has an advisory role.⁵⁶ In practice, there is also the Eurogroup that operates informally.⁵⁷

The Executive Board shall comprise the President, the Vice- President and four other members appointed by agreement of the member states. Only nationals of Member States may be members of the Executive Board. They are appointed from among persons of recognized standing and professional experience in monetary or banking matters. Their term of office shall be eight years and shall not be renewable. The appointment decision is made by common accord of the Governments of the Member States at the level of Heads of State or of Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank.⁵⁸

⁵² Article 108 (previous Art.107) Treaty establishing EC i article 7 of the Statute.

⁵³ Articles 28 i 29 of the Statute.

⁵⁴ Paragraph 3 article 107 (previous Art.106) Treaty establishing EC.

⁵⁵ Article 45 of the Statute.

⁵⁶ Article 114, paragraphs 2-4 (previous Art.109C) Treaty establishing EC.

⁵⁷ Ž.K.Zarka, *ibid.*, p.96-97.

⁵⁸ Article 112 (previous Art.109A) Treaty establishing EC.

The main task of the Executive Board is to manage the Bank operationally and effectively. The Board shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council and give necessary instructions to the national central banks. The Executive Board may have certain powers delegated to it where the Governing Council so decides. Besides, the Executive Council shall have responsibility for the preparation of meetings of the Governing Council.⁵⁹

Each member of the Executive Board is entitled to vote and has one vote. Decisions shall be made by a simple majority of votes. In the event of a tie, the President shall have a casting vote.⁶⁰ The Executive Board President chairs the Governing Council, as well. The same person is the Bank President and the president of the European System of Central Banks,⁶¹ and in that capacity shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the monetary union.⁶²

The Governing Council shall comprise the members of the Executive Board and the Governors of the national central banks and shall meet at least ten times each year.⁶³ The President of the Council and a member of the Commission may participate in meetings, without having the right to vote. The President of the Council may submit a motion for deliberation to the Governing Council.⁶⁴

Each member of the Council is entitled to vote and has one vote. Decisions shall be made by a simple majority of votes. In the event of a tie, the President shall have a casting vote. The quorum is composed of two third of members present. Members of the Governing Council shall vote in person. By way of derogation from this rule, the Rules of Procedure may lay down that members may cast their vote by means of teleconferencing. These rules also provide that a member who is prevented from attending

⁵⁹ Article 12 of the Statute.

⁶⁰ Article 11.

⁶¹ Article 13.

⁶² Article 113, paragraph 2 (previous Art.109B) Treaty establishing EC.

⁶³ Article 112, paragraph 1 (previous Art.109A) Treaty establishing EC and article 10 of the Statute.

⁶⁴ Article 113, paragraph 1 (previous Art.109B) Treaty establishing EC.

meetings for a prolonged period may appoint an alternate as a member of the Governing Council.

Special weighted voting procedure shall be applied for decisions relating to the Bank capital, distribution of monetary revenue of national banks and distribution of profit and coverage of losses of the Bank. Votes of the Council members are weighted by the national central banks' shares in the subscribed capital of the Bank, while the Executive Board members shall have no voting right. A decision representing at least two thirds of the subscribed capital and at least a half of the shareholders shall be adopted.⁶⁵

Because of the Union enlargement, the Council passed a decision ratified by all member states⁶⁶ to change the decision making methodology in the Governing Council once the number of Governors exceeds 15. Sticking to the role that each member is entitled to one vote, the decision also stipulates classification of Governors by the economic power and importance of their states, as well as a complex rotations system among the groups. The Treaty of Lisbon has taken over this solution.⁶⁷

The Governing Council shall adopt the guidelines and take the decisions necessary to ensure performance of the tasks entrusted to the ESCB. It shall also formulate the Community monetary policy relating to intermediate monetary objectives, key interest rates and the supply of reserves.⁶⁸ Besides, it shall also exercise the advisory function and decide on international cooperation.⁶⁹

The third Bank body, the General Council is a transitional institution since not all EU member states are parts of the monetary union. It comprises the

⁶⁵ Article 10 of the Statute.

