

Amendment of the Bundesbank Act for Stage Three of European economic and monetary union

In connection with the preparations for the introduction of the euro, the Bundesbank Act has been amended. With the Sixth Act Amending the Deutsche Bundesbank Act, promulgated in the Federal Law Gazette on December 30, 1997, German central banking legislation has been adapted to the requirements under Community law for the participation of the Federal Republic of Germany in Stage Three of monetary union. This also provided an opportunity to amend the regulations governing the Bank's capital and reserves as well as its accounting regulations. The present article introduces the contents and history of the amended version of the Act.

The Sixth Act Amending the Deutsche Bundesbank Act of December 22, 1997 (Federal Law Gazette I, page 3274) was adopted in preparation for the introduction of the euro. Under Article 108 of the Treaty establishing the European Community (EC Treaty), each Member State is required to ensure, at the latest at the date of the establishment of the European System of Central Banks (ESCB) and the European Central Bank (ECB), that its national legislation, including the statutes of its national central bank, is compatible with the EC Treaty and the Statute of the ESCB. Under Article 109j (1) of the EC Treaty, the convergence reports of the European Commission and the European Monetary Institute (EMI) shall include an examination of not only fulfilment of the economic criteria but also the extent to which the national legislation of

the individual Member States, including the statutes of their respective national central banks, are compatible with Articles 107 and 108 of the EC Treaty and the Statute of the ESCB. The examination of what is known as the legal convergence is thus an important criterion for the overall fulfilment of the convergence criteria, on which the selection of the Member States to participate in Stage Three will be based. Besides the fulfilment of the obligations deriving from Article 108 of the EC Treaty, the amended Bundesbank Act also envisages adaptation of the regulations governing the Bank's capital and reserves as well as those governing its accounting practices. These amendments are not a legal precondition for entry into Stage Three of European economic and monetary union, but are closely linked to it.

*The Federal
Government's
draft legislation*

Initially, the aim of the Federal Government's draft legislation was solely the fulfilment of the obligations deriving from Article 108 of the EC Treaty. Three of the amendments aim at adapting the Deutsche Bundesbank's independence to Community law. The others are intended to integrate the Bank into the new system.

Independence

In order to strengthen their personal independence, the minimum term of office of the President of the Deutsche Bundesbank, the other Members of the Board, and the Presidents of the Land Central Banks has been increased from two years to five years (sections 7 and 8 of the Bundesbank Act) and thus adapted to Article 14.2 of the ESCB Statute.

The Federal Government's right to request that decisions taken by the Central Bank Council be deferred for up to two weeks (section 13 (2) sentence 3 of the Bundesbank Act) was not compatible with the provisions governing the ESCB's independence. The Federal Government's right to defer a vote has thus been repealed.

The integration of the Bundesbank into the ESCB requires the adaptation or repeal of several Bundesbank Act provisions. The ESCB will be established immediately following the decision on the start of Stage Three of monetary union and the appointment of the members of the ECB's Executive Board. The primary objective of the ESCB is to maintain price stability. The Governing Council, comprising the members of the Executive Board of the ECB and the governors of the national central banks of the participating Member States, shall take the key monetary policy decisions, as well as adopt the guidelines and take the decisions necessary to discharge the duties conferred upon the ESCB. The tasks of the ESCB are primarily 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. The national central banks are an integral part of the ESCB and act according to the guidelines and instructions of the ECB (Article 14.3 of the ESCB Statute). In addition, they may discharge functions other than those stated in the ESCB Statute to the extent that this is compatible with the objectives and tasks of the ESCB.

*Integration into
the ESCB*

*Revised
definition of
the Bank's tasks*

The task of the Bank under section 3 of the Bundesbank Act had to be adapted for entry into economic and monetary union. In future, section 3 will read: "The Deutsche Bundesbank, being the central bank of the Federal Republic of Germany, is an integral part of the European System of Central Banks (ESCB). It shall participate in the performance of the ESCB's tasks with the primary objective of maintaining price stability, and shall arrange for the execution of domestic and international payments. In addition, it shall discharge the duties assigned to it under this Act or other legislation." The new wording of section 3 of the Bundesbank Act incorporates the ESCB's objective of maintaining price stability; that means nothing has changed with regard to the Bank's commitment to stability. The new version of section 3, moreover, emphasises the integration of the Deutsche Bundesbank into the ESCB following entry into Stage Three of monetary union. The fact that payment operations were explicitly maintained within the description of the Bank's tasks is meant to outline the ongoing significance of the Deutsche Bundesbank's activities in that field.

*Future role of
the Deutsche
Bundesbank*

The transfer of responsibility for monetary policy to the Community level means that key monetary policy decisions are taken centrally in the Governing Council of the ECB. The President of the Deutsche Bundesbank will take part in all fundamental monetary policy decisions in the Governing Council of the ECB, in which the Deutsche Bundesbank will be the largest shareholder.

