

Legal status of the European Central Bank

Фінансово-правовий статус Європейського центрального банку

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European Central Bank (ECB), aims of the ECB, price stability, the ECB principles.

Ключові слова:

Європейський центральний банк, цілі Європейського центрального банку, цінова стабільність, принципи діяльності Європейського центрального банку.

According to the definition laid down in the Financial dictionary – Legal Terms, the European Central Bank (Eng. European Central Bank) is the body that is responsible for the common monetary policy of member countries of the Eurozone, currency operations, management and maintenance of foreign currency reserves and the ensuring of the smooth operation of the payment system¹. The European Central Bank contributes to the events, content of which is to strengthen the stability of the financial system. It enjoys the exclusive right to issue Euro within the community. Its mission is to ensure price stability and support the general economic policy of community.

The European Central Bank officially began operations on June 1, 1998 According to the art.282 of the Treaty on the Functioning of the European Union, the bank together with the national central banks constitute the European System of Central Banks (ESCB) (Eurosystem) and conducting monetary policy of the Union². The primary objective of the ESCB and of the ECB is to maintain the price stability, i.e. to safeguard the value of the euro. Price stability is essential for economic growth and job creation – two of the European Union's objectives – and it represents the most important contribution monetary policy can make in that area. The Maastricht Treaty enshrines the independence of the ECB from European and national political bodies. To achieve the stated goal Eurosystem has at its disposal a set of tools of monetary – credit policy, as defined in the Statute of the ECB.

These tools are:

- minimum reserves (The ECB reserve requirements is 2% (with legally established range of possible fluctuations 0–10%));
- operation on the open market (under open market operations in this context should be understood the one not usual for all operations of the central bank in the securities market (often public), and a wider set of mechanisms of monetary control, the main feature of which is an initiative that is from the central bank;
- credit and deposit funds (Authorized ECB counterparties are able to use the mechanism of placing deposits in order to place overnight deposits with the national central bank).

The Eurosystem is responsible for:

- defining and implementing monetary policy;
- conducting foreign exchange operations;
- holding and managing the euro area's foreign currency reserves;
- promoting the smooth operation of payment systems.

The ECB carries out specific tasks in the areas of banking supervision, banknotes, statistics, macroprudential policy and financial stability as well as international and European cooperation.

¹ Словник фінансово-правових термінів / за заг. ред. д. ю. н., проф. Л.К. Воронової. – 2-е вид., переробл. і доповн. – К. : Алерта, 2011. – 558 с.

² Договір про функціонування Європейського Союзу [Електронний ресурс]. – Режим доступу : file:///C:/Users/%D0%AE%D0%B7%D0%B5%D1%80/Downloads/consolidated_versions_20120516.PDF.

"The primary objective of the European System of Central Banks [...] shall be to maintain price stability" (Article 127 of the Treaty on the Functioning of the European Union)³.

This is the key provision in the monetary policy chapter of the Treaty on the Functioning of the European Union. By having the monetary policy of the ECB focus on this objective, the Treaty incorporates modern economic thinking on the role, scope and limits of monetary policy and establishes the basis, in institutional and organisational terms, for the central banking arrangements in Economic and Monetary Union.

The Governing Council of the European Central Bank aims to keep inflation below, but close to, 2% over the medium term. In order to achieve its primary objective, the Governing Council bases its decisions on a two-pillar monetary policy strategy and implements them using its operational framework.

Treaty on the Functioning of the European Union provided for the formation of the Economic and Monetary Union (hereinafter – EMU) by a package of measures, which were to take place in three stages. The first stage covered the period from 1 July 1990 to 31 December 1993. In this period were to implement the provisions of the Treaty, which concerned the free movement of capital and liberalization of the financial institutions to ensure the convergence of national policies in the field of economics and finance. The second stage covered the period from 1 January 1994 and had to be completed in 1996 to achieve the goal, but no later than 31 December 1998. During this phase had to make all necessary measures at the national level and at the level of the EU to transition to a single currency no later than the beginning of 1999. From 1 January 1999 the implementation of the third stage, it was transition to the single currency.

The Treaty on European Union, expressed required financial and economic criteria, accordance been announced that an essential condition of membership in the monetary union and institutional framework of EMU. The Treaty established the European Monetary Institute, which status was defined as the constituent agreement and a special protocol containing the statute of the European Monetary Institute. The European Monetary Institute, which was created in 1994, on the one hand, took over all the main functions of the monetary authorities that existed earlier (the Committee of Governors national central banks, the European Monetary Cooperation Fund) and performed advisory and control functions; on the otherhand – the European Monetary Institute prepared the formation of the European System of Central Banks (hereinafter – the ESCB) and the European Central Bank (hereinafter – the ECB) in the material, organizational and legal terms. One of the most important functions of the European Monetary Institute is supervision and control the activities of Member States, necessary to prepare for the third phase and participating in monetary union in accordance with strict criteria identified in a number of legal acts of the EU.

