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List of abbreviations

BAM.....	Bosnian Mark
BIS Basel.....	Bank for International Settlements
CARDS.....	Community Assistance for Reconstruction, Development and Stabilisation
CBBH.....	Central Bank of Bosnia and Herzegovina
CET.....	Common external tariff
DG ECFIN.....	Directorate-General for Economic and Financial Affairs
DG.....	Directorate-General
DSG.....	Deposit Guarantee Schemes
EAEC.....	European Atomic Energy Community
EC.....	European Community
ECB.....	European Central Bank
ECOFIN.....	Council of Economics and Finance Ministers
ECSC.....	European Coal and Steel Community
ECU.....	European Currency Unit
EEC.....	European Economic Community
EFP.....	Economic and Fiscal Programme
EFTA.....	European Free Trade Association
EMCF.....	European Monetary Cooperation Fund
EMF.....	European Monetary Fund
EMI.....	European Monetary Institute
EMS.....	European Monetary System
EMU.....	Economic and Monetary Union
ERM.....	Exchange Rate Mechanism
ERP.....	Economic Reform Programme
ESCB.....	European System of Central Banks
EU.....	European Union
EURATOM.....	European Atomic Energy Community
FX.....	Forex
HCIP.....	Harmonised Index of Consumer Prices
IGC.....	Intergovernmental Conference
IMF.....	International Monetary Fund
IPA.....	Instrument for Pre-Accession Assistance
IRC.....	International Relations Committee
LED.....	Local Economic Development Programme
MFA.....	Macro-Financial Assistance
NCB.....	National Central Bank
OCT.....	Overseas countries and territories
PEP.....	Pre-Accession Economic Programme
PPP.....	Purchasing Power Parity
SAA.....	Stabilisation and Association Agreement
SEA.....	Single European Act
SME.....	Small and Medium Enterprises
SRM.....	Single Resolution Mechanism
SSM.....	Single Supervisory Mechanism
TARGET	Trans National Automated Real-Time Gross Settlement Express Transfer System
U.S.....	United States
UK.....	United Kingdom

German-language Abstract

Einer der größten Erfolge der heutigen Europäischen Union ist sicherlich die unabhängige Europäische Zentralbank (EZB), die für die europäische Einheitswährung - den Euro - zuständig ist und die die Geldpolitik aller Mitgliedstaaten, die diese gemeinsame Währung nutzen, regelt. Um die Ziele der einheitlichen Zentralbank und der einheitlichen Währung zu erreichen, muß eine wirksame Wirtschafts- und Währungsunion geschaffen werden. Alles begann mit der Einführung des gemeinsamen Marktes für einige spezifische Produkte. Dieser gemeinsame Markt entwickelte sich langsam in den europäischen Binnen- oder Binnenmarkt mit garantierten vier Freiheiten, der Freizügigkeit von Waren, Personen, Dienstleistungen und Kapital.

Auf der anderen Seite ist die europäische Erweiterung auch eine der Schlüsselpolitiken der EU und gilt als eine ihrer größten Leistungen. Mit zunehmender Bedeutung der EU wuchs der Markt auch mit der allmählichen Beseitigung aller Handelshemmnisse - physisch, technisch und steuerlich.

Diese These verbindet die Auswirkungen des Prozesses der Schaffung der WWU und der EZB auf die Erweiterung der Union. Unsere These ist, dass die Idee der EZB die Erweiterungspolitik nachdrücklich drängte und die Union für potenzielle Länder attraktiver machte. Wohlgeordnete Wohlstand und Nutzen der WWU und der EZB von Marjolin Memorandum, Barre Report, Werner-Gruppe, vor allem aber durch das Delors-Komitee sowie die späteren hervorragenden Vorbereitungen des Europäischen Währungsinstituts hatten eine so große Zahl der neuen Mitgliedstaaten.

Der nächste Abschnitt der Arbeit beschäftigt sich mit allen Stadien des Beitrittsverfahrens und der Rolle, die die EZB in ihr hat. Eines der wichtigsten Punkte ist die EZB-Erstellung der Länderbewertungen der Geld-, Finanz- und Wechselkurspolitik. Als Referenzbeispiel verwenden wir Bosnien und Herzegowina und ihre nationale Zentralbank (CBBH).

Letzter Schwerpunkt dieser Arbeit ist die Bedeutung der EZB für die Geschäftsentwicklung in der gesamten Union sowie in den EU-Beitrittsländern. Da das Kernziel der EZB die Aufrechterhaltung der Preisstabilität ist, diskutieren wir es im Lichte der Geschäftsentwicklung und der Verbesserung des Geschäftsklimas.

1. Introduction

One of the biggest success of today's European Union is surely independent European Central Bank (ECB) which is in charge of European single currency – the Euro, and which is governing the monetary policy of all Member States that are using this single currency. In order to achieve goals of single central bank and single currency, effective economic and monetary union needed to be established. All began with introducing of the common market for some specific products. This common market slowly evolved into the European internal or single market with guaranteed four freedoms, freedom of movement of products, persons, services and capital. Parallel with evolving of the common market there was a big effort for establishing of the economic and monetary union because the general opinion was that the best results of the single market can only be enjoyed if there is a single currency in such market. Of course if there is a single currency in some territory, some kind of a bank is necessary to govern it. In first chapters of this thesis we are presenting the whole process of establishing first the European single market from its common market's roots and then the European Economic and Monetary Union (EMU). Final stage of EMU is finishing with the establishment of the European Central Bank.

On the other side, European enlargement is also one of the EU's key policies and widely considered one of its greatest achievement. Officially, first enlargement began in 1972 with the Treaty of Accession of Denmark, Ireland and the United Kingdom and progressively continued with more and more countries becoming the Member States. In 2017 EU counts 28 Member States with more than 510 million people.¹ As the EU was becoming bigger, its market also grew with the gradual removal of all trade barriers - physical, technical and fiscal. More and more businesses operated in this newly created border-free internal market. It was a logical solution for this market to move into the highest form of integration providing for a central bank and a single currency. A stable single currency eliminates transaction costs and unpredictable changes of the different exchange rates.² Finally, the process finished successfully with the establishment of the ECB in 1998.

This thesis connects the effects of process of creating EMU and the ECB on the enlargement of the Union. Our premise in the thesis is that the idea of the ECB strongly pushed the enlargement policy and made the Union more attractive to potential countries. From the first enlargement in 1972 until the creation of the ECB in 1998 nine countries became new

¹ Population on 1 January (*Eurostat*)

<<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&language=en&pcode=tps00001&tableSelection=1&footnotes=yes&labeling=labels&plugin=1>> accessed 20 December 2016

² Peter Fisher, *European Internal Market Law* (Vienna Law School Script, unpublished 2014) p. 10

Member States finishing with Austria, Finland and Sweden. The Treaty of Accession of these three countries was signed just four years before the establishment of the ECB.³ Well-presented prosperity and benefits of the EMU and the ECB made by Marjolin Memorandum, Barre Report, Werner group, but most notably, by Delors Committee as well as later excellent preparatory work done by the European Monetary Institute as a result had such big number of new Member States.

Furthermore, next segment of the thesis is dealing with all stages of accession procedure and roles which the ECB has in it. So it is dealing with the period after the creation and establishment of the ECB. One of the most important issue here is the ECB's production of country's assessments of monetary, fiscal and exchange rate policies. Although it is not considered as very important segment in the public, EU experts are giving a lot of attention to this assessments. As the reference example here, we use Bosnia and Herzegovina and its national central bank (CBBH), so we are showing accession stages from very beginning with the ECB's relations and coordination with potential candidate country, then candidate country all the way until the signing of an accession treaty.

Last focus of this work is the ECB's significance in business development throughout the whole union as well in EU candidate countries. As the core objective of the ECB is maintaining of the price stability we are discussing it in the light of business development and improvement of the business climate. Also other objectives of the ECB and the fact that it is governing the Euro are reconsidered. Various works, assessments and documents made by the ECB's staff are contributing to this matter as well. Finally, direct financial aid from the EU's instruments focused specific to business development in candidate and potential candidate countries is in one specific way depending on the ECB.

³ Treaty of Accession of Austria, Finland and Sweden [1994] OJ C241/9

2 Foundations of the European Union and steps toward the creation of the European Single Market

All of us dealing with European Union law and economics are familiar with the famous statement made by former British Prime Minister Winston Churchill in his “Speech to the Academic Youth” delivered on 19 September 1946 at the University of Zurich, Switzerland. In this speech Churchill stated that: We must build a kind of United States of Europe. In this way only will hundreds of millions of toilers be able to regain the simple joys and hopes which make life worth living.⁴ As a first step in creation of the United Europe he introduced a body called Council of Europe. With this idea Churchill came to Congress of Europe held in The Hague from 7-11 May 1948. But not all 750 delegates from around Europe shared Churchill’s views. We can see separation between two groups: unionist and federalists.

First remained resolutely opposed to anything which might limit state sovereignty. They were, admittedly, prepared to establish relations and international alliances, but they deemed it is important to proceed gradually and with caution. The federalists, on the other hand called for the creation, as a matter of urgency, of a federation vested with its own powers which could be enforced upon the Member States.⁵ Organisation of the Council of Europe were seen different by this two groups. On the one hand first group preferred a classical international organization with representatives of governments, while, on the other hand, second group selected a political forum with parliamentarians.

One whole year needed to pass in order to finally complete creation of the Council of Europe, it was founded on 5 May 1949 by the Treaty of London. The Treaty of London is also known as the Statute of the Council of Europe. At first it was created by ten countries and today it has 47 member states and roughly 820 million people. It is in fact an international organisation which is working on promoting democracy, human rights, rule of law, economic development and integration of certain regulatory functions in Europe. The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and

⁴ Winston Churchill, ‘Speech to the Academic Youth’ (Speech, 19 September 1946) <<http://archive.is/hSYZV>> accessed 23 July 2016

⁵ The Congress of Europe in The Hague (7–10 May 1948) — Introduction (CVCE.EU by UNI.LU 8 July 2016) <http://www.cvce.eu/en/obj/the_congress_of_europe_in_the_hague_7_10_may_1948_introduction-en-b7d8de79-1341-4bb5-bf33-830c7c2bb847.html> accessed 23 July 2016

social progress.⁶ This concept of “facilitating their economic and social progress” is of the big importance for this work. Idea of economic progress and development is, as we will conclude, common for both unionists and federalists. We saw that federalists were able to construct the Council of Europe in order with their primarily ambition – as an international organisation. The Council of Europe’s Member States fully maintain their sovereignty and only commit themselves through conventions or treaties and cooperate on the basis of common values and common political decisions. All conventions and decisions are developed by member states working together in the organs of the Council of Europe: the Committee of Ministers and the Consultative Assembly.⁷

On the other side, one of the unionists’ representatives, former Prime Minister of France and the French Foreign Minister Robert Shuman on 9 May 1950 made famous “Shuman declaration”. In the declaration he proposed the pooling of the coal and steel resources of France and the Federal Republic of Germany within an organisation that would be open for membership to other European countries. Such an act was intended to help economic growth and cement peace between France and Germany, who had previously been long-time enemies.⁸ Furthermore Shuman says that “...it will be a Europe where the standard of living will rise by grouping together production and expanding markets, thus encouraging the lowering of prices.”⁹ That concrete achievement, relating to one limited but decisive point - the heavy industry of two long-opposed countries – was to set up common foundations for the economic development of the European nations while preventing their confrontation.¹⁰ Of course that after the World War II preventing of the further violence was main goal but economic development and growth was also one of the main forces leading to integration of the Europe. Both Churchill and Shuman had this incorporated in their ideas and projects.

⁶ Statute of the Council of Europe 1949, CETS 001, art 1

⁷ Statute of the Council of Europe 1949, CETS 001, art 10

⁸ Robert Shuman, ‘Shuman Declaration’ (*Schuman info*)<<http://schuman.info/9May1950.htm>> accessed 26 July 2016

⁹ *ibid*

¹⁰ The European Communities (*CVCE.EU by UNI.LU*, 8 July 2016)

<<http://www.cvce.eu/obj/the-european-communities-en-3940ef1d-7c10-4d0f-97fc-0cf1e86a32d4.html>> accessed 26 July 2016

2.1 First common market - The common market in coal and steel

9 May 1950, the day of the Shuman declaration is today known as the Europe Day because it in fact manifested the beginning of the history of the European Communities. This declaration had several very important aims but the most important for this work and discussion are: marking of the birth of a united Europe, creation of the world's first supranational institution, creation of a common market across the Community, revitalising of the whole European economy and improving of the economies of developing countries.¹¹

After some political negotiations and persuasions the European Coal and Steel Community was finally established by the Treaty of Paris. It was signed on 18 April 1951 by France, West Germany, Belgium, the Netherlands, Luxembourg and Italy. The Treaty created the common market for coal and steel with clearly provided rules about what is compatible and what is incompatible with such market. Incompatible with the common market and accordingly abolished and prohibited within the Community are: import and export duties or charges having equivalent effect and quantitative restrictions on the movement of products; measures or practices which discriminate between producers, between purchasers or between consumers, especially in prices and delivery terms or transport rates and conditions; subsidies or aids granted by States, or special charges imposed by States; restrictive practices which tend toward the sharing or exploiting of markets.¹²

Article six highlighted that this Community have legal personality in international relations. Therefore, ECSC became first international organisation based on supranational principles. Treaty of Paris also constituted the institutions of the Community as follows: High Authority, Common Assembly, Special Council of Ministers and Court of Justice.¹³ These institutions are predecessors of today's EU institutions. High Authority evolved into the European Commission, Common Assembly is equivalent to the European Parliament, and Special Council of Minister is current Council of the European Union.

Main objective of the ECSC was in fact contribution to economic development and rising standard of all citizens of the Member States. That is accomplished by establishing of the common market in coal and steel. The ECSC was progressively to bring about conditions which would ensure the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and taking care not to provoke

¹¹ What was the Purpose of the Schuman Proposal? (*Schuman Info*) <<http://www.schuman.info/proppurp.htm>> accessed 26 July 2016

¹² Treaty establishing The Eurpean Coal and Steel Community [1951] 11951K/TXT, art 4

¹³ *ibid* art. 7

fundamental and persistent disturbances in the economies of the Member States.¹⁴ We are concluding that first common market on the European territory was made by Treaty of Paris with establishment of the common market for coal and steel between European “inner six” countries. The common market in coal was opened on 10 February 1953, and the common market in steel on 1 May 1953.¹⁵ Creation of these common markets is a first concrete step towards creation of the single market and finally Economic and Monetary Union. Discussion about EMU was fully launched 37 years after the Treaty of Paris. And establishment of the European Central Bank with introduction of euro as a currency happened even later in 1998. Detailed discussion about the European Central Bank is given in following chapters but before that we are continuing with the period after the Treaty of Paris.

2.2 Further development of the common market – The EEC

Just six years after the Treaty of Paris, six ECSC members were signing the Treaties of Rome establishing the European Economic Community and the European Atomic Energy Community. All began with a joint memorandum made by the three Benelux countries which they sent to the Federal Republic of Germany, France and Italy. This memorandum set out a plan for reviving European integration by extending the responsibilities of the ECSC in the areas of transport, energy and nuclear energy, and in economic, social and financial fields.¹⁶ The memorandum was examined and discussed on the Messina Conference which took place from 1 to 3 June 1955.¹⁷

Result of this Conference was a resolution in which six states declared their determination to make further progress towards the setting up of a united Europe by development of common institutions, the gradual merging of national economies, the creation of a common market and the harmonisation of their social policies. The six Governments agree that the setting up of a common European market, free from all customs duties and all quantitative restrictions, is the aim of their work in the field of economic policy.¹⁸ Big part of

¹⁴ The Treaties establishing the European Communities (CVCE.EU by UNILU, 8 July 2016) <http://www.cvce.eu/obj/the_treaties_establishing_the_european_communities-en-4a537592-d9d0-41a7-853a-f6cd74aed386.html> accessed 28 July 2016

¹⁵ *ibid*

¹⁶ From the Messina Conference to the Rome Treaties (EEC and EAEC) Full text (CVCE.EU by UNILU, 4 August 2016) <http://www.cvce.eu/obj/from_the_messina_conference_to_the_rome_treaties_eec_and_eaec_full_text-en-950e8fdc-263d-4ef1-aae2-bd336cfacb54.html> accessed 10 August 2016

¹⁷ *ibid*

¹⁸ Resolution adopted by the Ministers of the Foreign Affairs of the Member States of the E.C.S.C. at their meeting at Messina (June 1 to 3, 1955) [1955] art I. B

the Conference was also aiming on the development of the nuclear energy, making the energy cheaper for European economies and finally creation of the European Atomic Energy Community. But for the purposes of this work we are not going into details in regard to this matter.

Messina Conference created the Intergovernmental Committee also known as the Spaak Committee because it was placed under the chairmanship of Belgian Foreign Minister Paul-Henri Spaak. This Intergovernmental Committee published famous Spaak Report on June 1956 which represented the basis for drafting of the Rome Treaties. The Spaak Report constituted from three parts: first dealing with the common market, the second dealing with EURATOM, and the third with areas where the need for action was considered most urgent. Regarding the common market the Report says that the common market must affect all economic activities, so too the elimination of custom duties must progress simultaneously over the whole range of production activities.¹⁹ So common market as seen by Paul-Henri Spaak was absolute. Luckily, the common market was in the beginning defined for all production activities. This, as we will see, eased future creation of the single market and the Economic and Monetary Union.