The monetary policy decisions of the Governing Council of the ECB will then be implemented in a decentralised manner by the national central banks. In particular, the refinancing of the credit institutions will continue to be undertaken by the national central banks. In some cases, they will have a certain discretionary scope, for example, if the Governing Council adopts guidelines which make it necessary or possible for the national central banks to take decisions regarding implementation. For instance, the ESCB Statute contains no detailed provisions regarding the ESCB's set of monetary policy instruments. Therefore, it is envisaged that the Governing Council shall decide on implementation provisions regarding the set of monetary policy instruments in the form of a guideline and shall commission the national central banks with implementing the substantive rules for their individual sectors themselves and complementing them, as appropriate. In this case, it is not only the different national legal systems which have to be taken into account. There is also the possibility of taking into account national traditions when incorporating the requirements of the ECB Governing Council into the existing national legislation to the extent that the uniformity of monetary policy is not negatively affected. In Germany, the business relationships with some 3,600 credit institutions have been adapted through an amendment to the General Terms and Conditions of the Deutsche Bundesbank. In other countries, adjustment could be made by changing existing regulations or also by concluding or amending individual contracts with a few of the central bank's business partners. The concomitant scope for structur-

ing shall then be fleshed out by the national central bank.

The tasks of the Bank regarding both cashless payments and cash-based payments will continue to exist. Moreover, the Bank will also continue to discharge its duties in banking supervision and foreign payments.

*Change in the
tasks of the
Central Bank
Council*

The transfer of the authority to take decisions on monetary policy to the Governing Council of the ECB requires that the tasks of the Central Bank Council be amended. The provision in section 6 (1) sentence 1 of the Bundesbank Act, according to which the Central Bank Council determines the monetary and lending policy of the Bank, shall be replaced by: "The Central Bank Council determines the Bank's business policy. In the performance of tasks to be carried out through the European System of Central Banks, it shall act in accordance with the guidelines and instructions issued by the European Central Bank. It shall discuss the implications of monetary policy, without prejudice to the President's independence from instructions in his capacity as a Member of the Governing Council of the European Central Bank and the secrecy provisions applying to the European Central Bank." Accordingly, the Central Bank Council will be entrusted in future with determining within the scope of its statutory responsibilities, by general guidelines for management and administration and by instructions, how the Bank is to implement the monetary policy decisions of the ECB.

The responsibility of the Central Bank Council assumes particular significance in this context

when the Governing Council of the ECB lays down guidelines which make decisions by the national central banks regarding implementation necessary or possible. The new version reflects the future integration of the Deutsche Bundesbank into the ESCB. In addition, it also makes it clear that the Deutsche Bundesbank continues to have areas of business policy for which the Central Bank Council still bears sole responsibility.

According to its Statute, the ESCB has a broad range of monetary policy instruments at its disposal, including open market, lending and minimum reserve policies. Furthermore, the Governing Council may take decisions concerning the deployment of additional monetary policy instruments. That leaves no more scope for a national set of instruments. As a consequence, the provisions of the Bundesbank Act governing discount, lending and open market policies will be repealed (sections 15 and 16 of the Bundesbank Act).

*Set of monetary
policy
instruments*

In section 14 (1) sentence 1 of the Bundesbank Act, an addendum makes it clear that the sole right of the Deutsche Bundesbank to issue banknotes denominated in Deutsche Mark, which will continue to exist temporarily following entry into Stage Three of monetary union, shall not prejudice the ECB's right to issue banknotes under Article 105a of the EC Treaty. The clause regarding the publication of the Deutsche Bundesbank's Weekly Returns (section 28 of the Bundesbank Act) will be repealed. The publication of the Deutsche Bundesbank's Weekly Returns is primarily meant to reflect the Bank's domestic and external monetary policy activities. In fu-

ture, that function will be performed by the consolidated financial statement of the ESCB, which will be published weekly and will also cover the activities of the Deutsche Bundesbank as an integral part of the ESCB. The question of whether the Bank's Weekly Returns will continue to be published separately will need to be studied.

During the discussions of the Bundestag and its committees, further amendments were made to the Bundesbank Act.

Participation in international monetary institutions

The text inserted into section 4 of the Bundesbank Act, which governs the participating interests of the Deutsche Bundesbank, makes it clear that the Bank's participating interests in international monetary institutions shall in future require the approval of the ECB under Article 6.2 of the ESCB Statute. Parliament inserted this text following a suggestion by the EMI to make that point clear; the suggestion was made when the EMI was consulted concerning the Federal Government's draft legislation.

Relations between the Bank and the Federal Government

Section 12 of the Bundesbank Act, which governs the Deutsche Bundesbank's relationship to the Federal Government, will read in future: "In exercising the powers conferred on it by this Act, the Deutsche Bundesbank is independent of instructions from the Federal Cabinet [Government]. In the context of its tasks as part of the European System of Central Banks, it shall support the general economic policy of the Federal Cabinet to the extent possible." Upon entry into monetary union, the Deutsche Bundesbank will become an integral part of the ESCB and will be obli-

gated to participate in the performance of the tasks and objectives of the ESCB, as is also clearly stated in the amended section 3 of the Bundesbank Act.