⁶⁶ Council decision of 21 March 2003 that came into force on 1 June 2004. For details, see: Ph. Manin, *ibid.*, p.326.

⁶⁷ Article 10 of the Statute (Protocol no.4) paragraph 2 stipulates that from the date on which the number of governors exceeds 15, until it reaches 22, they shall be allocated into two groups. The first group shall be composed of five governors with four voting rights, and the second of the remaining governors with eleven voting rights. As from the date on which the number of governors reaches 22, they will be allocated to three groups. Again the first group shall be composed of five governors with four voting rights, the second of half of the total number of governors with eight voting right, and the third of the remaining governors with three voting rights.

⁶⁸ Article 12 of the Statute.

⁶⁹ Articles 4 i 6 of the Statute.

President and Vice-President of the Bank, and Governors of the national central banks of all member states. Other members of the Executive Board may participate, without having the right to vote, in the General Council meetings.⁷⁰ The President of the Council and a member of the Commission have the same option.⁷¹

The General Council is not a decision-making body. It shall investigate the economic and financial situation in member states that do not fulfill the requirements to progress into the last, third phase of the monetary union. Accordingly, it reports to the Council to pass a final decision on accession of a member state to the single currency system.⁷²

The Economic and Financial Committee is an advisory body. It replaced the Monetary Committee that was dissolved at the beginning of the third phases of the monetary union. The Member States, the Commission and the ECB each appoint no more than two members of the Committee. It has the task to keep under review the economic and financial situation of the Member States and of the Community and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions. Besides, it is required to contribute to the preparation of the work of the Council of Ministers of Finance and at least once a year examine the situation in the area of the movement of capital and the freedom of payments.⁷³

The Euro Council is not recognized as a special body in the establishing documents, but is an informal body of the ministers of finance of the member states whose currency is the euro. The council meets each month before the meeting of the Council of Ministers of Finance and Economy, and it is chaired by the Council Chairperson. Representatives of the Commission and European Central Bank may participate in the meeting. Since it has no official legal grounds, the Euro Council is not a decision-making body, but is a forum for discussion, exchange of opinions on issues relating to the common currency, preparation of the budget and

⁷⁰ Article 45 of the Statute.

⁷¹ Paragraph 2 article 46 of the Statute.

⁷² Article 47 of the Statute

⁷³ Article 114, paragraphs 2-4 (previous Art.109C) Treaty establishing EC.

harmonization of macroeconomic policies of the countries in the Euro zone.⁷⁴

4. Competence of the European Central Bank covers a large number of powers defined in the treaty and Statutes. Its main function implies formulation and implementation of monetary policy of the Union and stability of the Euro. The task is accomplished by the policy of interest rates on a reasonable level, avoiding the risk of inflation.⁷⁵ The special powers include the advisory function, collection of statistical data, issuance of bank notes and coins and international monetary cooperation. Besides, the Bank may issue acts in the monetary area, examines operations of credit institutions, file actions to the Court of Justice and duty to report on its operations to other EU bodies.

The advisory role is reflected in the right of European Central Bank to be consulted in the process of adoption of acts on the Community and national levels, and powers to give opinion on matters within its fields of competence. The establishing documents stipulate mandatory consulting of the Bank on any proposed Community act. The same applies to draft of national legislations, but the Council may set certain limits according to the Commission proposal or advice of the Bank, after consultation with the European Parliament. In turn, the Bank may submit opinions to the appropriate Community institutions (Commission, Council and Parliament) or bodies or to national authorities on matters within its fields of competence.⁷⁶

The Bank shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes the Bank shall cooperate with Community institutions, bodies, offices or agencies and with the competent authorities of the Member States or third countries and with international organizations. It is authorized to process and distribute the collected statistical data within its field of competence.⁷⁷

⁷⁴ For details, see: Ž.K.Zarka, *ibid.*, p.96-97.