Final negotiations before the signing of the Rome Treaties were held at Val Duchesse near Brussels. Negotiations in the Common Market Group were very difficult. The French and German delegations found it very hard to compromise on issues including the harmonisation of employment - related costs before the shift to phase two of the common market transition period; the establishment of the common external tariff (CET); how to link the overseas countries and territories (OCTs) to the EEC; competition rules; and the introduction of the institutional system.²⁰ After agreeing on these questions on negotiations, The Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC) were finally signed by “inner six” on 25 March 1957. The EEC is of big importance for this work and we are delineating it here.

Main aim of the Treaty establishing European Economic Community is as said in its second article – establishing of the Common Market. For this purposes, the activities of the Community, among others, shall include: ...the elimination of custom duties and of quantitative restriction in regard to the importation and exportation of goods, as well as of all other measures with equivalent effect; the establishment of a common customs tariff and a common

¹⁹ The Brussels Report on The General Common Market (Spaak Report) [1956] § 1

²⁰ From the Messina Conference to the Rome Treaties (EEC and EAEC) Full text (CVCE.EU by UNILU, 4 August 2016)

<http://www.cvce.eu/obj/from_the_messina_conference_to_the_rome_treaties_eec_and_eaec_full_text-en-950e8fdc-263d-4ef1-aae2-bd336cfac54.html> accessed 10 August 2016

commercial policy towards third countries; the abolition, as between Member States, of the obstacles to the free movement of persons, services and capital; inauguration of a common agricultural policy; inauguration of a common transport policy, the establishment of a European Investment Bank intended to facilitate the economic expansion of the Community through the creation of new resources,...²¹ Mission of the EEC was to create the Common Market, the customs union and common policies. All of this was successful and ultimately led all the way to the monetary unification with creation of the European Central Bank, although Europe's founding fathers did not dwell on the idea of a common currency in official wording of the Treaty.

EEC Treaty provided a transitional period of twelve years for establishing of the Common Market.²² The Common Market is established on the free movement of goods, services, persons and capital – the famous four freedoms. With this a free economic area with free competition between undertakings was created on territories of all Member States at that time. However, the ECC's most important achievement has been its custom union, it has propelled the growth of intra-Community trade from less than 40 percent to over 60 percent of the total trade of the participating countries.²³ With abolition of tariffs and quotas on goods between six members and adoption of a common external tariff on goods from the rest of the world, the custom union was completed. It happened in 1968. This custom union is also accompanied by common trade policies, namely common agricultural policy (Art. 38 – 47), transport policy (Art. 74 – 84) and common trade policy (Art. 110 -116). And also, as specified in Article 235, all others policies may be launched depending on needs of the Community.

2.3 The outset of the enlargement and an ever closing union

The first fifty years of EU integration have involved within-EU tariff elimination, followed by moves to a customs union, tax union, European monetary union, and associated institutional harmonization and deepening in competition and regulatory policies.²⁴ One of the aims of the EEC was also its enlargement to the rest of the Europe. The determination to establish the foundation of an ever closing union among the European peoples is stated in first lines of the

²¹ Treaty establishing European Economic Community – original text (non-consolidated version) [1957] 11957E/TXT, art 3 (EEC Treaty – original text)

²² *ibid* art 8

²³ Barry Eichengreen, 'European Economic Community' [1993] (*The Concise Encyclopedia of Economics*) <<http://www.econlib.org/library/Enc1/EuropeanEconomicCommunity.html>> accessed 15 August 2016

²⁴ Peter Egger, John Whalley, *Global Constraints on European Integration over the Next Few Decades* (The Continuing Evolution of Europe, The MIT Press 2012), p. 33

preamble of the EEC Treaty. With establishment of the EEC, economies of Member States were booming so the membership in this community was very attractive for European states. Even before completing of the custom union, in 1961 we saw first endeavour for membership from four countries: United Kingdom, Denmark, Ireland and Norway. Due to some political reasons regarding UK and its special economic and monetary relations with the Commonwealth this first application was vetoed by France.²⁵ Six years after the first attempt these four countries resubmitted their application and soon after the change in French leadership veto was lifted.

Accession negotiations started in 1970 and finished 2 years later with signing of the accession treaties with United Kingdom, Ireland and Denmark.²⁶ On the other hand, in Norway referendum result was “no” for entering in the EEC with the result of 53.6%.²⁷ As a result the first phase of the enlargement of EEC was completed with accession of these three countries. Shortly after Greece also applied for membership and finally joined the Community in 1981.²⁸ Treaty of accession of Spain and Portugal was signed in 1985 and they became members of the Community on 1.1.1986.²⁹ This Treaty increased number of Member States from six to twelve. Although enlargement has been a central preoccupation since the Community’s foundation, serving as a key element of foreign policy, it has gradually become more institutionalized through a set of rules, principles, and practices that have evolved intermittently over its history.³⁰ Accession procedure at that time was of course very different from the procedure that we know today, that old procedure is not discussed here. Current process of the enlargement with ECB role in it is examined in later chapters. The market power of the EU has acted as a magnet for applicant states, anticipating economic growth and trade creation, extending the boundaries both physically and economically.³¹

Number of original six Member States was doubled and it was time to tackle some undergoing problems with this evolving Community. Main objective was to improve trade between Members through making of an internal or single market. Economic development was first priority but also political stability, social situation and removal of regional imbalances. This objectives were very difficult to accomplish mainly because decision-making mechanism

²⁵ Negotiations with the United Kingdom (CVCE.EU by UNI.LU, 8 July 2016)
<<http://www.cvce.eu/en/recherche/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/f0d3b03b-cbe2-484a-8d17-466e7a6bf34a>> accessed 15 August 2016

²⁶ Treaty of Accession of Denmark, Ireland and the United Kingdom [1972] OJ L73/5

²⁷ Norway – EU 1961-1994 (*nei til eu*, 2 March 2016)

<http://www.neitileu.no/articles_in_foreign_languages/norway_eu_1961_1994> accessed 16 August 2016

²⁸ Treaty of Accession of Greece [1979] OJ L291/9

²⁹ Treaty of Accession of Spain and Portugal [1985] OJ L302/9

³⁰ Michelle P. Egan, *Single Markets Economic Integration in Europe and the United States* (Oxford University Press) p. 49

³¹ *ibid*

demanded unanimity for the harmonisation of legislation. Efforts for change of this dysfunctional mechanism began. Final result of this efforts was the Single European Act amending the EEC Treaty. The preparatory work carried out by the Dooge Committee in 1984-85 and, more particularly, the White Paper *on the completion of the internal market*, presented in June 1985 by the Commission under its President, Jacques Delors, paved the way for the February 1986 Single European Act (SEA).³² Full name of this document and program is “White Paper, Completing the Internal Market”, it was proposed by Lord Cockfield, European Commissioner for Internal Market and Services. The document identified around 300 legislative proposals which are to be taken in order to achieve the internal market. These actions are divided into three categories: measures to eliminate a series of physical, technical and fiscal non-tariff barriers. The deadline given for the completion of the single market was 31 December 1992³³. The Single European Act was intended to be the beginning, rather than the end, of the process of completing the Single Market. Despite the fact that not all the necessary legislation was in place, the Single Market was formally launched on 1 January 1993.³⁴

Single European Act (SEA) was the first major amendment to the EEC Treaty. Its intention was to lay down in the Treaty the procedures for accomplishing a truly internal market by the end of 1992. To achieve this objective, a more collaborative legislative process known as the Cooperation Procedure was adopted, and qualified majority voting was extended to new areas.³⁵ SEA entered into force on 1 July 1987. Regarding the institutional provisions and changes in it, Single European Act states that “the Council shall, acting by a qualified majority on a proposal from the Commission, in co-operation with the European Parliament and after consulting the Economic Social Committee.”³⁶ So in order to achieve the internal market, the SEA provides for increasing the number of cases in which the Council can take decisions by qualified majority voting instead of unanimity. This eased and speeded up the whole process of creation of the Single Market. Unanimity was no longer needed for all measures except measures regarding free movement of persons, taxation and the rights and interests of employed persons. Definition of the internal market is given as “an area without internal frontiers in which

³² Preparations for the Single European Act (CVCE.EU by UNI.LU, 8 July 2016)
http://www.cvce.eu/obj/preparations_for_the_single_european_act_sea-en-7c34ff97-f690-4b88-aac5-5e2020055c06.html accessed 15 August 2016

³³ The origins of the Single Market (UK Parliament Publications)
 <<https://www.publications.parliament.uk/pa/ld201011/ldselect/ldcom/129/12905.htm>> accessed 20 August 2016

³⁴ *ibid*

³⁵ Jianping Zhou, *Institutional Setup for the Single Market and Economic and Monetary Union* (From Fragmentation to Financial Integration in Europe, International Monetary Fund 2014) pp. 39-49

³⁶ Single European Act [1986] OJ L169/1, art. 6

the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty”.³⁷

Encouraged by this new approach of Lord Cockfield’s completing of the internal market and ideas of the SEA, few more European countries decided to join this evolving Community. So the Treaty of Accession of Austria, Finland and Sweden was signed in 1994.³⁸ For these three countries, the interest in membership was partly the deepening of economic integration, which provided incentives for a stronger institutional relationship as well as the transformation in the security environment at the end of the Cold War.³⁹ We are not saying here that just this events were decisional for this countries to consider joining the Community but they surely were one of the most important. The internal market provided a strong pull, and the development of a consolidated market in which investment and trade might be diverted, provided a strong push towards creating contiguous economic boundaries for Nordic states.⁴⁰ As the EU became more confident about its long-term political ambitions, the prospect of remaining outside of the Community became even less attractive for those countries that had deliberately remained part of the European Free Trade Association (EFTA) and non-members in the EU.⁴¹

Completing of the market is evolving from year to year, so current “Europe 2020 – a strategy for smart, sustainable and inclusive growth” sees the completion of the Single Market as being essential to achieving its goal. Also there is the Single Market Strategy which is the European Commission’s plan to unlock the full potential of the Single Market. The Commission’s main goal is to ensure the free movement of goods within the market, and to set high safety standards for consumers and the protection of the environment.⁴² Single market for services, the digital single market and standardisation are still to be fully achieved. This job is very complicated and time consuming but Europe and European Union must never give up on it because the single market of more than 500 million people and their business is well worth completing, expanding and preserving.

³⁷ Single European Act [1986] OJ L169/1, art. 8A

³⁸ Treaty of Accession of Austria, Finland and Sweden [1994] OJ C241/9

³⁹ Michelle P. Egan (n 20) p. 50

⁴⁰ *ibid*

⁴¹ *ibid*

⁴² The European Single Market (*European Commission*) <<http://ec.europa.eu/growth/single-market>> accessed 20 August 2016

3. Path of creating the EMU and the ECB

As the ECB is central theme of this work, we need to understand roots and history of economic and monetary union. The full fruits of the single market can only be enjoyed with the measure of (price) transparency that EMU entails.⁴³ The freedom of payments and the free movement of capital are the foundation upon which a single currency area is built.⁴⁴ Subsequently, it is impossible to understand and even to present the creation and establishment of the European Central Bank with the Euro as the single currency without deep discussion of all steps toward the achievement of the single market and the EMU. Clearly, full achievement of the European EMU in fact means independent ECB and euro.

3.1 Monetary Committee and Committee of Governors of Central Banks

We already concluded that the Treaty of Rome did not govern anything regarding money, currencies or central banking. Creators of the Treaty of Rome believed that currencies would remain stable and that Europe's integration and development could be based just on achieving a custom union and common market with four freedoms. All Member States independently regulated payments between themselves. However, the EEC Treaty instructed that each Member State in pursuing its economic policy needs to appreciate: equilibrium in its balance of payments, confidence in its currency, a high degree of employment and stable prices.⁴⁵ In order to achieve this objectives Member States needed to collaborate between the competent services of their administrative departments and their central banks. Instruments for supporting of the balance of payments were described in Chapter 2 of EEC Treaty. All Member States had to authorise, in the currency of the Member State in which the creditor of the beneficiary resides, any payment connected with the exchange of goods, services, capital and also any transfer of capital or wages.⁴⁶

Most important is Article 105 which established a Monetary Committee in order to coordinate economic policies between Member States to the full extent necessary for the functioning of the Common Market. Monetary Committee had consultative status and

⁴³ Rene Smits, *The European Central Bank, Institutional Aspects* (Kluwer Law International 1997) p. 55

⁴⁴ *ibid*

⁴⁵ EEC Treaty – original text, art 104

⁴⁶ *ibid* art 106

following tasks: keeping under review the monetary and financial situation of Member States, of the Community and of the general payments system of Member States and reporting regularly thereon to the Council and to the Commission.⁴⁷ Members of the Monetary Committee were appointed by the Member States and the Commission, each appointed two of them.

The concept of establishing an economic and monetary union among its members is almost as old as the EEC itself. In the late 1950s, Jean Monnet, who had fathered the idea of European integration through common institutions, proposed a European Reserve Fund.⁴⁸ The idea of pooling 20% of the Member States' reserves in a common fund was aired as early as 1958, written into resolution of the Action Committee for the United States of Europe which Monnet headed and came partially to fruition with the institution of the European Monetary System in 1978, which implied the pooling of 20% of the central banks' holdings of gold and U.S. dollars.⁴⁹ This idea was not included in the EEC Treaty's articles.

The idea of a common currency for the EEC Member States was first launched in the European Commission's Memorandum of 24 October 1962. This memorandum is known as the Marjolin Memorandum. In its Memorandum, the Commission called for the customs union to lead on to an economic union by the end of the 1960s with irrevocably fixed exchange rates between Member States' currencies.⁵⁰ The Member States considered that intra-Community exchange rate stability could be secured through the Bretton Woods system, so no follow-up actions were taken pursuant to the Memorandum. Only move regarding this was the creation of the Committee of Governors of the Central Banks of the Member States of the European Economic Community which happened in 1964.

The Committee was composed of the Governors of the Central Banks and its purpose was promotion of cooperation between the Central Banks of the Member States and holding consultations concerning the general principles of policies regarding credit, money and foreign exchange markets.⁵¹ In fact Committee of Governors gradually gained more important role, mostly in preparation of the ESCB Statute which is discussed later. At the start of Stage two of EMU the European Monetary Institute (EMI) took all obligations of the Committee of Governors and it ceased to exist. Cooperation and consultations between the Member States were also required on matters such demanding of an aid from international financial institutions

⁴⁷ EEC Treaty – original text, art 105

⁴⁸ Smits (n 43) p. 12

⁴⁹ *ibid*

⁵⁰ Hanspeter K. Scheller, *The European Central Banks, History, Role and Functions* (European Central Bank 2006) p. 17

⁵¹ Council Decision 64/300/EEC of 8 May 1964 on cooperation between the Central Banks of the Member States of the European Economic Community [1964] OJ 077/1206, art. 1 - 3

such IMF or attendance in monetary support operations for third countries. These consultations were obligatory on Monetary Committee level and prescribed by Council Decision of 8 May 1964.⁵²

3.2 From Barre Report and Werner Report to the EMU Resolution and the European Exchange Rate Arrangement

Post WWII order for the market economies of Europe, North America and Japan was founded on the Bretton Woods system which provided the international framework for currency stability, with gold and U.S. dollar as the predominant monetary standards. It created an international basis for exchanging one currency to another and also led to the creation of the International Monetary Fund and International Bank for Reconstruction and Development, today known as the World Bank. Nations agreed to fix their exchange rates by tying their currencies to the U.S. dollar which was linked to gold in amount: 1 dollar equalled to 35 oz. of bullion (gold bar). In order to fund post-war reconstruction and free international trade Nations also agreed to buy and sell U.S. dollars to keep their currencies within 1% of the fixed rate. But this system showed its weakness very soon, so by 1969 a new period of currency instability threatened when market turbulence forced a revaluation of the German mark and devaluation of the French franc, this also endangered the stability of other currencies.⁵³ The Bretton Woods system collapsed between 1968 and 1973, moreover in 1971 President Richard Nixon severed the link between the dollar and gold. At that time United States Bullion Depository had only a third of the gold bullion necessary to cover the amount of dollars in foreign hands.⁵⁴

Influenced by this newly formed situation Community decided to solve it through adopting a memorandum setting out the greater economic and monetary coordination and cooperation with achieving of the Economic and Monetary Union (EMU). This was proposed in Barre Report submitted to the Council on February 1969. Barre Report further led to the adoption of different coordination mechanisms. Most important is an agreement from 9 February 1970 which created coordination institution of short-term monetary support between

⁵² Council Decision 64/301/EEC of 8 May 1964 on co- operation between Member States in the field of international monetary relations [1964] OJ 077/1207

⁵³ Economic and Monetary Union (*European Commission*)

<http://ec.europa.eu/economy_finance/euro/emu/road/werner_report_en.htm> accessed 2 September 2016

⁵⁴ The end of the Bretton Woods System (*International Monetary Fund*)

<<https://www.imf.org/external/about/histend.htm>> accessed 2 September 2016

the central banks of the EEC. This agreement with some amendments regarding the accession of new countries survives until today. Also Member States agreed on setting up machinery for medium-term financial assistance between them by new Council Decision adopted in 1971.⁵⁵ This decision was later changed with new Council Regulation which established a single facility providing medium-term financial assistance for Member States' balances of payments which is still valid.⁵⁶

On The Hague summit in 1969 EMU became a formal goal of the Community, a High Level Group under than Luxembourg Prime Minister and Finance Minister Pierre Werner was set up and its obligation was to report how EMU could be achieved by 1980. Final result of the Werner group was published in October 1970. Report gave proposition that EMU can be achieved within a period of ten years in three-stage process. The final objective would be the irreversible convertibility of currencies, free movement of capital, and the permanent locking of exchange rates – or possibly a single currency, so in order to achieve this, the report called for closer economic policy coordination, with interest rates and management of reserves decided at Community level, as well as agreed frameworks for national budgetary policies.⁵⁷ Very important was a proposal for a possible single currency which in fact took a lot of effort and time to appear many years later in 1999 in the form of Euro.