In according with M. Sidak, the aim of the ECB is to forme a proper climate for businesses and individuals for investment, to provide the basis of social stability as supporting a fair distribution of income, affect on raising the living standards of citizens. Analyzing the provisions of Article 105 of the Maastricht Treaty, the Statute of the ESCB and the ECB M.Sidak defines the list of major tasks of the European Central Bank. According to him, the main tasks of the ECB include are the following:

- 1) To ensure price stability within the framework of the Eurosystem and the ESCB;
- 2) To support the economic policy of the EU;
- 3) Define, implement and manage the monetary policy of the EU (according to Article 3 of the Statute of the ESCB and the ECB);
- 4) Provide the necessary information to the competent authorities of the EU;
- 5) Provide advice to the competent authorities in the adoption of regulations at EU level (Article 4 of the Statute of the ESCB and the ECB);
- 6) Take normative – legal acts (sift law);
- 7) To carry out open market operations;
- 8) Manage foreign currency reserves of the ECB and the national central banks;
- 9) Ensure proper and smooth functioning of payment systems;
- 10) Provide permits for emission of currency unit-euro;
- 11) Carry out banking inspection (Article 25 of the Statute of the ESCB and the ECB);
- 12) To determine the rates of interest, value of the euro and conduct foreign currency intervention;
- 13) Issue orders that are mandatory for the members of the Economic and Monetary Union, to define and

³ Протокол про Статут Європейської системи центральних банків та Європейського Центрального Банку [Електронний ресурс]. – Режим доступу : http://zakon5.rada.gov.ua/laws/show/994_681.

- implement the monetary policy for the countries of the Eurosystem;
- 14) Manage the official foreign reserves of the EU Member States;
- 15) Maintain working communications with relevant institutions, authorities and communities in the European Union in tasks that faced to the Eurosystem;
- 16) To calculate and determine the required minimum reserves (Article 19 of the Statute of the ESCB and the ECB);
- 17) Consolidate the rules on liability of prosecution of the banking relationships (Article 34 of the Statute of the ESCB and the ECB);
- 18) Carry out foreign exchange operations (Article 20 of the Statute of the ESCB and the ECB);
- 19) To control of reporting (monthly bulletin of the European Central Bank, the consolidated weekly financial statement of the Eurosystem and annual report);
- 20) To monitor financial risks;
- 21) To perform advisory functions to Union institutions and national authorities of countries – EU member states;
- 22) To provide the work of the information and technical system of the EU banking sector.

The European Central Bank within its powers and to fulfill the tasks entrusted to it, has the right to issue instructions (guidelines), instructions (instructions), internal decisions (internal decisions), decisions (decisions), recommendations (recommendations), regulations (regulations). According to the EU legal provisions, regulations have general application and is required in its entirety and directly applicable in all Member States. Recommendations and opinions have no obligatory force. The decisions are mandatory in all elements to whom it addressed⁴.

In this study, we want to stop attention on the principles of creation of the European Central Bank, and described its organizational – legal form, the order of the authorized capital of the ECB, profit distribution, and financial responsibility for its activities.

Treaty establishing the European Community, the ECB defines a subject of law (st.107 Treaty), except that it has characteristics of a public authority and an economic subjects, and is completely independent from the rest of the governing bodies of the European Union. ECB activities based on the principles of independent national states and supranational bodies decisions, which involves primarily the lack of enforcement in covering their internal and external debts. According to the Article 9 of the Protocol, the ECB is a subject of law and is used in each country – member of EU in all possible legal personality, including be a part in legal proceedings, to acquire movable and immovable property and dispose of them according to legal requirements. According to the research, despite the fact that the process of formation and capital increase, the rights and obligations of the Member States on capital and dividends are similar to the rights and responsibilities of shareholders, the ECB has not established as a joint stock company⁵.

The authorized capital of the ECB is 5 billion Euros. The contribution of individual countries in the authorized capital of the ECB is determined according to the proportion of its gross national product in total the gross domestic product of EU and the number of inhabitants of this country. Central banks of EU countries – members must submit to the ECB's foreign currency reserves totaling the equivalent of 50 billion Euros. The size of individual NCBs reserve is determined by its share in the authorized capital of the ECB. The total amount of the fund shall not exceed the bank's capital. Balance profit is distributed among the national central banks in proportion to their paid-up capital. The European Central Bank has all the right to keep and reserves represented order and should use them only for the purposes specified in the Statute of the ESCB. In the information – analytical materials of the National Bank of Ukraine "Restructuring the banking system of Ukraine in the context of European integration" Issue 8 Ed V. Mishchenko, A. Shapovalov, Vladimir Krylov, and others notes that the share distributed among 15 countries: Bundesbank – 24.4%, Banque de France – 16.9%, Banco di Italia – 15%, Bank of England – 14.7%, etc. The ECB provided foreign currency assets in third countries, the euro and SDR3. SDR (s) – Specially drawing rights (SDRs), an international reserve asset that is used as a unit of the country – members of the International Monetary Fund and some international organizations.