⁷⁵ Paragraph 1 article 105, Treaty establishing EC.

⁷⁶ Paragraphs 4 and 5 article 105 Treaty establishing EC and article 4 of the Statute

⁷⁷ Article 5 of the Statute.

The ECB shall have the right to decide on the issue of bank notes (euro) within the Community as the only legal tender within the Community. More precisely, Bank shall have the exclusive right to authorize the issue of bank notes, while the national central banks may also issue such notes. Member States may issue coins subject to approval by the ECB of the volume of the issue. The Council may, after consulting the ECB, adopt measures to harmonize the denominations and technical specifications of all coins.⁷⁸

In the field of international cooperation the ECB shall decide how the European System of Central Banks shall be represented. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions and may establish relations with central banks and financial institution of third countries and international organizations.⁷⁹

In order to carry out the tasks entrusted to the Bank, it shall make regulations in the monetary area. In general, they shall correspond to the decisions adopted by the Community bodies. Except for the directives and guidelines, Bank shall be entitled to make decisions, recommendations and deliver opinions. The regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A decision shall be binding in its entirety upon those to whom it is addressed, while recommendations and opinions shall have no binding force. Besides, within the limits and under the conditions adopted by the Council under the procedure laid down in Article 106(6), the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.⁸⁰

The ESCB shall contribute to supervision of credit institutions. It has the power to give opinion and be consulted by the Council, Commission and national authorities of the Member States relating to implementation of Community acts relating to the quality of operations and stability of the financial system. The Council may, acting unanimously on a proposal from the Commission after receiving the assent of the European Parliament,

⁷⁸ Article 106 (previous Art.105A) Treaty establishing EC.

⁷⁹ Article 6 of the Statute.

⁸⁰ Article 110 (previous Art.108A) Treaty establishing EC and article 34 of the Statute.

confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.⁸¹

The Bank may institute proceedings under before the European Court of Justice. It may file against a national central bank that fails to fulfill an obligation under the Treaty or Statute of the European System of Central Banks. Before that, the Bank shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations and give a deadline to comply.⁸² Besides, the Bank is entitled to file for review of legality of binding acts enacted by other Community bodies within its field of competence for the purpose of protecting their prerogatives. Conversely, acts enacted by the Bank are also subject to review of legality, and may be contested at the Court of Justice.⁸³

The Bank reports on its operations extensively. In addition to weekly consolidated financial statement the Bank shall draw up and publish reports on the activities of the ESCB at least quarterly.⁸⁴ The ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council. The Bank President presents the report to the Council and Parliament, which may be followed by public debate.⁸⁵

IV EUROPEAN INVESTMENT BANK

1. All EU member states are also members of the European Investment Bank. The Bank shall have a legal personality. It has own capital that the member states subscribe proportionally to their economic power.⁸⁶ A part

⁸¹ Article 105, paragraph 6 Treaty establishing EC and article 25 of the Statute.

⁸² Article 237 (d) (previous Art.180) Treaty establishing EC and article 35 of the Statute.

⁸³ Article 230 (previous Art.173) Treaty establishing EC.

⁸⁴ Article 15 of the Statute.

⁸⁵ Paragraph 3 article 113 (previous Art.109B) Treaty establishing EC.

⁸⁶ As of 1 January 2007, the total Bank capital amounts to eur 164 billion. Amounts of capital subscribed by member States are presented in art.4 of the Bank Statute.

of the capital is generated by the Bank itself by placement of capital at financial markets. The Bank is seated in Luxembourg.

The Treaty has only basic provisions on the positions and duties of the Bank.⁸⁷ The Statute of the European Investment Bank is laid down in a Protocol annexed to this Treaty. The Statute may be amended by unanimous decision of the Council upon request of the European Investment Bank or after consultations with the European Parliament or Commission, or upon request of the Commission and after consultations with the European Parliament and European Investment Bank.⁸⁸

2. The European Investment Bank shall be directed by the Board of Directors, Governing Council and a Management Committee.⁸⁹ Verification Board is also added to audit Bank operations.