On the basis of the Werner Report the Council and the representatives of the Governments of the Member States adopted a Resolution on 22 March 1971. This Resolution defined EMU on same principals included in the Werner Report with four freedoms and a single currency. In order to strengthen coordination in the field of the monetary and credit policy of the Member States the Council has agreed on compulsory prior consultations within the Monetary Committee and the Committee of Governors of Central Banks.⁵⁸ Full EMU was to be achieved by 1 January 1981, first stage would start on 1 January 1974 and last three years.⁵⁹ Both economic and monetary coordination were pursued in this period mainly through the Council's work. Detailed provisions for the coordination procedures regarding the economic

⁵⁵ Council Decision 71/143/EEC of 22 March 1971 setting up machinery for medium-term financial assistance [1971] OJ L073/15

⁵⁶ Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments OJ L178/1

⁵⁷ The history of the euro (*European Commission*)

<http://ec.europa.eu/economy_finance/euro/emu/road/werner_report_en.htm> accessed 2 September 2016

⁵⁸ Resolution on the achievement by stages of economic and monetary union in the Community [1971] Part III

⁵⁹ *ibid*

policy were set up in a Convergence Decision⁶⁰ and Convergence Directive.⁶¹ This decision was later repealed in 1990 when new Convergence Decision was adopted as a preparation for the first stage of EMU according to the Delors Committee which is discussed later.

And finally worth mentioning is the creation of the Economic Policy Committee which replaced several coordination committees in area of economic policy such as the Medium-term Economic Policy Committee.⁶² More important for topic of this work regarding this period was Council Decision about strengthening of the cooperation between the central banks from 1971. It required consultations between the central banks before all major measures of monetary policy were taken.⁶³ The main achievement in the area of monetary policy in this period was the establishment of an exchange arrangement among Community currencies and the institution of a body under Community law which was entrusted with monetary functions.⁶⁴ We will add here that proposition and further talks about possibly single currency is also of big importance, if not most important.

According to the EMU Resolution, the central banks of the Member States were invited to keep fluctuations in the rates between Community currencies within margins narrower than those resulting from the application of the margins in force for the US dollar, by means of concerted actions vis-à-vis this currency.⁶⁵ So currencies of the Member States were maintained on basis of the Bretton Woods System. As we already saw this system crushed in 1971 so Community decided to make new system of exchange rate stability by adopting wider margins. It was done in April 1972 by The European Exchange Rate Arrangement.

Under this agreement, the exchange rates of the participating currencies were not allowed to deviate from the agreed central rates by more than 2.25%, or in another words countries agreed to prevent exchange rate fluctuations of more than 2.25%.⁶⁶ This joint float against the US dollar of several Community currencies was called “snake”, “snake in the tunnel” or “European currency snake”. It derives its name from the form of the fluctuations of

⁶⁰ Council Decision 74/120/EEC of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community [1974] OJ L63/16

⁶¹ Council Directive 74/121/EEC of 18 February 1974 on stability, growth and full employment in the Community [1974] OJ L63/19

⁶² Council Decision 74/122/EEC of 18 February 1974 setting up an Economic Policy Committee [1974] OJ L63/21

⁶³ Council Decision 71/142/EEC of 22 March 1971 on the strengthening of cooperation between the central banks of the Member States of the European Economic Community OJ L73/14

⁶⁴ Smits (n 43) p. 17

⁶⁵ Resolution on the achievement by stages of economic and monetary union in the Community [1971] Part III, para 7

⁶⁶ Francesco Paolo Mongelli, *European economic and monetary integration and the optimum currency area theory* (European Commission Directorate-General for Economic and Financial Affairs Publications 2008) p 10

the exchange rates of the participating currencies against the dollar, when depreciated graphically.⁶⁷

European Monetary Cooperation Fund (EMCF) was established in 1973 pursuant to the Part III (8) of the 1971 EMU Resolution with the obligation to organize the central bank cooperation necessary for the snake's operation.⁶⁸ By its Statute EMCF was managed by a Board of Governors consisting of the members of the Committee of Governors. The snake arrangement lasted not so long with some new members joining but also others leaving, with a lot of realignment of the central rates. Most of the actions undertaken were failure mainly because USA effectively floated the dollar which caused wave of market instability putting pressure on the Deutschmark. Finally The European Exchange Rate Arrangement was replaced by the European Monetary System (EMS) in 1979.

3.3 The European Monetary System (EMS)

EMS was European leaders' new solution for EMU because the creation process of monetary union on basis of Werner group plan never transformed into phase two. New proposal was made in more limited and more accurate form and launched in 1979. Currencies of all Member States was participating except the British pound which joined later in 1990 but only stayed for two years.⁶⁹ This proposal came from Roy Jenkins, former president of the European Commission, but similar idea of a "zone of monetary stability" came also from than Germany's Chancellor Helmut Schmidt.⁷⁰

Principals of EMS were stated in EMS Resolution from 5 December 1978. Three main paragraphs of this Resolution were paragraphs 2 to 4: The ECU and its functions, the exchange rate and intervention mechanism and the credit mechanisms. So in order with the Resolution EMS consists of three interrelated elements, each building on already existing Community structures: (1) an arrangement for linking exchange rates, (2) a projected European Monetary Fund, and (3) a system of credit facilities for mutual payments support.⁷¹ Smits however, divides this elements as: (1) the creation of ECUs against the deposit of foreign reserves of all

⁶⁷ Smits (n 43) p. 18

⁶⁸ Council Regulation (EEC) 907/73 of 3 April 1973 establishing a European Monetary Cooperation Fund [1973] OJ L089/2

⁶⁹ Economic and Monetary Union (*European Commission*)

<http://ec.europa.eu/economy_finance/euro/emu/road/ems_en.htm> accessed 5 September 2016

⁷⁰ Benjamin J. Cohen, *The European Monetary System: An Outsider's view* (Princeton University 1981) p. 1

⁷¹ *ibid* p. 2

Member States, (2) an exchange rate mechanism (ERM) between the participating currencies, (3) mechanisms to provide credit to the participating central banks in order to maintain the central rates agreed, and coordination of the economic and monetary policies to underpin the currency arrangement.⁷²

Linking of exchange rates was solved through the “basket solution” – each currency is tied to a European Unit of Account, renamed the European Currency Unit (ECU), equal to some weighted average of all the currencies (it is not accident that the acronym ECU also happens to be the name of an ancient French silver coin).⁷³ Basket solution meant that if a currency of some country moved sharply out of the arranged lines or that a currency has begun to diverge too far from the weighted average, only central bank of that country had to intervene, not all other central banks. Intervention was to be done either in the exchange or forex market or by adjusting domestic fiscal and monetary policies.

The ECU was at the centre the EMS and were used (a) as the denominator (numéraire) for the exchange rate mechanism, (b) as the basis for a divergence indicator, (c) as the denominator for operations in both the intervention and the credit mechanism, (d) as a means of settlement between monetary authorities of the EC.⁷⁴ The ECU was composed of a basket of currencies of the European Communities Member States and it served as the standard monetary unit of measurement of the market value/cost of goods, services, or assets in the European Communities, it was only an electronic unit of account without any official coins or notes and it was replaced by the euro on 1999 at ratio of 1:1.⁷⁵ But above all as we can conclude the ECU was used as a means of payment between the Community’s monetary authorities.

The value and composition of the ECU were set equal to those of European Unit of Account, which had been introduced in April 1975 for transactions under the Lomé Convention, thus the ECU consisted of: 0.828 Deutsche marks (equal to 33.02% of the total on the basis of market rates on March 1. 1979), 1.15 French francs (19.89%), 0.0885 pounds sterling (13.25%), 0.286 Dutch guilders (10.56%), 109 Italian lire (9.58%), 3.66 Belgian francs (9.23%), 0.217 Danish krone (3.10%), 0.00759 Irish pounds (1.11%), and 0.14 Luxembourg francs (0.35%).⁷⁶ The total sum of all these amounts is in fact the value of the ECU. EMS Resolution in its Article

⁷² Smits (n 43) p. 20

⁷³ Cohen (n 70) p. 3

⁷⁴ Resolution of the European Council of 5 December 1978 on the establishment of the European Monetary System (EMS) and related matters [1978] (Bulletin of the European Communities, Office for official publications of the European Communities No 12. 1978) art. A, para. 2.2 (EMS Resolution)

⁷⁵ Glossary: European currency unit (ECU) (*Eurostat* 24 May 2016) <[http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:European_currency_unit_\(ECU\)](http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:European_currency_unit_(ECU))> accessed 6 September 2016

⁷⁶ Cohen (n 70) p. 3

A (2.3) defines re-examination of the weights of currencies in the ECU in the period of every five years or, on request if the weight of any currency has changed by 25%.⁷⁷ Value of the Deutsche mark, for instance, was 0.6242 and of French franc 1.332 on 1 January 1999.⁷⁸

Within the European Monetary System, currency fluctuations were controlled through the Exchange Rate Mechanism (ERM) and kept within $\pm 2.25\%$ of the central rates, with the exception of the Italian lira, Spanish peseta, the Portuguese escudo and the pound sterling which were allowed to fluctuate by $\pm 6\%$.⁷⁹ If the margin is reached in some Member State, than the central bank of that State had to buy or sell currency on forex market in order to stop the margin being exceeded. The intention of and ERM was to reduce variabilities in exchange rate and of course to accomplish monetary stability in all Member States in times prior to the establishment of the European Central Bank and the euro as the single currency. Regarding the fixing of the central rates the EMS Resolution stipulates that the adjustments of central rates will be subject to mutual agreement by a common procedure which will comprise all countries participating in the exchange rate mechanism and the Commission.⁸⁰

Next element of the European Monetary System was, as already said, European Monetary Fund. It was intended to build to European Monetary Cooperation Fund (EMCF) which we already mentioned in previous subchapter. EMCF was first established in April 1973 and it supposed to supervise all Community credit facilities related to exchange rates and balance of payments.⁸¹ It was originally intended as a first root of the European Central Bank but in reality it existed only in name without even a headquarter or a staff. Bank for International Settlements in Basel (BIS Basel) was in reality only institution for settling debts among the Member States. European Monetary System wanted to revive EMCF through the EMF which would become one form of reserve institution. The central banks of the Member States deposited 20% of their gold holdings and 20% of their US dollar assets with the EMS and were credited with the counter value in ECUs.⁸² This funds were intended to be used in settlement of all intra-Community debts.

And finally last element of the EMS were the credit facilities and coordination procedures. As we mentioned earlier, coordination procedures were already in existence before the start of the EMS and they were guided through the EMCF. But credit mechanisms were

⁷⁷ EMS Resolution, art A, para. 2.3

⁷⁸ Smits (n 43) p. 22

⁷⁹ Economic and Monetary Union (*European Commission*)

<http://ec.europa.eu/economy_finance/euro/emu/road/ems_en.htm> accessed 5 September 2016

⁸⁰ EMS Resolution, art A, para. 3.2

⁸¹ Cohen (n 70) p. 4

⁸² Smits (n 43) p. 22

explained in detail in Paragraph 4 of the EMS Resolution which allowed distribution of Short-term monetary support in amount of 14000 million ECU and Medium-term financial assistance in amount of 11000 million ECU.⁸³ This financial assistance were finally managed by the European Monetary Institute (EMI) which took this role from the EMCF in 1994. EMI was the precursor of the European Central Bank and operated until 1998 with the creation of the ECB. The EMI had big role as the monetary institution so we are discussing it minutely in chapter about the creation of the ECB.

Additional financial concessions and measures designed to strengthen the economies of the less prosperous Member States of the EMS were also stated in the EMS Resolution. This part of the Resolution is of big importance for this work since it directly talks about the development of the business in Member States. This element is also included in the spirit of the ECB. In the period of the EMS Germany backed this additional financial concessions to weaker members in the form of supplementary subsidized loans from the European Investment Bank and other Community institution, weak countries regarded such transfer of resources as essential if they were to withstand the potentially harsh disciplines of a joint float.⁸⁴

3.4 Delors Committee Report

In discussion about completing of the Single Market we presented the main amendments made to EEC Treaty by the Single European Act form 1986. Apart from chapters dealing with the Single Market, very important segment of SEA is Sub-section II – Monetary capacity. It introduced cooperation in economic and monetary policy between all Member States through developing of the economic and monetary union. EEC Treaty, as we already mentioned, instructed that each Member State shall pursue the economic policy necessary to ensure the equilibrium of its overall balance of payment and to maintain confidence in its currency.⁸⁵

SEA expands this notion and says that Member States in doing this activities of ensuring of the convergence of economic and monetary policies shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ECU, and shall respect existing powers in this field.⁸⁶ Also in same article SEA

⁸³ EMS Resolution, art A, para. 4

⁸⁴ Cohen (n 70) p. 5

⁸⁵ EEC Treaty – original text, art 104

⁸⁶ Single European Act [1986] OJ L169/1, art. 102A

explains that the Monetary Committee and the Committee of Governors of the Central Banks shall also be consulted regarding institutional changes in the monetary area. EEC Treaty required only Member States' collaboration with its central banks. Roles of the EMS, ECU, the Monetary Committee and the Committee of Governors of the Central Banks were already described and discussed. SEA in fact included principals of the EMS formally in the Treaty, which were only constituted in secondary Community law until the adoption of this single act. This marked the beginning of a monetary capacity for the Community.⁸⁷ Biggest achievement was inclusion of the clauses that are dealing with the Single Market and the European Monetary Union into the Treaty of Rome. But this had only declaratory character since real monetary union would lead to institutional changes for which new full amendment of the Treaty is needed.

Single European Act pushed the idea of the single market as an objective to be attained. As already mentioned, it succeed to put some principals of the single market and EMU into the Treaty of Rome but idea of how to actually carry out this idea was still not clear. We saw that plan made by Werner group report was not the best road for this purpose because it never transformed into phase two out of three provided in it. There was a need for detailed road for achieving of the EMU.

Fortunately Jacques Delors, than president of the Commission had a vision for this road. On the meeting of the European Council held in Hanover on 27 and 28 June 1988 The Council set up the Committee for Study of Economic and Monetary Union which is more known as Delors Committee. Its chairman was Jacques Delors and its members were all governors of central banks of all Member States, certain professional and academic economists. This Committee unanimously submitted the report in April 1989.

In defining of the economic and monetary union Delors Committee Report was following same principals as the Werner group Report of 1970. EMU would imply complete freedom of movement for persons, goods, services and capital, as well as irrevocably fixed exchange rates between national currencies and, finally, a single currency.⁸⁸ Therefore we agree with Smits where he says that EMU as seen by the Delors Committee consists of three elements: (1) the completion of the internal market, (2) the establishment of a fair measure of coordination of the economic policies of the Member States (economic union), and the fixing of the exchange rates between the currencies and the subsequent introduction of a single currency (monetary

⁸⁷ Jean-Victor Louis, *Monetary Capacity in the Single European Act* (Volume 25, Issue 1, Common Market Law Review 1988) pp. 9-34

⁸⁸ Committee for the study of economic and monetary union, *Report on economic and monetary union in the European Community* (Office for Official Publications of the European Communities 1989) para. 16 (Delors Committee Report)

union).⁸⁹ This division of economic on one side and monetary on another is done very logically and elegantly, same division is made also throughout whole report but with clear parallelism between these two integrations.

Delors Committee Report indicated that EMU with all this objectives could be achieved in three stages, moving from closer economic and monetary coordination to a single currency with an independent European Central Bank and rules to govern size and financing of national budget deficits.⁹⁰ The Report did not mention ECB at all, this notion was still unfamiliar, but the concept of ECB was of course there. However, the Report called for establishing of a new monetary institution because a single monetary policy cannot result from independent decision and actions by different central banks.⁹¹ As the Report stated it might be called a European System of Central Banks (ESCB) and this new System would have to be given the full status of an autonomous Community institution.⁹²

ESCB would be based on the following principles: it would be committed to the objective of price stability, it should support general economic policy set at the Community level, it would be responsible for the formulation and implementation of monetary policy, exchange rate and reserve management, and the maintenance of a properly functioning payment system, and finally the System would participate in the coordination of banking supervision policies of the supervisory authorities.⁹³

According to the Delors Committee Report the creation of an economic and monetary union must be viewed as a single process, although this process is set out in stages which guide the progressive movement to the final objective.⁹⁴ Similarly to the solution introduced in the Werner Report the whole development of EMU is divided, as already mentioned, into three stages and had as step by step approach.

Stage one started on 1 Jul 1990 and it involved complete freedom for capital transactions, increased co-operation between central banks, free use of the ECU and improvement of economic convergence.⁹⁵ This stage were used to prepare and ratify the Treaty amendments necessary to move to a next phase. Actions made in this stage regarding the Committee of Governors along with new amendments that are officially including the ECSB

⁸⁹ Smits (n 43) p. 38

⁹⁰ From the start of the European Monetary System to Maastricht – a decade of success (*European Commission*) <http://ec.europa.eu/economy_finance/euro/emu/road/delors_report_en.htm> accessed 8 September 2016

⁹¹ Delors Committee Report, para. 32

⁹² *ibid*

⁹³ *ibid*

⁹⁴ Delors Committee Report para 39

⁹⁵ Stages of EMU (European Central Bank) <<https://www.ecb.europa.eu/ecb/history/emu/html/index.en.html>> accessed 10 September 2016

and the ECB into the Treaty are of biggest importance for this work since they directly lead to creation of the central bank.