Under Article 105 (1) sentence 2 of the EC Treaty, 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 of the EC Treaty, without prejudice to the objective of price stability. National economic policy can thus only be supported provided it is compatible with the primary tasks of the ESCB. This has been explicitly confirmed by the new version of section 12 of the Bundesbank Act in the interest of legal clarity, also to preclude any misinterpretation. Thus, Parliament has responded to a request by the EMI made during the consultation by the Federal Government. The altered sequence of sentences 1 and 2 is also designed to reflect the new legal situation.

The Deutsche Bundesbank's capital, unchanged since the Bank was established in 1957, will be raised from DM 290 million to DM 5 billion. Furthermore, the Bank's statutory reserves (section 27 no. 1 of the Bundesbank Act) will also be set at DM 5 billion. This is modelled on the arrangement applying to the ECB, according to which the ECB's general reserve fund shall total its capital of 5 billion euro. Every year, 20 percent of the Bundesbank's profit, but at least DM 500 million, shall be transferred to the statutory reserves until they equal DM 5 billion. The statutory reserves may only be used to offset falls in value and to cover other losses. The previous

Changes in the capital and reserves

practice of linking the statutory reserves to the amount of banknotes in circulation will be abolished, since it will no longer be appropriate once the Bank is integrated into the ESCB. "Other reserves", regulated by section 27 no. 2 of the Bundesbank Act and whose total amount may not exceed the Bank's capital, will thus become superfluous. Therefore, section 27 no. 2 will be repealed. The funds freed by the dissolution of other reserves and by setting the statutory reserves level at DM 5 billion will be used to increase the capital. The excess amount will then be transferred to the profit and loss statement.

*Amendments
to the regula-
tions governing
the accounting
system*

The regulations in section 26 (2) sentences 2 and 3 governing the accounting system have been reworded; in future, the passage will read: "The annual accounts shall be drawn up with due regard to the duties of the Deutsche Bundesbank, in particular those deriving from its being an integral part of the European System of Central Banks, and shall be published with appropriate notes thereon; the liability structure need not be disclosed. To the extent that the provisions of sentence 2 above do not necessitate any deviations, valuation shall be governed accordingly by the provisions of the Commercial Code relating to corporations." The new version makes it possible for the Bank to take over for its accounting system the accounting system applying to the ESCB. The ECB shall draw up the principles for its annual accounts and for accounting practices in the ESCB.

The EMI, which is making the necessary preparations, is contemplating principles which envisage the valuation of central bank assets

in line with market rates, particularly monetary reserves (gold, special drawing rights, ECU holdings and foreign currency balances). To the extent that undisclosed reserves are exposed through the revaluation, they shall be transferred to a revaluation account intended to offset fluctuations in the value of the monetary reserves; according to the rules envisaged for the ECB, this balancing item will only be dissolved in a profit-increasing manner to the extent that monetary reserves showing a valuation profit as a result of their valuation are sold.

For the sake of clarity, besides the regulation of entry into force, it was also necessary to issue a legal regulation to implement the reorganisation of the capital and reserves structure and to incorporate the ESCB's accounting rules. For that purpose, section 45 will be inserted into the Bundesbank Act. That provision contains an explicit legal statutory order regarding the time of the reorganisation of the capital and reserves and the use of the funds transferred to the statutory reserves under section 27 nos. 1 and 2 of the Bundesbank Act to increase the capital and the new statutory reserves as well as regarding the time of the application of the ESCB accounting rules. The amendments to the structure of capital and reserves shall be made in the annual accounts at the date immediately preceding the beginning of the first year in which the Federal Republic of Germany participates in Stage Three of monetary union under Article 109j of the EC Treaty, i.e. in the 1998 annual accounts if Germany participates as of January 1, 1999. The amended regulations governing the ac-

counting system (section 26 (2) of the Bundesbank Act) shall be applied for the first time to the subsequent accounting year.

Finally, a passage inserted into section 25 of the Bundesbank Act clearly states that in Stage Three the Deutsche Bundesbank may also conduct the transactions envisaged in the Statute of the ESCB and the ECB.

The amendments that became necessary in view of central bank independence (extending the minimum term of office of the members of the Bank's governing bodies and the repeal of the right of the Federal Government to defer decisions taken by the Central Bank Council) already entered into force on De-

cember 31, 1997, the day after the Act was promulgated. The other provisions will enter into force on the date from which the Federal Republic of Germany participates in Stage Three of monetary union under Article 109j of the EC Treaty.

Through the Sixth Act Amending the Deutsche Bundesbank Act, the amendments to the Bundesbank Act necessary for the participation of the Federal Republic of Germany in Stage Three of monetary union have been made. Due account has been taken of all pointers made in the report "Legal Convergence in the Member States of the European Union", published in October 1997 by the EMI.