The Board of Governors is the most important body of the Bank. It is composed of ministers appointed by the Member States, usually Ministers of Finance or Economy. The Board shall lay down general directives for the credit policy, with particular reference to the objectives to be pursued as progress is made in the attainment of the common market.

The Board of Governors shall ensure that these directives are implemented. As the supreme body, it supervises implementation of directives. Besides, it shall decide whether to increase the subscribed capital, approve loans to non-EU states, approve the annual balance sheet and profit and loss account, approve the rules of procedure of the Bank, adopt the annual report, appoint and dismiss members of the Board of Directors, Executive Board and Verification Committee⁹⁰

Decisions of the Board of Governors shall be taken by a majority of its members. This majority must represent at least 50% of the subscribed capital. When qualified majority is needed, the voting system stipulated for EU Council shall apply accordingly.⁹¹ The exceptions are any decisions

⁸⁷ Articles 266-267 (previous Art.198 D-E).

⁸⁸ Article 266, paragraph 3, amended by the Treaty of Nice.

⁸⁹ Article 8 of the Bank Statute.

⁹⁰ Article 9.

⁹¹ Article 10 of the Bank Statute. See also art.205 (previous Art.148) Treaty establishing EC.

concerning the suspension of the operations of the Bank or its liquidation, where unanimous decision is required.⁹²

The Board of Directors is the executive body of the Bank.⁹³ It plays the central role in implementation of decisions and measures enacted by the Council. It is composed of twenty-six directors and sixteen alternate directors⁹⁴ and appointed by the Council for a 5-year term. They may be re-elected. They are usually elected from the ranks of high officials in the ministries of finance and economy or bank/credit institutions management.⁹⁵ The Board may also co-opt six experts (three regular and three substitutes) with no voting right.

Out of the 26 directors, one shall be nominated by each Member State, and one nominated by the Commission. The alternate directors shall be appointed by the following key: two from Germany, France, Italy and United Kingdom, each: one jointly by Spain and Portugal, as well as Belgium, Luxemburg and Holland; two jointly from Denmark, Greece and Romania, as well as from Estonia, Latvia, Lithuania, Austria, Finland and Sweden; and three jointly from Bulgaria, Cyprus, Hungary, Malta, Poland, Slovenia and Slovakia, and one appointed by the Commission.⁹⁶

The Board of Directors shall see that the Bank is properly run; it shall ensure that it is managed in accordance with the provisions of this Treaty and of this Statute and with the general directives laid down by the Board of Governors. It shall have sole power to take decisions in respect of granting loans and guarantees and raising loans; it shall fix the interest rates on loans granted and the commission on guarantees; at the end of the financial year the Board of Directors shall submit a report to the Board of Governors and shall publish it when approved. If the annual report is not approved, the Board of Directors shall resign.⁹⁷

⁹² Paragraph 4 art.9 of the Bank Statute.

⁹³ English: Board of Directors; French: Conseil d'administration.

⁹⁴ Paragraph 2 art.11 of the Statute, amended by the Act of Accession attached to the Treaty of Accession of 25 April 2005.

⁹⁵ J.Rideau, *ibid.*, p.441.

⁹⁶ Paragraph 2 article 11 of the Bank Statute.

⁹⁷ Paragraph3.

Each director shall have one vote on the Board of Directors. Decisions of the Board of Directors shall be taken by at least one third of the members entitled to vote representing at least 50% of the subscribed capital. A qualified majority shall require 18 votes in favor and 68% of the subscribed capital. The rules of procedure of the bank shall lay down the quorum required for the decisions.⁹⁸

The Management Committee⁹⁹ is in charge of current operations of the Bank. It is composed a President and eight Vice-Presidents appointed for a period of six years by the Board of Governors on a proposal from the Board of Directors. Their appointments shall be renewable.