Committee of Governors of the central banks of the Member States was given additional responsibilities, roles and tasks. This Committee extended its roles and now had responsibility of holding consultations on general principles and broad lines of monetary policy, also responsibility on issues falling within the competence of the central banks and affecting the stability of financial institutions and markets.⁹⁶ Furthermore, exchange of information and coordination of national monetary policies was to be promoted.⁹⁷ Also the Committee was granted the power to formulate opinions on overall monetary and exchange rate policies and to express these opinions to the governments of the Member States and to the Council.⁹⁸

The Committee of Governors really strengthen its position and powers, this was very important because Committee along with European Monetary Institute had crucial role in creating of the ECB. It was the Committee of Governors who proposed the draft of Protocol on the Statute of the European System of Central Banks and of the European Central Bank. Finally, changes made by Delors Committee Report allowed the Committee of Governors to set up sub-committees and provide its own research services.⁹⁹ Thus, three sub-committees were set up in 1990, devoted to monetary policy, foreign exchange policy and banking supervision.¹⁰⁰ Because of good preparation made in phase one of the EMU according to the Delors Committee Report, the final establishment of the ECB was smooth and without bigger problems.

3.5 The European Central Bank in the Maastricht Treaty

As we already concluded, in order to achieve stages two and three of EMU there was a need for revision of the Treaty establishing the European Economic Community. For this purpose Intergovernmental Conference (IGC) on EMU was convened, which was held in 1991 simultaneously with Intergovernmental Conference on political union. ICG had meetings throughout whole 1991 trying to agree and draft new proposals and solutions. These sessions

⁹⁶ Council Decision 90/142/EEC of 12 March 1990 amending Council Decision (64/300/EEC) of 8 May 1964 on cooperation between central banks of the Member States of the European Economic Community [1990] OJ L78/25, art. 3 sub (1)

⁹⁷ *ibid*, Art. 3 sub (1) and sub (3)

⁹⁸ *ibid*, Art. 3 sub (4) and sub (5)

⁹⁹ Council Decision 90/142/EEC of 12 March 1990 amending Council Decision (64/300/EEC) of 8 May 1964 on cooperation between central banks of the Member States of the European Economic Community [1990] OJ L78/25, art. 5

¹⁰⁰ Smits (n 43) p. 45

and negotiations finally culminated in the European Council meeting in Maastricht on 9 and 10 December 1991. Result was the Treaty on European Union signed in Maastricht on 7 February 1992 which amended the Treaty establishing the European Economic Community changing its name to the Treaty establishing the European Community also known as the EC Treaty. Due to scepticism and problems in some of the Member States the ratification process of the Maastricht Treaty took a lot of time. Referendums held in Member States showed only slight majority for the ratification. Denmark, for example, accepted this ratification on second referendum because result of the first was negative. In Germany there was a judicial challenge, therefore only after the decision made by the Federal Constitutional Court of Germany (Bundesverfassungsgericht) the ratification was possible. In its decision Court concluded that the transition to the third stage was not an automatism, as the Member States are to collaborate to achieve the necessary convergence which is a precondition for the adoption of the single currency.¹⁰¹ It further held that these so-called convergence criteria cannot be weakened without the consent of the German Parliament.¹⁰² After all this difficulties, the Maastricht Treaty finally entered into force on 1 November 1993. The Treaty adopted the Delors Committee proposals in a big degree and prescribed same idea that EMU is to be achieved in three stages.

Here we are presenting only provisions of the EC Treaty which are dealing directly and precisely with EMU. Title II, Chapter 4 named “Capital and payments” were amended and new provisions were inserted. This includes articles 73a till 73h and also article 75 which is replaced with new solution. All restrictions on the movement of capital and all restrictions on payment between Member States and between Member States and third countries shall be prohibited.¹⁰³ Treaty also regulated direct investment, financial services and the admission of securities to capital markets.¹⁰⁴

The most important title of Maastricht Treaty for EMU is Title VI named Economic and Monetary Policy. Economic policy is presented in articles 102 A – 104 C, and monetary policy in articles 105 – 109. Treaty states that Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council.¹⁰⁵ Council needs to monitor economic developments of the Member States in order to ensure closer coordination of economic policies and sustained convergence of the economic performances.¹⁰⁶ Treaty

¹⁰¹ Decision of the Bundesverfassungsgericht of 12 October 1993 (Supplement No. 5 to Issue No. 12, *Recht der Internationalen Wirtschaft* 1993, English translation in *CML Rev.* 57. 1994)

¹⁰² *ibid*

¹⁰³ Treaty on European Union [1992] OJ C191/1, art. 73b

¹⁰⁴ *ibid* art. 73c

¹⁰⁵ *ibid* art. 103

¹⁰⁶ *ibid* art. 103 (3)

devotes article 104c to the budgetary situation and the stock of government debt and says that Member States shall avoid excessive government deficits.¹⁰⁷ In conclusion, we can say that the Treaty regulated economic policy through the coordination of economic policies of Member States and multilateral surveillance of this coordination, and finally through the budgetary and financial discipline.

Monetary policy described in Chapter 2, Title VI of the Treaty on European Union is definitively core chapter for ECB and ESCB and therefore crucial for this work. First we need to indicate the Article 4a which was, by amendment, inserted in the newly named EC Treaty. It provides for the establishment of a European System of Central Banks (ESCB) and a European Central Bank (ECB) with powers conferred upon them by the Treaty and by Statute of the ESCB and of the ECB annexed to the Treaty¹⁰⁸. This statute is presented in next part of the thesis, here we are dealing exclusively with provisions of the Maastricht Treaty.

In mentioned Chapter 2, precisely in article 105, the Treaty describes objectives and roles of the ESCB and the ECB. The primary objective of the ESCB is to maintain price stability and to support the general economic policies of the Community.¹⁰⁹ Its basic tasks are: to define and implement the monetary policy of the Community¹¹⁰, 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.¹¹¹ Article 106 states that ESCB is composed of the ECB and of the national banks and that it is governed by the decision-making bodies of the ECB (the Governing Council and the Executive Board). Treaty in article 108 imposes an obligation to each Member State that it needs to ensure, at the latest at the date of establishment of the ESCB, that its national legislation including the statutes of its national central banks is compatible with the Treaty and the Statute of the ESCB.

In total eleven articles of Maastricht Treaty are devoted to ECB regulating its main issues. A lot of this articles are rewritten exactly same in the Statute of the ECSB and of the ECB which was annexed to the EC Treaty. Of course a lot of provisions were added in order to expand whole regulation and mechanisms of functioning of the ECB.

However, Maastricht Treaty also includes articles concerning EMU in general. For example article 109c sets up a Monetary Committee in effort of promotion of coordination of the policies of the Member States to the full extent needed for the functioning of the internal

¹⁰⁷ Treaty on European Union [1992] OJ C191/1, art. 104c

¹⁰⁸ *ibid* art. 4a

¹⁰⁹ *ibid* art. 105 (1)

¹¹⁰ Notion “Community” is changed into notion “Union” by the Treaty of Lisbon, also numbering of articles

¹¹¹ Treaty on European Union [1992] OJ C191/1, art. 105 (2)

market. It was constructed from members appointed by the Member States and the Commission, each appointed two. Among others, it had following tasks: to keep under review the monetary and financial situation and the general payments system of the Member States and of the Community and to report regularly thereon to the Council and to the Commission; to deliver opinions at the request of the Council or of the Commission; to examine, at least once a year, the situation regarding the movement of the capital and the freedom of payments.¹¹² In same article the Treaty also provided for dissolution of this Committee at the start of the third stage of the EMU. It is changed by the Economic and Financial Committee with same tasks. Difference is that newly established ECB is also appointing two members of this Committee.

The discussion on first phase of the EMU is concluded here with Maastricht Treaty's Article 109a which states that the second stage for achieving economic and monetary union shall begin on 1 January 1994.¹¹³

3.6 Transformation of the European Monetary Institute into the European Central Bank

Stage two of the EMU was marked by establishment of the European Monetary Institute (EMI) which took all tasks from the Committee of Governors of Central Banks of the Member States. The Committee was dissolved along with the European Monetary Cooperation Fund. EC Treaty partially govern issues of principles of functioning of the EMI but clear and detailed provision were issued in the Statute of the EMI which was laid down in a Protocol annexed to the Treaty.

Members of the EMI were the central banks of the Member States.¹¹⁴ The EMI was directed and managed by the Council which consisted of a President and the Governors of the national central banks.¹¹⁵ It had objective to contribute to the realization of the condition necessary for the transition to the third stage of EMU in particular by strengthening the coordination of monetary policies, making the preparations required for the establishment of the ECSB, creation of a single currency and development of the ECU.¹¹⁶ It had its seat in Frankfurt, same as the ECB have today. While the EMI did not have any decision-making

¹¹² Treaty on European Union [1992] OJ C191/1, art 109c (1)

¹¹³ *ibid* art 109e (1)

¹¹⁴ Protocol (No 19) annexed to the Treaty establishing the European Community by the Treaty on European Union signed in Maastricht on 7 February 1992 which establishes the Statute of the European Monetary Institute (EMI), [1992] OJ C191/79, art 1.2 (EMI Statute)

¹¹⁵ *ibid* art. 9.2

¹¹⁶ *ibid* art. 2

powers in the field of monetary policy, the ECB of course have it. The EMI was responsible for ensuring the coordination of national monetary policies with the aim to promote convergence and to ensure price stability. In stage two of the EMU governing of monetary policies were still done under national authorities. The EMI carried out its coordination task on the basis of analyses of overall economic developments in the various Member States and monetary policies pursued by the respective national authorities.¹¹⁷

Very important obligation of the EMI together with the Commission was to report to the Council on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of the EMU and achievement of a high degree of sustainable convergence.¹¹⁸ Criteria that Member States need to fulfil are found article in 109j of Maastricht Treaty: the achievement of high degree of price stability, the sustainability of the government financial position, the observance of the normal fluctuation margins provided for by the exchange rate mechanism of the EMS, the durability of convergence achieved by the Member State being reflected in the long-term interest-rate levels. The EMI was obliged to submit a convergence reports every year. The EMI made it clear from the outset that it would assess the state of convergence and its sustainability in full independence, but it would do so in a fully accountable manner by stressing in advance that it would apply the following four guiding principles: (1) the individual convergence criteria would be interpreted and applied in a strict and rigorous manner; (2) they would be regarded as a coherent and integrated package that would all have to be satisfied on an equal footing; (3) they would have to be met on the basis of current data which would therefore also need to be as harmonised as possible; and (4) compliance with the criteria would be assessed in a consistent, transparent and simple manner.¹¹⁹

This is of very big importance because the ECB is now using and applying these same four guiding principles in its convergence reports. In making of this reports EMI was using a lot of different assessments that are dealing with all criteria from the Maastricht Treaty. This criteria were assessed in a coherent, rigorous and transparent manner so EMI's reports were highly professional. This small institution that lasted about four and a half years left big impact on European Union, made so to say a form, methodology and procedure of making of convergence reports used by ECB even today.

¹¹⁷ European Monetary Institute, *The European Monetary Institute* (EMI 1997) p. 14

¹¹⁸ Treaty on European Union [1992] OJ C191/1, art. 109j (1)

¹¹⁹ Ivo Maes and Frank Moss, *Progress through crisis? Proceeding of the Conference for the 20th anniversary of the establishment of the EMI* (European Central Bank 2014) p. 85

The succession of the EMI by the ECB was ensured by the EMI Statute. Pursuant to the Article 23 all assets and liabilities of the EMI shall pass automatically to the ECB, so all contracts made by the EMI are binding the ECB. This transformation is made at the moment of the liquidation of the EMI which is to be completed by the beginning of the third stage of the EMU.¹²⁰ Independence of the EMI provided in article 8 of its Statute is crucial for independence of today's ECB because it stated that the members of the EMI Council act according to their own responsibilities. Here the EMI Statute ensures that national central bank's governors are acting independently of their NCB and government instructions.

Apart from coordination of monetary policies the EMI also had to do preparatory work for stage three of the EMU. Regarding this task it precisely had to specify and develop the technical and organisational infrastructure for the ESCB and the ECB, to devise a monetary policy strategy and the appropriate set of monetary policy instruments, to promote the harmonisation of statistics, to hold and manage the official foreign exchange reserves of the Member States, to supervise the technical preparation of the euro banknotes.¹²¹ 31 December 1996 was the date until the EMI needed to specify all work necessary for the ESCB to perform its tasks in the third stage.¹²²

The final date for starting of a third and last stage of EMU according to the Maastricht Treaty was prescribed to be latest on 1 January 1999.¹²³ Final stage implied: introduction of the euro, entry into effect of the intra-EU exchange rate mechanism (ERM II), entry into force of the Stability and Growth Pact, irrevocable fixing of conversion rates and conduct of the single monetary policy by the European System of Central Banks.¹²⁴ All of preparatory work in order to achieve this was done in stage two under leadership of the EMI. The name of the single European currency "euro" was agreed in December 1995 by the European Council. Design of the euro banknotes was presented by the EMI. In December 1996 the EMI presented its report to the European Council, which formed the basis of a Resolution of the European Council on the principles and fundamental elements of the new exchange rate mechanism (ERM II), which was adopted in June 1997.¹²⁵ European Council adopted Stability and Growth Pact also in June 1997. Most important parts of this Pact were two Regulations which aimed to ensure budgetary discipline in respect of EMU. Reforms of this issues were done in 2005 and 2011.

¹²⁰ EMI Statute, art. 23.1

¹²¹ European Monetary Institute, (n 117) p. 15

¹²² EMI Statute Art. 4.2

¹²³ Treaty on European Union [1992] OJ C191/1, art. 109j (4)

¹²⁴ Stages of Economic and Monetary Union (*European Central Bank*)

<<https://www.ecb.europa.eu/ecb/history/emu/html/index.en.html>> accessed 15 September 2016

¹²⁵ *ibid*

“The Changeover to the Single Currency” was the name of EMI’s report published in November 1995 in which it was proposed that stage three is divided into three periods. In preparation for the first period, the EMI carried out tasks such as preparing necessary organizational and legal framework and regulations for the ECB and ESCB to execute business in stage three of the EMU, preparing legislation related to the euro, and developing and testing the euro settlement system (TARGET: Trans-European Automated Real-time Gross Settlement Express Transfer System).¹²⁶ First period begun in May 1998 and prescribed: determining who would be the EMU member states, selection of an ECB president and other officials and establishing of the ESCB and the ECB.

Period two was scheduled to start on 1 January 1999. The exchange rates among the euro and the currencies of the EMU member states would be irrevocably fixed and the euro would be introduced in non-cash transactions, TARGET also began to function, the euro was used in all operations involving ECB monetary policy and foreign exchange operations, and the issuance of euro-denominated bonds by the public entities of the EMU member states was launched.¹²⁷ 1 January 2002 was date set for beginning of period three. Euro officially become legal tender and each state’s currency was replaced and lost its legal force.

On the basis of EMI’s 1995 report at the European Council Summit in Amsterdam in June 1977 it was agreed that the Maastricht Treaty needs to be revised. So Amsterdam Treaty which in fact is revised Maastricht Treaty was signed in October 1997 and took effect in May 1999. Most important provisions of the Maastricht Treaty stayed same, only with specifying of the appropriate dates. Also name of the single currency was officially changed into “euro”.

In order to enter into stage three Member States had to fulfil the requirements or criteria prescribed in article 109j of the Maastricht Treaty which we already discussed. Only Member States which fulfil the necessary conditions for the adoption of a single currency can do so, all other Member States are referred to as Member States with derogation.¹²⁸ On 2 May 1998 the Council of the European Union unanimously decided that 11 Member States had fulfilled all this necessary conditions. The initial participants were: Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland.¹²⁹ In May 1998, the ministers of finance of this 11 Member States adopting the single currency agreed together

¹²⁶ Shigeyuki Hamori, Naoko Hamori, *Introduction of the Euro and the Monetary Policy of the European Central Bank*, (World Scientific Publishing Co. Pte. Ltd. 2010) p. 15

¹²⁷ *ibid* p. 16

¹²⁸ Treaty on European Union [1992] OJ C191/1, art. 109k (1)

¹²⁹ Stages of Economic and Monetary Union (*European Central Bank*)

<<https://www.ecb.europa.eu/ecb/history/emu/html/index.en.html>> accessed 20 September 2016

with the governors of the national central banks of these Member States, the European Commission and the EMI that the current ERM bilateral central rates of the currencies of the participating Member States would be used in determining the irrevocable conversion rates for the euro.¹³⁰

The Maastricht Treaty laid down procedure for the establishment of the ESCB and the ECB. Wording of the Treaty is: The governments of the Member States without a derogation shall appoint the President, the Vice-President and the other members of the Executive Board of the ECB, as soon as this Board is appointed the ESCB and the ECB shall be established and shall prepare for their full operation.¹³¹ On 25 May 1998 the governments of the 11 participating Member States appointed certain professionals on these functions. This appointment took effect from 1 June 1998 so this date is ultimate date of the establishment of the European Central Bank. In accordance with article 109l of the Maastricht Treaty and article 23 of the EMI statute, the EMI went into liquidation with the establishment of the ECB. As already mentioned all EMI's functions, assets and liabilities passed automatically to the ECB.