⁴ Протокол про Статут Європейської системи центральних банків та Європейського Центрального банку [Електронний ресурс]. – Режим доступу : http://zakon5.rada.gov.ua/laws/show/994_681.

⁵ European integration: an economic perspective / [edited by Jurgen Drud Hansen]. – N.Y. : Oxford : Oxford University Press, 2001. – 255 p.

The procedure for the distribution of cash profits of the central banks of EU countries – member carried out according to the European Central Bank decision number 2011/66 / EC of 25 November 2010 "Distribution of profits of the national central banks of the – Member States whose currency is the euro". According to the requirements of Article 5 "Calculation of profits NCBs ECB carried out on a daily basis. The calculation is based on accounting data that NCBs inform the ECB. The ECB shall inform the NCBs the total value quarterly... An average value of profit each NCB in proportion to the subscribed capital carried out at the end of each financial year"⁶.

Conclusion. In this study, author describes the tasks of the European Central Bank, and the main characteristics of its legal status. The author comes to the conclusion, that a clear consolidation of the main objective of the ECB serves to guarantee the effective organization of its activities. In the context of Ukraine's orientation towards the integration into EU, the main objective of the National Bank of Ukraine is to guarantee price stability. This could serve as the most effective mechanism of the central bank to support the country's economic development. Further research would be aimed at the introducing of European principles of regulation of banking operations in Ukraine.

Summary

This article describes the basic operation and principles of the European Central Bank and the foundation of its legal status with the the main focus on ECB's operational tasks. Summarizing the views of scientists on the legal status of the European Central Bank, it could be argued that domestic scientists have not payed enough attention to this issue. The relationships in the sphere of the ECB are reflected in studies of leading domestic and foreign scientists, such as: LK Voronov, NV Sidak, VI Mishchenko, AV Shapovalov, however they only analyzed some aspects of banking systems in the EU countries, without providing comprehensive analysis of the regulation and functioning of the European Central Bank. According to the foreign policy of Ukraine's integration into the European Union, the author believes that the study of the origin and functioning of the main financial regulator is very important..

Анотація

У статті автором описуються передумови виникнення та функціонування Європейського центрального банку. Розкрито основні характеристики його правового статусу. Увага концентрується на меті функціонування Європейського центрального банку. Узагальнюючи відображені в наукових джерелах погляди вчених щодо правового статусу Європейського центрального банку, можна стверджувати, що цьому питанню не було приділено достатньої уваги вітчизняними науковцями. Правовідносини у сфері діяльності Європейського центрального банку відображено в дослідженнях провідних вітчизняних і зарубіжних учених, а саме: Л.К. Воронової, М.В. Сідака, В.І. Міщенко, А.В. Шаповалова та інших. Але ними проаналізовано лише окремі аспекти організації банківських систем у державах-членах Європейського Союзу, проте не проведено комплексного аналізу регулювання організації та функціонування Європейського центрального банку. Зважаючи на зовнішньополітичний напрям України до інтеграції в Європейський Союз, вважаємо, що дослідження питань виникнення й функціонування основного фінансового регулятора на сьогодні є досить актуальним.

⁶ Рішення Європейського центрального банку від 25 листопада 2010 року про розподіл грошових прибутків національних центральних банків держав-членів, валютою яких є євро (перевидання) (ЄЦБ/2010/23) [Електронний ресурс]. – Режим доступу : https://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0ahUKewij-LrW25j-MAhWBSiwKHUIzB0kQFghUMAc&url=http%3A%2F%2Fold.minjust.gov.ua%2Ffile%2F30931&usg=AFQjCNFqmtjYud9VZ6CC-23mCy_IKts6A&bvm=bv.119745492,d.bGg.

Literature:

1. Словник фінансово-правових термінів / за заг. ред. д. ю. н., проф. Л.К. Воронової. – 2-е вид., переробл. і доповн. – К. : Алерта, 2011. – 558 с.
2. Договір про функціонування Європейського Союзу [Електронний ресурс]. – Режим доступу : file:///C:/Users/%D0%AE%D0%B7%D0%B5%D1%80/Downloads/consolidated_versions_20120516.PDF.
3. Протокол про Статут Європейської системи центральних банків та Європейського Центрального Банку [Електронний ресурс]. – Режим доступу : http://zakon5.rada.gov.ua/laws/show/994_681.
4. European integration: an economic perspective / [edited by Jurgen Drud Hansen]. – N.Y. : Oxford : Oxford University Press, 2001. – 255 p.
5. Рішення Європейського центрального банку від 25 листопада 2010 року про розподіл грошових прибутків національних центральних банків держав-членів, валютою яких є євро (перевидання) (ЄЦБ/2010/23) [Електронний ресурс]. – Режим доступу : https://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0ahUKEw-ij-LrW25jMAhWBSiwKHUIzB0kQFghUMAc&url=http%3A%2F%2Fold.minjust.gov.ua%2Ffile%2F30931&usq=AFQjCNFqmtjYud9VZ6CC23mCy_IKts6A&bvm=bv.119745492,d.bGg.

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