The Board of Governors, acting unanimously, may vary the number of members on the Management Committee.¹⁰⁰ The President or, if he is prevented, a Vice-President shall represent the Bank in judicial and other matters. The officials and other employees of the Bank shall be under the authority of the President and shall be engaged and discharged by him. In the selection of staff, account shall be taken not only of personal ability and qualifications but also of an equitable representation of nationals of Member States.¹⁰¹

In addition to the current business of the Bank, the Management Committee shall be responsible for preparation and execution of decisions of the Board of Directors, in particular decisions on the raising of loans and the granting of loans and guarantees. It shall act by a majority when delivering opinions on proposals for raising loans or granting loans and guarantees. It operates under the control of the Board of Directors. However, the Management Committee and the staff of the Bank shall be responsible only to the Bank and shall be completely independent in the performance of their duties. Decision of their dismissal, in case they fail to fulfill the requirements for their duty, may be enacted by the Governing Council upon advice of the Board of Directors.¹⁰²

⁹⁸ Article 12 of the Bank Statute.

⁹⁹ Eng. Management Committee; Fr. Comité de direction.

¹⁰⁰ Paragraph 1 art. 13 of the Bank Statute.

¹⁰¹ Paragraphs 6 and 7.

¹⁰² Paragraphs 2-4 and 8.

A (Verification) Committee consisting of three members, appointed on the grounds of their competence by the Board of Governors, shall annually verify that the operations of the Bank have been conducted and its books kept in a proper manner. The Committee shall confirm that the balance sheet and profit, and loss account are in agreement with the accounts and faithfully reflect the position of the Bank in respect of its assets and liabilities.¹⁰³ Before adoption of the annual report, the Board of Governors regularly obtains opinion and report of the Committee. A special department for internal audit of the bank and international body for external audit are involved in financial control.¹⁰⁴

3. The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilizing its own resources, to the balanced and steady development of the common market in the interest of the Community. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the projects in all sectors of the economy. It realizes the task by approval of loans and issuing guarantees for funding of project in accordance with the EU economic and political objectives. In the process, the Bank does not aspire to lucrative objections or generation of profit.

The Bank particularly supports the following types of projects: for developing less-developed regions; for modernizing or converting undertakings or for developing fresh activities called for by the progressive establishment of the common market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States; and projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States. The Bank shall facilitate the financing of investment programs in conjunction with assistance from the structural Funds and other Community financial instruments.¹⁰⁵

¹⁰³ Article 14 of the Bank Statute.

¹⁰⁴ For details, see: J.Rideau, *op. cit.*, p.442; Z.Stefanović, *Pravo Evropske unije*, Beograd, 2003, p.122-123.

¹⁰⁵ Article 267 (previous Art.198E) Treaty establishing EC. The Bank earmarks most of its resources to loans for development of underdeveloped regions in the EU. In addition to regional and developmental infrastructural projects, the list of funded investments includes constructions of traffic and telecommunication infrastructure, environment protection, measures for improvement

Within the Community policies of support and development, the European Investment Bank is competent for financing project in non-EU states. This primarily refers to assistance to third countries with which various types of association agreements have been signed. According to their provisions, the Bank has, so far, supported numerous projects in the Mediterranean countries, and countries in Africa, Caribbean and Pacific region, Middle, Eastern and SE Europe. Nevertheless, even without these association agreements it has financially intervened in countries of Asia and South America.¹⁰⁶

For project financing, the Bank shall grant loans for investment projects to be carried out in the European territories of Member States, to the extent that funds are not available from other sources. The loan beneficiaries may be member states, private or public undertakings with the seat on the territory of Member States. Only exceptionally, the Bank may grant loans for investment projects to be carried out, in whole or in part, outside the territories of Member States. Unanimous decision of the Board of Governors is required, acting on a proposal from the Board of Directors.¹⁰⁷