3.7 Characteristics of the European Central Bank

ECB and the NCBs of all Member States construct the ESCB. As the ESCB has no legal personality, main player is the ECB which govern monetary policy of all Member States that are part of the euro area. These Member States gave up their monetary sovereignty. In fact NCBs can also act but in line with the rules of the Treaty, the Statute of the ESCB and the decisions taken by the ECB. So we can agree with Scheller where he states that: 1) decision-making is centralised and 2) the tasks that the EC Treaty has assigned to the ESCB are performed jointly and consistently in line with the allocation of powers and the objectives of the system.¹³²

We need to understand that ESCB includes three groups of NCBs. First are NCBs of Member States that have adopted euro, second are NCBs of Member States with derogation (Sweden and new EU Member States) and third are NCBs of Member States with special status (Denmark and still United Kingdom (September 2016)). Therefore, to help the public to

¹³⁰ Stages of Economic and Monetary Union (*European Central Bank*)

<<https://www.ecb.europa.eu/ecb/history/emu/html/index.en.html>> accessed 20 September 2016

¹³¹ Treaty on European Union [1992] OJ C191/1, art. 109l (1)

¹³² Scheller (n 50) p. 42

understand the complex structure of the European central banking system more easily, the Governing Council of the ECB decided in November 1998 to adopt the term “Eurosystème” which refers to the composition – the ECB and the NCB of the Member States that have adopted the euro – in which the ESCB perform its basic tasks.¹³³ The NCBs of the non-participating EU Member States are excluded from the conduct of the single monetary policy.

Some authors which favour a unitary institutional view of the European Union qualify the ECB as an independent sub-organisation of the Union because it is independent as regards its personnel, its finances and its legal personality.¹³⁴ But we are taking the approach of viewing the ECB as an independent specialised organisation of Community law in which it represents the most supranational entity so far established by the means of Community law.¹³⁵

Main features of the European Central Bank as determined in the Protocol on the Statute of the ESCB and of the ECB annexed to the EC Treaty are showed here. Same Protocol is published in Official Journal of the European Union from 2012 because of the changing of the name of the Treaty on European Union to the Treaty on the Functioning of the European Union and here we are quoting this new source.

By the Treaty the ECB have legal personality¹³⁶, of course the ESCB does not have it. The Statute however, expands this adding that the ECB may acquire or dispose of movable and immovable property and may be a party to legal proceedings.¹³⁷ Regarding objectives, roles and tasks of the ESCB they are written exactly same in the Statute as in the Treaty. We are finding these provisions in Articles 2 and 3 of this Statute. Primary objective of the ESCB is to maintain price stability. Also supporting of the general economic policies in the Union with the principle of an open market economy with free competition. Article 6 deals with international cooperation of the ECB and article 7 with its independence.

As we already mentioned, the decision making bodies of the ECB are the Governing Council and the Executive Board. The Council comprise the members of the Executive Board of the ECB and the governors of the national central banks.¹³⁸ Voting system and quorum of the Council is further described in this article. The Executive Board is comprised of the President, the Vice-President of the ECB and four other members that have professional

¹³³ Scheller (n 50) p. 42

¹³⁴ A. von Bogdandy, *The Legal Case for Unity: The European Union as a Single Organisation with a Single Legal System* (CML. Rev 1999) p. 904

¹³⁵ Chiara Zilioli, Martin Selmayr, *The Law of the European Central Bank* (Hart Publishing 2001) p. 29

¹³⁶ Treaty on European Union [1992] OJ C191/1, art. 106 (2)

¹³⁷ Protocol (No 4) on the Statute of the European System of the Central Banks and of the European Central Bank from 26.10.2012 [2012] OJ C326/230, art. 9 (1) (ESCB and ECB Statute)

¹³⁸ ESCB and ECB Statute, art 10 (1)

experience in monetary or banking matters and are recommended from the Council.¹³⁹ Their term of office is eight years and they are responsible for current business of the ECB.¹⁴⁰ The governments of all the member states of the euro area must agree on the appointments to the Executive Board. The process begins with a recommendation by the Council of Economics and Finance Ministers (ECOFIN)¹⁴¹ Once ECOFIN makes its recommendations, the European Parliament and the Governing Council of the ECB are consulted, following these consultation the appointments are confirmed by the heads of state of government of the euro area members.¹⁴² Responsibilities of the Governing Council as laid down in article 12 are formulations of the monetary policy of the Community including decisions relating to intermediate monetary objectives, key interest rates and supply of reserves in the ESCB and establishing the necessary guidelines for their implementation. The Executive Board, on the other hand, shall implement monetary policy in accordance with this guidelines and decisions by giving necessary instruction to national central banks.

The ECB needs to be consulted on any proposed Union act in its fields of competence and on any national authorities draft legislative provisions in its fields of competence.¹⁴³ Collection of statistical information in order to undertake the tasks of the ESCB is regulated by article 5 of the Statute. Very important provisions is found in article 14 which treats national central banks and says that Member State shall ensure that its national legislation including the statute of its national central bank is compatible with this Treaty and this Statute. ECB must publish reports of the activities of the ESCB at least quarterly, a consolidated financial statement of the ESCB each week and also needs to address annual reports on the monetary policy to the European Parliament, the Council and the Commission and also to the European Council.¹⁴⁴

Finally, the Governing Council have the exclusive right to authorise the issue of banknotes (the European Council agreed to name the European currency “euro” in December 1995) within the Union and they can be issued by the ECB and national central banks. ECB is not referred to in Article 7 of the EC Treaty which establishes the five institutions of the Community. Instead, the legal basis of the ECB and the ESCB is given in the Article 8 of the EC Treaty so the ECB has the specific status in the European Community and enjoys genuine

¹³⁹ ESCB and ECB Statute, art 11 (2)

¹⁴⁰ *ibid* art 11 (2) and 11 (6)

¹⁴¹ Patricia S. Pollard, *A Look Inside Two Central Banks: The European Central Bank and the Federal Reserve* (The Federal Reserve Bank of St. Louis 2003) p.14

¹⁴² *ibid*

¹⁴³ ESCB and ECB Statute, art 4 (a), (b)

¹⁴⁴ *ibid* art 15

powers. The resources of the ECB are completely separated from the budget of the other institutions, and its financial interests are far from being identical of those of the Communities.¹⁴⁵

From this discussion of the EC Treaty and the Statute of the ESCB and ECB we can conclude that there are three objectives of the ESCB: 1) the primary objective of price stability, 2) the support of general economic policies in the Community which include a high level of employment and sustainable and non-inflationary growth, and 3) the principle of an open market economy with free competition. Since Article 105(1) of the EC Treaty applies only to the EU Member States which have adopted the euro, the term “ESCB” is referred to the term “Eurosystem”.

Basic tasks of the Eurosystem pursuant to the Article 105(2) of the EC Treaty and Article 3.1 of the Statute are: defining and implementing the monetary policy of the euro area; conduct of foreign exchange operations; holding and managing the official foreign reserves of the euro area Member States; promoting the smooth operation of payment system. All of this objectives and operations managed mainly by the ECB are directly helping in business development throughout the whole union. Also the task of promoting the smooth operation of payment systems acknowledges the importance of sound and efficient systems not only for conduct of monetary policy but also for the economy as a whole.¹⁴⁶ ECB’s role in business development in the Union is discussed in separated chapter.

The general principle is that decision-making of ESCB (the Eurosystem) is centralised and govern by the ECB’s decision-making bodies.¹⁴⁷ Within their respective responsibilities, those bodies take all the necessary decisions to enable the ESCB and the Eurosystem to carry out their respective tasks. Moreover, pursuant to the Article 9.2 of the Statute, the ECB ensures that the tasks of the Eurosystem are carried out either by its own activities or through the NCBs. The ECB exercises several specific functions, in particular it: is the decision-making centre of the ESCB and the Eurosystem; ensures consistent implementation of ECB policies; exercises regulatory powers and the right to impose sanctions; initiates Community legislation and advises the Community institutions and EU Member States on draft regulation; monitors compliance with the provisions of Articles 101 and 102 of the Treaty.¹⁴⁸

¹⁴⁵ Chiara Zilioli, Martin Selmayr (n 135) p. 43

¹⁴⁶ Scheller (n 50) p. 49

¹⁴⁷ ESCB and ECB Statute, art. 8

¹⁴⁸ Scheller (n 50) p. 51

Discussion on all of segments of the path toward the creation of the ECB was necessary for apprehension of complicated system of the central banking in the European Union and its impact on EU Member States. Furthermore, the discussion was needed in order to make specific conclusions on the thesis and to ease understanding of next argued ECB's roles. Detail examination of two specific roles of the ECB – its role in EU enlargement process and its role in business development in EU Member States, EU candidate and potential candidate states is presented in following chapters 4. and 5.

4. The European Central Bank's role in current enlargement process (reference to Bosnia and Herzegovina and the CBBH)

4.1 Cornerstones of the EU enlargement and pre-accession relations with the ECB

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.¹⁴⁹ Any European State which respects this values and is committed to promoting them may apply to become a member of the Union.¹⁵⁰ Article 49 of the Treaty on European Union is the legal basis for EU enlargement policy and it provides rules of formal procedure of the application. It says that the Applicant State needs to address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. Furthermore, the conditions of eligibility agreed upon by the European Council are also to be taken into account.

Certain criteria established in June 1993 summit meeting of the European Council in Copenhagen also known as “Copenhagen criteria” must be met for admission. This criteria are: 1) stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; 2) a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; 3) ability to take on obligations of membership, including the capacity to effectively implement the rules, standards and policies

¹⁴⁹ Consolidated versions of the Treaty on European Union OJ C326/13, art. 2

¹⁵⁰ *ibid*, art. 49

that make up the body of EU law (the ‘acquis’), and adherence to the aims of political, economic and monetary union.¹⁵¹ This criteria were further clarified by following European Council summits in Madrid 1995 and Brussels 2006.

The acquis (Union acquis) is defined as EU standards and rules and all new EU Member States must enact legislation to bring their laws into line with this acquis. The acquis is divided into 35 different chapters or policies for the purpose of accession negotiations. All of this 35 policy fields are not negotiable because they have to be accepted by EU candidate countries without changes. Only the conditions and timing of its adoption and implementation are discussed during the accessions negotiations, as such, full compliance with the acquis is often achieved progressively subject to transitional measures and periods in order to give new and existing Member States time to adapt.¹⁵²

The applicant country or potential candidate country submits its application for membership to the presidency of the Council of the EU and this formally marks the accession process. Despite this official action, the EU and interested country usually cooperate much before via an association agreement. This is particularly used in the case where a country’s application for EU membership would not be successful and the association agreement can help to prepare the country for candidacy.¹⁵³ All Western Balkan countries have signed this types of agreements. Independently of whether Western Balkan countries will be offered candidate status in the future, the degree of integration sought in the SAAs is deeper than with any other non EU-country.¹⁵⁴ Countries are obligated to implement rules on the establishment of companies, capital movements, competition, intellectual property and public contracts with the EU.¹⁵⁵ The Stabilisation and Association Agreement (SAA) with Bosnia and Herzegovina was signed in 2008 and entered fully into force in June 2015. Thanks to the SAA and its trade component, the Interim Agreement in force since 2008, 85% of Bosnia and Herzegovina’s exports go to the EU.¹⁵⁶

Furthermore, the European Commission monitors the EU potential candidate countries much before the official start of the accession negotiations. Every year it issues an assessment

¹⁵¹ Accession criteria (Copenhagen criteria) (EUR-Lex) <http://eur-lex.europa.eu/summary/glossary/accesion_criteria_copenhagen.html> accessed 3 November 2016

¹⁵² Lucia Orszaghova, *EU enlargement – Institutional aspects and the ECB’s role* (Narodna Banka Slovenska 2014) p. 27

¹⁵³ *ibid*

¹⁵⁴ Francesco Mazzaferro, Arnaud Mehl and others, *Economic Relations with Regions Neighbouring the Euro Area in the “Euro Time Zone”* (Occasional Paper Series No. 7, European Central Bank 2002) p. 17

¹⁵⁵ *ibid*, p. 18

¹⁵⁶ Memo on the adaption of the Stabilisation and Association Agreement with Bosnia and Herzegovina (*Delegation of the European Union to Bosnia and Herzegovina* 15 December 2016) <<http://europa.ba/?p=46704>> accessed 18 December 2016

of county's progress towards fulfilling the accession criteria. In this assessments the Commission is, among others, evaluating the economic criteria which are connected with the ECB and national central banks. In line with the Copenhagen criteria, EU accession requires the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union. In its 2016 assessment for Bosnia and Herzegovina the Commission concludes that the country is still at an early stage in developing a functioning market economy. Some progress has been made, such as steps to modernise labour legislation, improve the business environment and address weaknesses in the financial sector.¹⁵⁷ The Commission addressed these recommendations for the country:

- improving the quality of public finance by enhancing the growth-friendliness of investment,
- strengthening the financial sector by addressing non-performing loans and enhancing banking sector supervision and developing a new resolution framework,
- improving the provision and quality of timely and exhaustive statistics, increasingly applying European and international standards.¹⁵⁸

Monetary policy assessment of the country made by the European Central Bank and included into 2016 Progress Report brought some good information. The currency board arrangement with the euro as anchor currency was maintained and continues to enjoy a high level of confidence and credibility.¹⁵⁹ This approach avoided the build-up of major macroeconomic imbalances. But the Commission also stated that the county requires a more responsible fiscal policy, necessitating the building-up of sufficient fiscal buffers and a stronger emphasis on medium-term stability.

Regarding financial stability and functioning of financial markets the Report says that the banking sector supervision and resolution suffer from fragmentation and insufficient data sharing among relevant stake holders. This is happening because of unnatural inner territorial organisation of the country which is resulting in slow cooperation among banking authorities. In our opinion this could be fixed in such manner that banking authorities of lower territorial organisations need to be dissolved and only central authority should remain.

Next conclusion of the Commission is that the sector's overall capital endowment with respect to its risk, the so-called capital adequacy ratio recovered to 15.8% by mid-2016 and it

¹⁵⁷ Commission Staff Working Document Bosnia and Herzegovina 2016 Report (SWD 365 final, European Commission 2016) p. 30

¹⁵⁸ Commission Staff Working Document Bosnia and Herzegovina 2016 Report (SWD 365 final, European Commission 2016) p. 31

¹⁵⁹ *ibid* p. 33

is above the regulatory minimum of 12%.¹⁶⁰ Moreover, the banking sector profitability and credit risk indicators have been improved in 2016.

4.2 Formal stages of the accession process with ECB's roles in them

Application for the membership is addressed to the Council which then requests the European Commission to make its first evaluation and opinion and notify the European Parliament of the application. Commission's opinion is then given to the Council of the European Union. In the light of the European Commission's opinion, the Council decides whether to consider the applicant a candidate country and whether to set certain conditions that must be met before accession negotiations can begin.¹⁶¹

In 2016 Bosnia and Herzegovina made really big steps on its path of the EU integration process. First there is full implementation of the SAA with signing of the newest Protocol on the adaption of the SAA¹⁶² after a long and problematic process of negotiations. The Protocol is planned to be provisionally applied as of 1 February 2017. Second there is the establishment of a functioning coordination mechanism on EU matters which took a lot of time and effort to complete. This is due to complicated inner territorial organisation of Bosnia and Herzegovina. And finally there is a membership application submitted by Bosnia and Herzegovina on 15 February 2016. On 20 September 2016 the session of the Council for General Affairs of the European Union accepted the application and in order with accession procedure, requested the Opinion of the Commission on the membership application. The Council gave an assignment to the Commission to prepare a Questionnaire with several thousand questions about country's suitability to join. Next in line with this, on 9 December 2016 the Commission handed over a comprehensive Questionnaire to Bosnia and Herzegovina, which is used together with other tools to shape final Commission's Opinion.

When the application for EU membership is accepted, a country is then officially recognised as a candidate country. A unanimous decision issued by the European Council on the

¹⁶⁰ Commission Staff Working Document Bosnia and Herzegovina 2016 Report (SWD 365 final, European Commission 2016), p. 35

¹⁶¹ EU Enlargement Factsheet (*European Commission*) < http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/publication/factsheet_en.pdf > accessed 18 December 2016

¹⁶² Protocol to the SAA between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, to take account of the accession of the Republic of Croatia to the European Union [2017] OJ L12/3

mandate for negotiations is needed in order to start the formal membership negotiations with the candidate country. The accession negotiations represent the cornerstone of the accession process and cover adoption, implementation and application of the *acquis* by the applicant country.¹⁶³ European Commission investigates the candidate country in details in a process called screening. The resulting screening report identifies shortcomings in the candidate country that need to be gradually addressed in order for it to comply with the body for all EU Member States (the *acquis*).¹⁶⁴ As already mentioned, the *acquis* is divided into 35 chapters. The chapters are related to major aspects of EU policy such as fundamental rights, free movement of persons, goods, services and capital, than regional policy, economic policy, foreign policy, energy, transport and much more.

There are six chapters of the *acquis* which are related to central bank tasks. Those chapters are: Chapter 3: Right of establishment and freedom to provide services; Chapter 4: Free movement of capital; Chapter 9: Financial services; Chapter 17: Economic and monetary policy; Chapter 18: Statistics; Chapter 28: Consumer and health protection.¹⁶⁵ ECB and NCBs of candidate countries are involved in negotiations regarding this chapters.

Membership negotiations phase is divided into three steps. First of them is the *Acquis Screening* which in fact represents analytical examination and assessment of a degree of harmonisation of national legislation with the *acquis communautaire* by the European Commission. This step lasts approximatively one year and when it is completed, the EU Council assesses the readiness of the candidate country to open negotiations. Candidate country presents its negotiations position. Then the European Commission drafts a common position which the Council has to adopt.

Second step or negotiations starts at an accession conference which is held most commonly on Foreign Ministers level. The negotiations step relate to how soon the candidate country fulfils benchmarks and requirements which have to be fulfilled before the chapters are opened for negotiations. Candidate country also needs to fulfil requests from other Member States. Once all Member States are satisfied negotiations on a chapter are provisionally closed, but not definitely until the entire negotiation process is concluded.

¹⁶³ Orszaghova (n 152) p. 28

¹⁶⁴ EU Enlargement Factsheet (*European Commission*) <http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/publication/factsheet_en.pdf> accessed 18 December 2016

¹⁶⁵ Chapter of the *acquis* (*European Commission*) <https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en> accessed 18 December 2016

During the negotiations the European Commission publishes regular progress reports based on assessments against Copenhagen Criteria. It is doing so every year until the full membership in European Union.

Last step of negotiations and also final step of the accession process is coming after a candidate country has completed and closed all chapters of negotiations meaning that it has reformed all of its national laws so that they match the *acquis*. This is concluded with the accession treaty which needs to be signed by the candidate country and all EU Member States. The accession treaty must also win the support of the Council of the European Union, the European Commission and the European Parliament, than the candidate country becomes an acceding country.¹⁶⁶ An acceding country has the “active observer” status which means that it has the right to speak but not to vote in EU institutions. In the accession treaty there is the specified date on which the acceding country becomes an EU Member State.

The ECB has significant role in all of this aforementioned phases of the enlargement process. It is included in relations with the potential candidate and candidate countries or the pre-accession and accession countries from core beginning of the process. The ECB is involved in issues about financial stability, monetary and exchange rate policies and in all other areas of its competence. Its job is to monitor monetary, economic and financial developments in respective countries.

Most of the ECB’s roles in the accession process are informal and they are not done directly by ECB’s bodies. In theory the ECB does not give any opinions on matters regarding some country’s accession path. However, the ECB carries out, in parallel to the DG ECFIN and in line with their respective mandates, an annual assessment of candidate countries’ medium-term policies and priorities, the so-named pre-accession economic and fiscal programmes (EFPs or PEPs).¹⁶⁷ DG ECFIN stands for The Directorate-General for Economic and Financial Affairs which is a Directorate-General of the European Commission. Its mission is to improve the economic wellbeing of the citizens of the EU – through the policies designed to promote sustainable economic growth, a high level of employment, stable finances and financial stability.¹⁶⁸

The pre-accession economic and fiscal evaluations or programmes made by the DG ECFIN and the ECB have the goal to strengthen the economic planning capacity in the countries

¹⁶⁶ EU Enlargement Factsheet (*European Commission*) < http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/publication/factsheet_en.pdf > accessed 18 December 2016

¹⁶⁷ Orszaghova (n 152) p. 28.

¹⁶⁸ About DG ECFIN (*European Commission*) < http://ec.europa.eu/dgs/economy_finance/index_en.htm > accessed 19 December 2016

concerned and prepare them for participation in economic and fiscal coordination and surveillance procedures that are at the stage in the EMU. Economic and fiscal programmes are established at the level of the EU Economic and Financial Committee (EFC) so reports and submitted medium-term economic and fiscal programme of a potential candidate country are discussed at this Committee. DG ECFIN then issues a “Commission’s overview and country assessment” document as an information note.

ECB’s International Relations Committee (IRC) issues once a year an “Annual Briefing on candidate and potential candidate countries”, usually in November. The ECB directly cooperate with the Commission in making of its country specific assessments. Its representatives and experts are always present on discussion meetings. This became even more important when the Commission in its 2013 and 2014 enlargement strategies outlined a new approach to economic governance. This new approach implies an important change in the economic policy dialogue with enlargement partners with a view to giving clearer guidance on the reforms needed to foster macroeconomic stability, ensure fiscal sustainability, and support long-term growth and competitiveness.¹⁶⁹ The dialogue on economic governance is meant to prepare enlargement countries for their future participation in the EU economic policy coordination. With this new approach enlargement countries need to submit medium-term Economic Reform Programmes (ERP) in which they describe macroeconomic and fiscal policy framework and structural reform plans for boosting of competitiveness and long-term growth. Bosnia and Herzegovina submitted Economic Reform Programme on 1 February 2016 covering the period 2016-2018. It was adopted by country’s Council of Ministers in line with the government’s medium-term fiscal strategy. As we already said, on basis of these programmes Commission issues its conclusions in a document named “Commission’s overview and country assessment”.

The programmes and Commission’s assessment are firstly discussed at multilateral meetings and at the Economic and Financial Dialogue. These meetings are attended by representatives from EU Member States, the Commission, the European Central Bank, enlargement countries as well as representatives of the central banks of potential candidate and candidate countries. Economic and Financial Dialogue adopts the Joint Conclusions which contain country-specific policy guidance.

¹⁶⁹ European Commission Directorate-General for Economic and Financial Affairs, 2016 Economic Reform Programmes The commission’s Overview and Country Assessments from 26 May 2016 (Institutional Paper 028, Publications Office of the European Union 2016) p. 1

The conclusions for Bosnia and Herzegovina regarding economic activity are that the country experienced the recovery which has been mainly driven by stronger private consumption, investment and exports.¹⁷⁰ This led to a positive effect on employment and also inflation remained subdued.¹⁷¹ On the financial stability side, challenges to banks' asset quality through non-performing loan burdens remain high, and thus demand policy action by authorities on account of the implications to both financial stability and the real economy; Authorities plan to upgrade the legal infrastructure underpinning the financial system and to shed light on smaller banking entities through an asset quality review.¹⁷² In the end Participants of the Joint Conclusions invite Bosnia and Herzegovina to: 1. Improve the quality of public finances; 2. Improve the provision of timely and exhaustive statistics; 3. Develop a comprehensive strategy to foster the resolution of non-performing loans by banks with a view to reducing risks to financial stability; 4. Set up a common economic space and systematic coordination mechanisms between all government levels; 5. Introduce e-payment services on taxation; 6. Reinforce the capacities of the employment services.¹⁷³

These policy guidance are also included in The Commission's Overview and Country Assessments issued in July 2016. Here we are giving most relevant information from parts of this Commission's document which were made in order with recommendations from expert staff coming from the European Central Bank. Part 6 of the Commission's Overview is dedicated to Bosnia and Herzegovina country analysis. Precisely Part 6.2. of this Overview talks about economic outlook and risks for Bosnia and Herzegovina. It states that the pace of growth will be moderate in 2016-2017, but more pronounced in 2018. The ERP of Bosnia and Herzegovina is based on macroeconomic framework, projecting that growth will increase from 2.5 % in 2015 to 4 % in 2018, bringing average annual growth to 3.4 %.¹⁷⁴ For the macroeconomic scenario the Commission concluded that it is optimistic with some risks. The risks related to the external environment are well recognised, while given the country's track record the assumption that investment will grow by some 9 % annually is rather optimistic, given that in the fiscal part public investment is planned to drop (from 3.8 % of GDP in 2014 to 2.2 % in 2018) and the country's track record in improving the business environment is rather

¹⁷⁰ Secretary-General of the European Commission, Joint Conclusions of the Economic and Financial Dialogue between the EU and the Western Balkans and Turkey (ECOFIN 510 UEM 235 2016) p. 8

¹⁷¹ Ibid

¹⁷² Ibid

¹⁷³ Secretary-General of the European Commission, Joint Conclusions of the Economic and Financial Dialogue between the EU and the Western Balkans and Turkey (ECOFIN 510 UEM 235 2016) p. 9

¹⁷⁴ European Commission Directorate-General for Economic and Financial Affairs, 2016 Economic Reform Programmes The commission's Overview and Country Assessments from 26 May 2016 (Institutional Paper 028, Publications Office of the European Union 2016) p. 111

poor.¹⁷⁵ Furthermore, the Commission's Overview says that the programme's inflation scenario is largely plausible, envisaging low inflationary pressures in the coming years. Price increases for imported energy and intermediate goods are expected to remain subdued, while domestic price pressures, in particular on the wage side, are seen to remain moderate.¹⁷⁶

And lastly for the banking system, the Overview concludes that it appears broadly stable. Profitability remained positive and the liquidity of the system remains at comfortable levels because precautionary motives appear to be keeping deposit growth high, with average deposit levels higher than before.¹⁷⁷ However, there are significant differences at a lower level of aggregation, with significantly higher levels of non-performing loans at some, non-systematic, domestically-owned banks.¹⁷⁸ So, legislative changes to facilitate loan restructuring have yet to be made and further efforts remain necessary to encourage the clean-up of banks' balance sheets, and also banking sector supervision and resolution needs to be improved.¹⁷⁹

Financial sector indicators					
	2011	2012	2013	2014	2015
Total assets of the banking system, mEUR	10,987	11,210	11,794	12,299	12,758
Credit growth	-6.3	-0.7	3.1	-1.9	0.8
Bank loans to the private sector	53.0	49.9	48.8	47.9	45.2
Deposit growth	1.5	9.0	5.9	10.0	13.7
Loan to deposit ratio	1.1	1.2	1.1	1.1	1.0
Financial soundness indicators					
- non-performing loans	12.0	12.7	14.5	15.2	13.9
- net capital to risk weighted assets	17.1	17.0	17.8	16.3	16.2 Q3
- liquid to total assets	27.2	25.4	26.4	26.8	25.8 Q3
- return on equity	5.8	4.9	-1.4	5.2	3.0 Q4
- forex loans to total loans	66.7	63.1	62.9	62.3	62.4Q1

Table 1.

Source: European Commission Directorate-General for Economic and Financial Affairs, 2016 Economic Reform Programmes The commission's Overview and Country Assessments; Central Bank, DataInsight, IMF

¹⁷⁵ European Commission Directorate-General for Economic and Financial Affairs, 2016 Economic Reform Programmes The commission's Overview and Country Assessments from 26 May 2016 (Institutional Paper 028, Publications Office of the European Union 2016) p. 111

¹⁷⁶ *ibid*

¹⁷⁷ *ibid* p. 113

¹⁷⁸ *ibid*

¹⁷⁹ *ibid*

Commission's Overview and Country Assessment included this table providing information about financial sector indicators. Because it is directly connected with the thesis we found it conveniently to include the table here. This table is made by cooperation of the ECB with the International Monetary Fund and the CBBH.

4.3 Other means of ECB's involvement in enlargement process

This subchapter is dealing with all other aspects of ECB's involvement and significance in EU enlargement. As we saw from sources of Table 1. Country specific assessment made by the ECB are not only discussed in the institutions of the EU. There is a cooperation of the ECB with the International Monetary Fund (IMF). By the Fund Agreement of IMF only countries are permitted membership. From the point of view of public international law and this the relevant point of view for interpreting international agreements like the Fund Agreement – it seems not possible to consider the ECB as a country in this sense.¹⁸⁰ Despite this the ECB has other means of relationship with the IMF. The ECB provides its assessment of the economic situation in potential candidate and candidate countries via its representative to the International Monetary Fund. These expert representatives presents the ECB's position at IMF Executive Board discussions on EU candidate countries.¹⁸¹ Bosnia and Herzegovina has permanent ongoing relations with the IMF that are evolving yearly and the ECB is also included in it in very important and unprecedented form. When the IMF is lending money to the country it relies largely on ECB's monetary and fiscal policy assessments. Big amount of these loans are used in enlargement process mainly on strengthening of the country's institutions, judicial and police systems which need to be independent and professional in order to satisfy accession criteria.

ECB is also directly included in programmes that are funded from the European Commission via existing EU financial instrument – Instrument for Pre-Accession Assistance (IPA). As potential candidate country, Bosnia and Herzegovina was entitled to annual funds under IPA for two components: Transition Assistance and Institution Building; and Regional and Cross-Border Cooperation.¹⁸² Projects funded by IPA having CBBH as the main

¹⁸⁰ Chiara Zilioli, Martin Selmayr, *The Law of the European Central Bank* (Hart Publishing 2001) p. 235

¹⁸¹ Orszaghova (n 152) p. 29

¹⁸² Bosnia and Herzegovina – Financial assistance (*European Commission*)

<https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/bosnia-herzegovina_en>
accessed 21 December 2016

beneficiary authority are periodically monitored by the EU Integration Department. Here we can see best picture of the ECB's cooperation with NCBs.

For institution-specific programmes the ECB applies a two-stage approach. These stages are needs analysis and implementation or capacity building. During the first stage the EU experts identify the existing gaps with respect to EU central banking standards and provide a report listing recommendations on necessary amendments to rules, regulations or practices, or the development of new ones, in order to meet these standards.¹⁸³ In the second stage or implementation EU and the ECB experts help and support the staff of national central bank in drafting new rules and regulations and executing needed reforms.

Some of the ECB-coordinated projects with the CBBH done in fields of central bank functions are: banking supervision, internal audit, economic analysis and research, financial stability, statistics, payment systems, EU integration, monetary and FX policy & operations, legal services and information technology.¹⁸⁴ From 1 April 2010 until 30 September 2011 the ECB and seven national central banks supported the Central Bank of Bosnia and Herzegovina in its efforts to implement the central banking standards of the EU in preparation for Bosnia and Herzegovina's accession to the EU.¹⁸⁵ All of these ECB-coordinated projects were funded by IPA, with exception of needs analysis that were funded by CARDS which stand for Community Assistance for Reconstruction, Development and Stabilisation. In the period 2000-2006 it was the main financial instrument to Bosnia and Herzegovina when it was changed by IPA. IPA was finally switched with IPAII for period 2014-2020.

Main results of the 2010-2011 ECB-CBBH programme are presented as follows:

- New interested rate statistics are implemented and an action plan has been drawn up for the development of portfolio investment statistics;
- Staff has been trained in the use of short-term forecasting models for economic analysis and research, and the CBBH has established a unit specialising in economic modelling. This has allowed the CBBH to further enhance both its economic analysis and its understanding of economic developments in the country;
- A road map has been established setting out the CBBH's involvement in and contribution to the process of integration within the EU;
- The programme has contributed to the harmonisation process that needs to take place in order

¹⁸³ Orszaghova (n 152) p. 30

¹⁸⁴ *ibid* p. 29

¹⁸⁵ Central bank cooperation (*European Central Bank*)

<<https://www.ecb.europa.eu/ecb/tasks/international/assistance/html/index.en.html>> accessed 21 December 2016

to comply with the EU's legal framework;

- The ECB has established a more forward-looking and risk-focused framework for financial stability analysis;

- The CBBH has drawn up an action plan establishing priorities as regards further improvements in IT services and security and separate action plan for the CBBH' data management.¹⁸⁶

Surely all of this results are exceptional in making the CBBH more up-to-date with technologies and techniques that are used in national central banks of the EU Member States. Furthermore, models for economic analysis and economic developments are of big importance not only for the bank but also for the whole country. But most significant for this thesis is of course the creation of the road map of involvement of the CBBH in EU integration which is a document which describes all obligations of the CBBH's bodies in every stage of the enlargement and integration. Officially, as a result of this programme, the CBBH is in a better position to provide further enhanced public goods and services.¹⁸⁷ The programme has contributed to the conduct of sound monetary and financial stability policies, for the benefit of the population of Bosnia and Herzegovina.¹⁸⁸

As we already said, the funding of ECB-CBBH coordinated projects are done by the European Union through the Instrument for Pre-accession Assistance so here we are providing some main information about this instrument. 11.7 billion EUR have been allocated for the 2014-2020 period (IPA II) which will help: increase good governance and capacity building to align with EU laws and standards, and support socio-economic development in line with the EU 2020 targets for smart, sustainable and inclusive growth.¹⁸⁹ Funding allocation for Bosnia and Herzegovina for the period 2014-2017, not including the allocation for Cross-Border Cooperation is EUR 165.8 million.¹⁹⁰ The priority sectors for funding in this period are divided into three categories: a) Reforms in preparation for Union membership (democracy and governance, rule of law and fundamental rights); b) Socio-economic and Regional development (competitiveness and innovation, local development strategies); c) Employment, social policies, education, research and innovation, promotion of gender equality, and human

¹⁸⁶ The ECB and the CBBH successfully complete their cooperation programme (*European Central Bank*) <<https://www.ecb.europa.eu/press/pr/date/2011/html/pr110930.en.html>> accessed 22 December 2016

¹⁸⁷ *ibid*

¹⁸⁸ *ibid*

¹⁸⁹ EU Enlargement Factsheet (*European Commission*) <http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/publication/factsheet_en.pdf> accessed 18 December 2016

¹⁹⁰ Bosnia and Herzegovina – financial assistance under IPA II (*European Commission*) <https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/bosnia-herzegovina_en> accessed 23 December 2016

resources development. Allocation on funds for category a) is EUR 64 million, for category b) EUR 63.8 million and for category c) EUR 38 million.¹⁹¹

European Commission needs to approve so called The Action Programme for certain country regarding the financial assistance. 2016 Action Programme on Bosnia and Herzegovina under the IPA II is approved by the Commission implementing decision of 7.12.2015. It set maximum amount of the European Union contribution at 37.2 million and also set the final date for concluding Financial Agreements with IPA II beneficiary at 31 December 2016.¹⁹²

Next segment where we can see relation between the CBBH and the ECB is EU Macro-Financial Assistance (MFA). MFA is a form of financial aid extended by the EU to partner countries, candidate and potential candidate countries experiencing a balance of payment crisis. It takes the form of medium/long-term loans or grants, or a combination of these.¹⁹³ On 22 May 2009, the State Minister of Finance of Bosnia and Herzegovina requested for macro financial assistance of EUR 100 million from the EU.¹⁹⁴ Disbursement of the MFA was delayed due to delays in signature of the Memorandum of Understanding. Delay was caused mainly because the 2010 general elections resulted in a political stalemate. But finally the first tranche was disbursed in February 2013 and followed by second in September 2013.¹⁹⁵ The CBBH Governor co-signed the MFA.