The Bank participates in project financing only partially. Therefore, loans shall be granted only on condition that other sources of finance are also used. When granting a loan to an undertaking or to a body other than a Member State, the Bank shall make the loan conditional either on a

of urban structure, increased safety in energy supply in EU, as well as strengthening of international competitiveness of the industry and its integration on the EU level, and in particular support to small and medium enterprises. Immediately before the establishment of the Economic and Monetary Union, the Bank financially supported introduction of the common currency. In recent years, its activities have been expanded to promotion of development and employment in EU. For details, see: O.Hilenbrand, *Evropska investiciona banka, Evropa od A do Š* (translation), Beograd, 2003, p.99-100.

¹⁰⁶ In 2000 the Bank decided to provide EUR 8,5 billion of additional loans for candidate countries for membership in EU by 2003. The sum is added to the amount of EUR 8.7 that had already been planned for the period up to 2007, making up for EUR 17.2 billion for a seven year period. At the same time, countries of Africa, Caribbean and Pacific were granted, pursuant to the Lome Convention and Cotonou Agreement, several millions of euros each year for project financing. Thus, in 2001, the Bank allocated EUR 3 billion for project in candidate countries, and EUR 2.9 billion for other partner countries. Besides, the Bank participates with 3% of available capital in the European Bank for Reconstruction and Development, established by the Paris Agreement in 1990, which also financially intervenes in these countries. For details, see: P.Burina, *Les interventions de la BEI à l'extérieur de la CEE*, Paris, 1988; J.Rideau, *ibid.*, pp.442-443; Ž.K.Zarka, *ibid.*, p.104-105.

¹⁰⁷ Paragraph 1 art.18 of the Bank Statute.

guarantee from the Member State in whose territory the project will be carried out or on other adequate guarantees. The Bank may guarantee loans contracted by public or private undertakings. The aggregate amount outstanding at any time of loans and guarantees granted by the Bank shall not exceed 50% of its subscribed capital.¹⁰⁸

Interest rates on loans and commission on guarantees shall be adjusted to conditions prevailing on the capital market. Although the Bank does not aspire to profit generating, its income therefrom shall enable the Bank to meet its obligations, to cover its expenses and to build up a reserve fund.¹⁰⁹

Summary

The EU institutional structure is an important innovation in the area of permanent organization of international cooperation. Its complex institutional mechanism is composed of specific bodies with composition and functions without precedent in the history of international organizations. In addition to the Commission and European Parliament, the members of which are not representatives of the Member States, but international officials with independent status, i.e. directly elected representatives of the electorate of the Member States, the institutional framework of the Union includes the financial institutions. These are: Court of Auditors, European Central Bank and European Investment Bank. The establishment and operations of these bodies result from development of European integrations in the areas of budgeting, monetary and banking affairs.

Establishment of the Court of Auditors resulted from gradual independence of Community sources of financing, i.e. replacement of contributions of the Member States by own Community income. At the same time, their occurrence coincides with the reform of budgetary procedure and strengthening of public powers of the European Parliament in this area. The Court of Auditors is the supreme EU body of financial control.

¹⁰⁸ Paragraphs 2-5.

¹⁰⁹ Article 19 of the Statute. The Bank shall not grant any reduction in interest rates. Where a reduction in the interest rate appears desirable in view of the nature of the project to be financed, the Member State concerned or some other agency may grant aid towards the payment of interest.

Establishment of the European Central Bank took place in the last, third phase of establishment of the economic and monetary union. As a monetary union body, the Bank cooperates with the national central banks of the member States within the European System of Central Banks. Although it is not recognized as one of the main EU bodies, the European Central Bank has a status of a Community institution.

The European Investment Bank was established with the establishment of the Communities as a banking and financial institution what makes up the European Investment Bank Group together with the European Investment Fund. The legal position of the bank is somewhere between an independent bank and Community institution. Financially, it is fully independent and does not depend on the budget, but is affiliated with the Community through provisions of the establishing Treaties that regulate its establishment, organization and operations.