It is also worth mentioning that during the all stages of accession process the ECB regularly organises a number of events at various levels aimed at establishing institutional relations and fostering dialogue with the possible future EU Member States.¹⁹⁶ For the Western Balkans area there are two main events of this type. First there is the regular conference on central, eastern and south-eastern Europe and second is statistical seminar which is organised by the ECB in cooperation with national central banks of the Western Balkans countries. There are a lot of informal meeting as well. CBBH's Governor met with the President of the ECB in early 2017 and appreciating the importance of the support of the ECB in process of the European integration invited the President to visit Bosnia and Herzegovina and add value to the

¹⁹¹ Bosnia and Herzegovina – financial assistance under IPA II (European Commission)
<https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/bosnia-herzegovina_en>
accessed 23 December 2016

¹⁹² Commission Implementing Decision C(2015) 8777 of 7.12.2015 adopting a Country Action Programme on Bosnia and Herzegovina for the year 2015, art. 3

¹⁹³ Macro-Financial Assistance (European Commission)
<http://ec.europa.eu/economy_finance/eu_borrower/macro-financial_assistance/index_en.htm> accessed 23 December 2016

¹⁹⁴ European Commission, Directorate-General for Economic and Financial Affairs, Ex-post Evaluation of the EU's Macro Financial Assistance to Bosnia and Herzegovina (2009-2013), [2015] p. 1

¹⁹⁵ *ibid*

¹⁹⁶ Orszaghova, *EU enlargement – Institutional aspects and the ECB's role* (n 152) p. 29

Central Bank Conference marking the twentieth anniversary of the establishment of the CBBH, which is held in Sarajevo in September 2017.¹⁹⁷

4.4 Relations with Bosnia and Herzegovina from 2017

Bosnia and Herzegovina completed the first few phases of the accession process and in early 2017 the country is preparing the answers for the EC Questionnaire. There are a lot of questions regarding ECB's and NCB's fields of competence. Surely ECB is not evaluating answers provided but it has big influence, so standards made by it must be met in respective answers. In Bosnia and Herzegovina, Governor of the CBBH received the Questionnaire. EU Integration Department of the CBBH circulates relevant questions to competent departments and coordinates answers and provides further assistance when needed. When questions are answered the CBBH submits the answers to Directorate for European Integration (DEI) which is central body for all EU matters in Bosnia and Herzegovina. It is the body of the Council of Ministers and it is responsible for coordination of the European integration process at horizontal and vertical level between Bosnia and Herzegovina's authorities.

The Questionnaire contains 3242 questions, of which 516 relate to political criteria, 74 to economic criteria and 2652 to the *acquis*, grouped into 33 chapters.¹⁹⁸ Of course the CBBH needs to answer on all questions from its competence. In doing so the CBBH has enhanced cooperation with the government ministries and agencies. Most of this questions are incorporated in chapter of the Questionnaire named "economic criteria" on pages 57-65. Questions cover areas about macroeconomic stability, state influence on product markets, privatisation and restructuring, financial stability, the banking sector, the capital market, the money market, non-bank financial institutions and the functioning of the labour market.¹⁹⁹ Although in case of the Questionnaire there is no direct relation between the ECB and the CBBH, from all above written conclusions on ECB's tasks in accession process we are achieving the same conclusion here – the ECB has indirect but very significant role.

¹⁹⁷ Governor of the CBBH met with the President of the ECB (*Central Bank of Bosnia and Herzegovina*) <<http://cbbh.ba/press/ShowNews/1126>> accessed 3 February 2017

¹⁹⁸ European Commission's Questionnaire for BiH (*Euinfo*) <<http://euinfo.ba/european-commissions-questionnaire-for-bih-available-in-english/>>

¹⁹⁹ Questionnaire, Information requested by the European Commission to the Council of Ministers of Bosnia and Herzegovina for the preparation of the Opinion on the application of Bosnia and Herzegovina for membership of the European Union (December 2016) [2016] <http://dei.gov.ba/dei/media_servis/vijesti/default.aspx?id=17741&langTag=bs-BA> accessed 25 January 2016

Next phase of accession process begins when the potential country submits answers to the European Commission (DG Enlargement). On the basis of the Questionnaire the European Commission drafts the Avis (i.e. Opinion of the Commission), which is then submitted for decision-making to the European Council. On the basis of the Avis the European Council decides whether to open negotiations or to simply grant candidate status without opened negotiations. It is important to say that the Candidate Status is necessary for opening accession negotiations. If finally the European Council decides to open negotiations the accession process is than moving into next phase. The country than receives the status of candidate country with opened negotiations. This phase is divided, as we already described into three steps: 1. Acquis screening; 2. Negotiations; and 3. Conclusion of Negotiations. Finally, the whole process is completed with signing of the accession treaty.

In this phases all previous actions regarding the Progress Reports, Economic Dialogue, ECB-IRC meetings, IPA Funds and MFAs continues same as described. The ECB continues with its tasks, most importantly with assessment of Monetary and Exchange Rate Policies which are based on country's Economic Reform Programmes (ERP).

With this we have completed the presentation of all roles that the ECB has in the process of the enlargement. In order to easier understand and show the whole procedure we took Bosnia and Herzegovina and Central Bank of Bosnia and Herzegovina as an exemplar. The conclusion to which we have come is that the ECB has absolutely significant roles throughout all phases of the accession process. Most important tasks are of course making of country's assessments, coordination with national central banks in various fields and in financial help through different Union's instruments. We are emphasizing once again the importance of the country's assessments of monetary, fiscal and exchange rate policies because without the competence of the ECB, the European Commission would not be able to fully produce and publish every year its documents "Progress Report" and "Overview and Country Assessment" respectively.

5. The ECB and Business Development

5.1 Influence by means of ECB's objectives

In previous chapter we already concluded that there are three main objectives of the ESCB and Eurosystem: 1) maintaining of price stability, 2) the support of general economic policies and 3) the principle of an open market economy with free competition. All of these objectives are also objectives of the ECB given that the Eurosystem is govern by the ECB. It is clearly that these objectives are in fact contributing to business development, especially the objective of maintaining price stability. It has been assigned by the EC Treaty for very good reasons. Firstly, decades of practical experience and large number of economic studies suggest that monetary policy will contribute most to improving economic prospects and raising the living standards of citizens by maintaining price stability in lasting way and secondly, theoretical foundations of monetary policy as well as experience drawn from past demonstrate that monetary policy can ultimately only influence the price level in the economy.²⁰⁰ A study by Kappler and Sachs concludes that a coordinated monetary policy may promote business cycle synchronisation if it leads to more similarity of output fluctuations and also if there are indirect effects from an increase in bilateral trade intensity through exchange rate stability.²⁰¹ So crucial conditions for increasing the economic growth and economic welfare in case of the ECB are coordinated monetary policy and maintaining stable prices.

The EC Treaty did not give a precise definition of price stability so the ECB's Governing Council has announced it. Price stability is defined as a year-on-year increase in the Harmonised Index of Consumer Prices (HCIP) for the euro area of below 2%.²⁰² From this definition we can see that the focus is on monetary policy in the euro area as a whole and that assessing of the price stability is done on the basis of price developments in the whole euro area economy. Using of the HCIP indicates that both inflation and deflation above 2% is inconsistent with price stability. Reasons for aiming at below, but close to 2% are because inflation rates in this range are low enough for the economy to fully reap the benefits of price stability.²⁰³

²⁰⁰ Hanspeter K. Scheller, *The European Central Banks, History, Role and Functions* (European Central Bank 2006) p. 45

²⁰¹ Marcus Kappler, Andreas Sachs, *Business Cycle Synchronisation and Economic Integration New Evidence from the EU* (Springer-Verlag 2013), p. 20

²⁰² The definition of price stability (*European Central Bank*)

<<https://www.ecb.europa.eu/mopo/strategy/pricestab/html/index.en.html>> accessed 15 December 2016

²⁰³ *ibid*

There are a lot of arguments in relevant literature which suggest that maintaining price stability has a significant contribution to the achievement of higher standards of living, high levels of economic activity and better employment prospects. First benefit of the price stability is simply regarding consumer's knowledge about the price changes. It makes it easier for people to recognise changes in relative prices since such changes are not obscured by fluctuations in the overall price level, which enables firms and consumers to make better-informed decisions on consumption and investment.²⁰⁴ Small businesses hugely benefit because it is easier for them to compete in prices with big companies. It allows them to easier develop and grow. Price stability further allows the allocation of resources more efficiently and finally it raises the productive potential of the economy.

Secondly, price stability eliminates inflation risks for investors. By reducing such risk premia in the real interest rate, monetary policy credibility contributes to the efficiency with which the capital markets allocate resources and thus increases the incentives to invest.²⁰⁵ In countries that are on their path of the European integration and initiation of the euro as a currency this is of very big importance. If prices are to remain stable in some given future period, investors and creditors are easier allocating their money and resources in this countries. This is clearly beneficial for development of new businesses in such countries. Linked with this is also third benefit in regard to individuals and firms. If there is a successful maintenance of price stability they are less likely to divert resources form productive uses of investments to hedge against inflation which is ultimately good for economic welfare. This investments and allotment of resources could go in developing of some existing firms or in establishing of the new ones.

Fourth, price stability eliminates the real costs entailed when inflation exacerbates the distortionary impact of tax and social security.²⁰⁶ And fifth, maintaining price stability prevents the considerable and arbitrary redistribution of wealth and income that arises in inflationary as well as deflationary environments, where price tends to change in unpredictable ways (e.g. redistribution effects from creditors to debtors).²⁰⁷

In conclusion and on basis of economic evidence which demonstrate that economies with lower inflation, on average, grow more quickly in real terms in the long run, we can say that the ECB in process of maintaining price stability gives one of the most significant

²⁰⁴ European Central Bank, *Monetary Policy of the ECB* (ECB 2014) p. 42

²⁰⁵ *ibid*

²⁰⁶ *ibid* p. 43

²⁰⁷ *ibid*

contribution to development of all kinds of businesses in economy of the whole EU. Not only the Eurosystem countries but the whole EU because the euro, for obvious reasons, has big influence also in countries where it is not directly used as a currency.

Two following objectives of the ECB, the support of general economic policies and the principle of an open market economy with free competition are directly beneficial in developing of the businesses as well. Indeed the best contribution which the ECB can make to promoting, among other things, sustainable and non-inflationary growth and a high level of employment, as referred to in Article 2 of the EC Treaty, is to pursue a monetary policy aimed at price stability.²⁰⁸ On the other hand, by maintaining price stability, the ECB contributes to the proper operation of the price mechanism, which is an essential feature of a well-functioning market economy and which favours an efficient allocation of resources.²⁰⁹ This objective or principle, especially part about free competition, is crucial in developing of new businesses and their coping with big players in some market, and it does not require further discussion.

5.2 Influence by means of governing the single currency

European Central Bank is responsible for single currency of the EU – the euro. Here we are arguing that introduction of the euro presents big advantage for business. For some company to invest more interest rates must be low. And in order to keep interest rates low there needs to be low inflation. The ECB with conducting of its monetary policy keeps low inflation of the euro. Because of this firms can borrow more money and cheaper money for all kinds of investments whether for research and development, buying equipment and technology for producing new products or for employing new workers. This leads to more new products and services and higher productivity, materialized in economic growth and more jobs.²¹⁰ Long-term investment is further encouraged by the sound and prudent management of EMU, which builds trust in the economy of the euro area and reduces uncertainty about future.²¹¹

A comprehensive cost-benefit analysis of joining the euro would include many aspects of monetary union, including the ability to achieve domestic policy goals such as stable prices,

²⁰⁸ Scheller (n 200) p. 47

²⁰⁹ *ibid*

²¹⁰ Adrian M. Truichici, Dr. Luiza Neagu, *Economic, social, political benefits and effects of introducing the Euro* (South-East European Journal of Political Science 2016) p. 4

²¹¹ The Euro-Business Benefits (*EUBusiness*) < <http://www.eubusiness.com/topics/euro/business> > accessed 15 December 2016

stable growth and low unemployment, as well as an assessment of whether the proposed currency union meets the recognised criteria for optimal currency areas.²¹² In the first ten years of the introduction of the euro in 1999, in the euro area were created about 8.7 million jobs (compared to only 1.5 million in 1992-1999).²¹³ If we take only this statistical information it would be enough to show benefit of ECB with euro on business development.

However, we are proceeding with next positive sides of EMU and the ECB on business. Fluctuating interest rates means unpredictable costs. If there are unpredictable costs than long-term investments are too risky for companies for obvious reason of not knowing is their investment going to generate profit. At the moment, economic stability under EMU reduces uncertainty and encourages long-term investments, lower risks encouraging cross-border trade.²¹⁴

Before introducing of the euro trade between the EU Member States was done with different currencies that had fluctuating exchange rates. It was a common practice to sell at a higher price abroad in order to reduce the risk losing profit due to fluctuating exchange rates. Companies were also discouraged from exporting within the single market.²¹⁵ This was of course very detrimental for trade between Member States. This risk has disappeared, trade in the euro area recorded an increase between 4% and 10% and foreign trade in goods increased by approximately 3% of the single currency.²¹⁶ In the euro area businesses do not need to work in different currencies. It is big relief because any company in doing its business throughout euro area is paying and being paid in same currency. Cross-border trade within the euro area is much more encouraged. Not only can companies sell into a much larger “home market”, but they can also find new suppliers offering better services or lower costs – a development that is helped by the growth of e-commerce over the internet.²¹⁷

Following benefit of the euro and its presence throughout the EU is elimination of foreign exchange costs. This elimination directly stimulates investment and trade between Member States. Without the euro, foreign exchange costs were high, estimated at 20-25 billion

²¹² Richard A. Werner, *What accession countries need to know about the ECB: A comparative analysis of the independence of the ECB, the Bundesbank and the Reichsbank* (Emerging European Financial Markets: Independence and Integration Post-Enlargement, International Finance Review 2006) p. 2

²¹³ Truichici, Neagu (n 210) p. 4

²¹⁴ Robert G. Huber, James Robertson, *Creating new money, A monetary reform for the information age* (New Economics Foundation London 2000) p. 38-39

²¹⁵ The Euro-Business Benefits (EUBusiness) <<http://www.eubusiness.com/topics/euro/business>> accessed 15 December 2016

²¹⁶ Truichici, Neagu (n 210) p. 4

²¹⁷ The Euro-Business Benefits (EUBusiness) <<http://www.eubusiness.com/topics/euro/business>> accessed 15 December 2016

annually in the EU, but currently, these costs have disappeared within the euro area, where all payments and invoices are now expressed in euro.²¹⁸

Single currency easily increased competition. It is easier for businesses to compare domestic as well as abroad prices and to compete in all markets of the EU. This is also very beneficial for consumers because they have more choices and lower prices. Also, the euro helped in price stability due to inflation rate around 2%. Predatory pricing is also lowered hugely with introduction of the euro. This helps small businesses to compete with big ones. Consumer price data shows that, on average, euro adoption caused fewer price increases than expected and the overall effect on prices was very small (a single impact between 0.1 and 0.3% recorded in 2002)²¹⁹ We need to clarify here the disbelieve that the single currency means same prices for same products in different countries. This statement is absolutely incorrect. Prices are established following complex interaction between demand, supply and regulation in a wide variety of competitive environments, so the introduction of a common currency does not eliminate price differences in the Eurozone.²²⁰

The euro has special credit for boosting of the integration of financial markets across the euro area. Investment banks, other banks and various financial institutions that are involved in financial markets business are no longer limited only to some local markets. With introduction of the euro by the ECB capital can flow more easily because exchange rate risks have disappeared and because financial market rules are being progressively harmonised – allowing investors to move capital to those parts of the euro area where it can be used most effectively.²²¹

With the introduction of the euro businesses coming from the euro area are making more international trade. The euro rapidly become internationally recognised and respected currency because it is strongly backed by euro area Member States. But most important role here had the European Central Bank with good management of monetary policy which allowed the euro to have its well-known reputation. So companies based in the euro area benefit because they can import and export anywhere in the world using their currency the euro. This of course reduces the risk of losses caused by different currency fluctuations. The euro area is large and open trading bloc. This makes doing business in euro an attractive proposition for other trading

²¹⁸ Truichici, Neagu (n 210) p. 4

²¹⁹ *ibid*

²²⁰ *ibid* p. 2

²²¹ The Euro-Business Benefits (*EUBusiness*)v< <http://www.eubusiness.com/topics/euro/business>> accessed 16 December 2016

nations, which can access a large market using one currency.²²² The euro is very beneficial for inward investments because most third country firms prefer to invest within the euro area for the sake of price stability. Currently, around 340 million citizens in 19 countries live in the euro area, and this number will increase as future enlargement of the euro area continues to spread the benefits of the single currency more widely in the European Union.²²³

Careful economic management of the euro by the ECB makes it very attractive reserve currency for any third country, this gives the euro a better position in the global economy. Scale and careful management also bring economic stability to the euro area, making it more resilient to so-called external economic shocks, i.e. sudden economic changes that may arise outside the euro area and disrupt national economies, such as worldwide oil price rises or turbulence on global currency markets.²²⁴ If the euro area is larger and stronger it is going to absorb these external shocks more easily without slowing down businesses and economic growth.

5.3 Influence by means of ECB's day-to-day work

The ECB's staff is working on numerous researches, assessments and recommendations that have big impacts and benefits for all kind of businesses. One of the most important document here is the review about the financial stability. Since 2004 the ECB has published twice a year the Financial Stability Review which provides an overview of the possible sources of risk and vulnerability to financial stability in the euro area.²²⁵ The review aims to promote awareness of issues that are relevant for safeguarding the stability of the euro area financial system both within the financial industry and among the public at large. These reviews have a role in preventing financial crises by assessment of sources and risks of vulnerability to financial stability. Concluding, if there is no financial crisis businesses can develop and grow.

²²² The Euro-Business Benefits (*EUBusiness*) < <http://www.eubusiness.com/topics/euro/business> > accessed 16 December 2016

²²³ Euro area (*European Commission*) < https://ec.europa.eu/info/business-economy-euro/euro-area_en > accessed 20 December 2016

²²⁴ How do those benefits of the euro arise? (*European Commission*) < https://ec.europa.eu/info/about-european-union/euro/benefits-euro_en#benefits-worldwide > accessed 20 December 2016

²²⁵ Financial Stability Review (*European Central Bank* 2015) < <https://www.ecb.europa.eu/pub/fsr/html/index.en.html> > accessed 26 December 2016

The ECB is also issuing macroeconomic projections for the euro area and for individual countries. Projections for individual countries are produced together with euro area national banks staff. This projections are mainly in regard to GDP and inflation. Over the projection horizon, real GDP is expected to grow by 1.7% in 2016 and 2017 and by 1.6% in 2018 and 2019.²²⁶ The projection also says that business investment is expected to show steady growth. A number of factors are expected to support business investment developments: business confidence continues to improve on the back of favourable production expectations, rising order books and a turnaround in selling price expectations; capacity utilisation is already at its highest level since mid-2008; financing conditions remain very supportive, reinforced by the ECB's non-standard policy measures.²²⁷

Furthermore, the ECB issues the Economic Bulletin (former the Monthly Bulletin) which provides comprehensive analysis of economic and monetary developments including an integrated discussion of the staff macroeconomic projections on inflation, growth, public finances, and external trade.²²⁸ This bulletin deals with various topics connected with business such as: financial developments, economic activity, prices and costs, money and credit. These topics are standard and always included. But sometime focus of the bulletin is some specific problem, so for example in first 2017 edition there is a topic about energy base effects in short-term inflation developments.²²⁹ In fact almost every topic has some connection with business so the bulletin is surely one of the most important sources of opinions and recommendations made directly by the ECB.

For this thesis we took one article of the Economic Bulletin Issue 7 form 2016 titled "Business investment developments in the euro are since the crisis" because it is directly supporting the thesis. It is composed from different statistical analyses about the issue from which interested public and business owners can get very valuable information. The article focuses on the recovery in the euro area real business investment, assessing its drivers and the policy responses required in order to improve investment conditions.²³⁰

We also included one chart published in this bulletin that is in regard to the real total and business investment in the euro area. From the chart we are concluding that investment during the crises (most visible in year 2009), started to grow slowly and then again slowed in

²²⁶ ECB, *December 2016 Eurosystem staff macroeconomic projections for the euro area* (European Central Bank 2016) p.1

²²⁷ *ibid* p. 4

²²⁸ Economic Bulletin (former the Monthly Bulletin) (European Central Bank)

<<https://www.ecb.europa.eu/pub/economic-bulletin/html/index.en.html>> accessed 26 December 2016

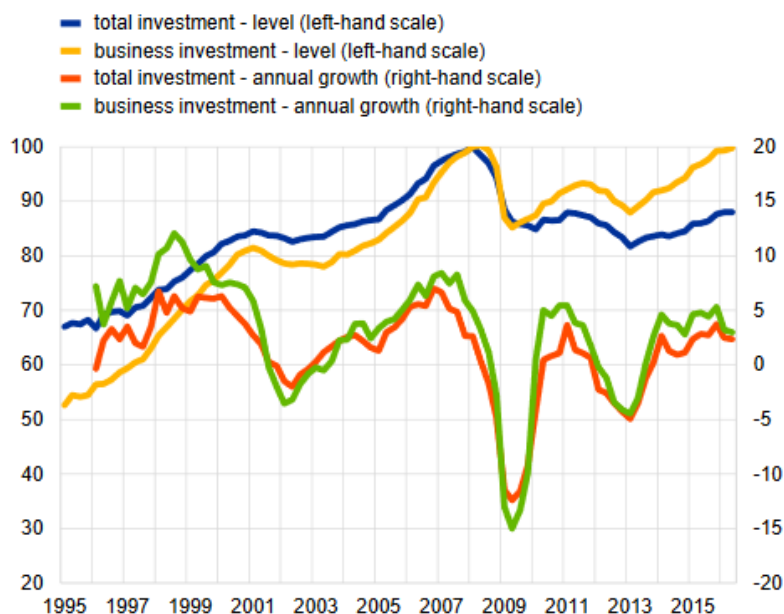
²²⁹ ECB, *Economic Bulletin* (Issue 1/2017, European Central Bank 2017) p. 34

²³⁰ ECB, *Economic Bulletin* (Issue 7/2016, European Central Bank 2016) p. 1

2013. But it has recovered visibly since early 2013. The strong fall in euro area total investment witnessed during the Great Recession and the decline in investment 2011-12 were the consequences of lower business investment, but also a strong downward correction in overheating house markets and persisting budgetary constraints that resulted in lower construction and public investment in some countries.²³¹

Real total and business investment in the euro area

(index: Q1 2008 = 100; annual percentage changes)



Sources: Eurostat and ECB calculations.

Notes: The latest observation is for the second quarter of 2016. Real business investment refers to non-construction investment.

Chart 1. Source: ECB, Economic Bulletin, Issue 7/2016

Also one of the very interesting articles for the thesis is “Structural indicator of the euro area business environment” published in Economic Bulletin Issue 8 from 2016. It analyses business practices and business environment in euro area. It concludes that a friendly business environment can facilitate the creation of new firms, promote economic activity, boost employment and increase the resilience of economies to adverse shocks. The ECB among number of other institutions, have called for reform to the business environment to boost economic dynamism and encourage enterprise in the euro area.²³² The article provides a lot of very important information about business environment in euro area. The ECB uses a collection of the World Bank’s indicators along with its own assessments in making of analyses about

²³¹ *ibid*

²³² ECB, *Economic Bulletin* (Issue 8/2016, European Central Bank 2016) p. 42

different factors in regard with business climate. Charts included in this particular article are: Overall “ease of doing business” ranking; Overall “Global Competitiveness Index”; “Number of days to enforce contracts” indicator; “Number of procedures to open a business” indicator.²³³

Conclusions from the first chart confirm that the environment in the majority of euro area countries remains rather business-unfriendly. In fact, progress in key areas of the business environment since 2013 accelerated only in Ireland, Austria, the Netherlands, France, Spain, Belgium and Cyprus.²³⁴ For the competitiveness index the outlook is that the majority of euro area countries remain far from the competitiveness frontier. The ECB calls for a major improvements towards more competitive structures with the importance of sound institutions and economic structures for euro area countries and EMU. This is crucial for catching up with the most competitive economies.²³⁵

From a lawyers perspective of view the “Number of days to enforce contracts indicator” is very interesting. We are showing chart with this indicator here.

Chart C
 “Number of days to enforce contracts” indicator

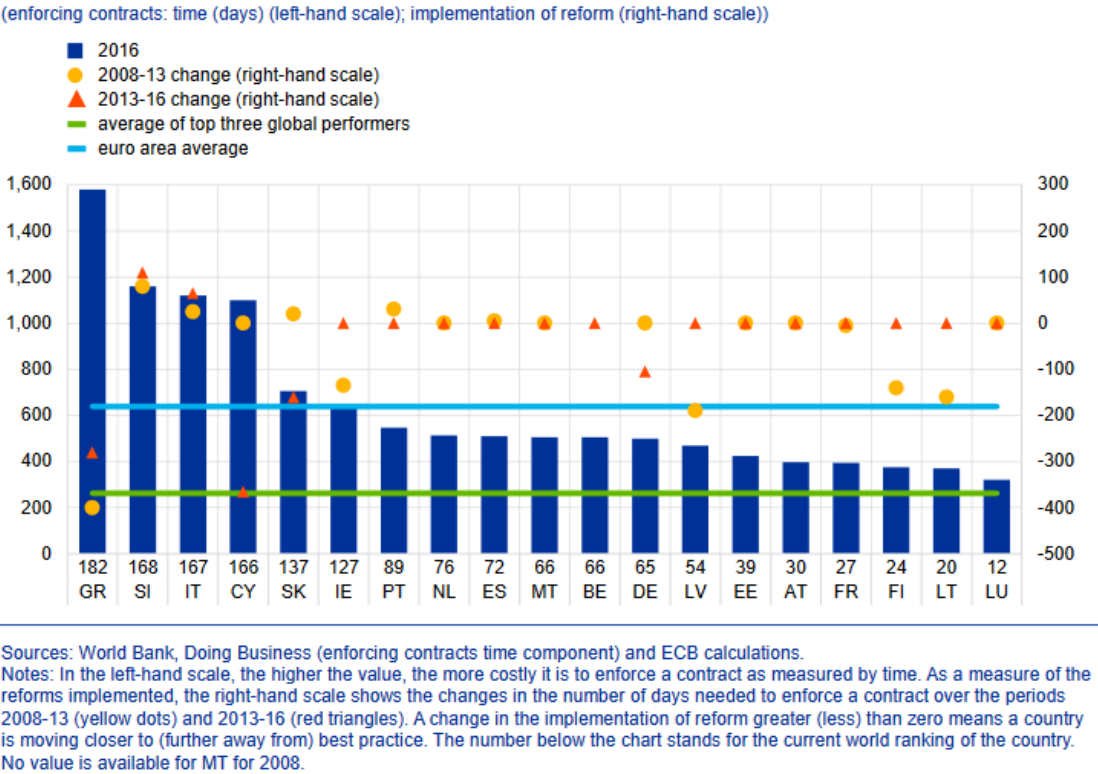


Chart 2. Source: ECB, Economic Bulletin, Issue 8/2016 (2016)

²³³ ECB, *Economic Bulletin* (Issue 8/2016, European Central Bank 2016) p. 43-46
²³⁴ *ibid* p. 42
²³⁵ *ibid* p. 43

The chart confirms that the gap between the best performers and the euro area countries is substantial. Limitations in a country's legal system usually means very long court proceedings and big difficulties in enforcing contracts which can discourage investors or reduce access to external financing that any business may need. It is therefore a source of concern that it takes more than 600 days on average to enforce a contract in the euro area but only about 250 days in the best performing countries across the globe.²³⁶ The ECB here also calls for reforms in legal system of the member states in order to be more efficient.

“To increase investment and productivity, boost job creation and guarantee sufficient shock absorption capacity, action to address weakness in the business environment - including measures to facilitate the entry of new firms and enhance competitiveness - should be a matter of priority in the euro area.”²³⁷ With this sentence the ECB in its document concludes that the economies of euro area countries can benefit significantly from implementing reforms to improve their business environments.

Once again we need to emphasise that these above-mentioned documents or articles made by the ECB do not only have statistical nature in it, they are also recommendations and guidelines that are to be followed. These professional opinions made by the ECB's staff are often used by other EU's institutions, for example by European Commission, in producing of their documents which are connected with some entrepreneurship or business-related topics. Moreover, as we saw from wording of ECB's bulletin, these documents can also be directed to member states and their governmental organisations.

5.4 Influence in EU candidate and potential candidate countries

Generally, accession countries are relatively poor: average GDP capita amounts to less than half of average GDP per capita in the euro area even when measured at PPP exchange rates.²³⁸ Part of this income gap reflects differences in economic development for instance, the relatively large size of the agricultural sector in terms of employment, and regarding public finances, while average candidate countries' current debt ratio and old age dependency ratio compare favourably with today's euro area, may still face significant challenges regarding bringing their

²³⁶ ECB, *Economic Bulletin* (Issue 8/2016, European Central Bank 2016) p. 44

²³⁷ *ibid* p. 46

²³⁸ Helge Berger, *The ECB and Euro-Area Enlargement* (IMF Working Paper, International Monetary Fund 2002), p. 6

fiscal policies in line with EU and euro area requirements.²³⁹

As we are using Bosnia and Herzegovina and CBBH as a reference in this thesis, this approach is followed here as well. Euro plays a pre-dominant role in the monetary and exchange rate arrangements of Western Balkan economies: Most countries have pegged their exchange rates (formally or informally) to the euro, and those with some degree of flexibility are limited by their relative large FX liabilities.²⁴⁰

Framework of the monetary policy of Bosnia and Herzegovina is exchange rate anchor vis-à-vis the euro. That means that Bosnian mark (BAM) is pegged to the euro and at a rate of 1 EUR = 1.95583 BAM. So we can easily conclude that the ECB has big influence on Bosnia and Herzegovina and its economy because anything happening with the euro is directly reflected on Bosnian currency. Price stability governed by the ECB is therefore of big importance for Bosnia and Herzegovina. This is one more reason for constant and permanent coordination between the ECB and the CBBH.

Very big importance for Bosnia and Herzegovina and all other EU candidate and potential candidate countries has the ECB's Financial Stability Review. As we already mentioned in previous discussion its aim is to promote awareness of issues that are relevant for safeguarding the stability of the euro area financial system. But ECB also assesses these issues and provides reports on financial stability challenges in countries that are preparing for membership of the European Union. These reports, which have focuses on countries with a candidate status have been produced biennially since 2003 and published since 2006 in the ECB Occasional Paper Series.²⁴¹ The report states and banking system in this countries is facing a number of challenges to financial stability in both the near-term and medium-term.

Taken together, near-term challenges primarily relate to credit risk stemming from the generally weak economic dynamics in combination with already high non-performing loan burdens in many banking systems, especially in Western Balkan economies.²⁴² The ECB recommends that removing impairments to bank balance sheets which may be standing in way of enhanced credit extension should remain a key near-term policy for authorities of Western Balkan countries.

²³⁹ Helge Berger, *The ECB and Euro-Area Enlargement* (IMF Working Paper, International Monetary Fund 2002)

²⁴⁰ Lucia Orszaghova, *EU enlargement – Recent economic developments and challenges for EU membership* (Rocnik 22 7/2014, Narodna Banka Slovenska 2014), p. 18

²⁴¹ ECB IRC expert group of the ESCB, *Occasional Paper Series, Financial stability challenges in EU candidate and potential candidate countries* (NO 164/August 2015, European Central Bank 2015) p. 7

²⁴² *ibid* p. 20

In the medium-term, the key challenges to financial stability in EU candidate and potential candidate countries relate to indirect market and funding risks.²⁴³ This suggests that active policies to increase the use of local currencies should be pursued both to reduce financial stability risks and to afford greater degrees of policy freedom to monetary authorities.²⁴⁴ Final conclusion of the ECB here is that countries need to develop domestic capital markets to provide stable longer-term funding alternatives which would be beneficial for businesses and whole economy.

The ECB also included the presentation about potential implications of the Single Supervisory Mechanism (SSM) for banking systems in EU candidate and potential candidate countries. The regulatory and supervisory environment of most euro area-headquartered banks with a strong presence in EU candidate and potential candidate countries fundamentally changed, as a key element of banking union – SSM – became fully operational in November 2014.²⁴⁵ With the establishment of a Single Resolution Mechanism (SRM) and a system of harmonised Deposit Guarantee Schemes (DSG), the relationship between “home” (euro area) and “host” (EU candidate and potential candidate countries) regulatory and supervisory authorities is constantly going forward. The key practical implication arising from the establishment of the SSM for EU candidate and potential candidate countries in the Western Balkans is that the ECB will become the “home supervisor” for a large part of local banking systems.²⁴⁶ In Western Balkans just one of the top three banks operating in any given country fall outside the supervisory remit of the SSM.²⁴⁷ So the conclusion is obvious – the ECB through the SSM has predominantly supervisory role in all of these countries with tendency of further grow. Establishment of the SSM can bring strong benefits to these countries such as increasing financial stability and simplification of home-host supervisory relationship.

The report on financial stability challenges includes country specific annexes. Conclusions for Bosnia and Herzegovina are following: local capital markets need to be further developed in order to reduce the dependency on external financing; the main challenges to financial stability are rising credit and market risks and improving the bank funding base; closer coordination and cooperation of banks with home country supervisors is of critical importance.²⁴⁸

²⁴³ ECB IRC expert group of the ESCB, *Occasional Paper Series, Financial stability challenges in EU candidate and potential candidate countries* (NO 164/August 2015, European Central Bank 2015) p. 21

²⁴⁴ *ibid*

²⁴⁵ *ibid* p. 33

²⁴⁶ *ibid* p. 35

²⁴⁷ *ibid* p. 35

²⁴⁸ *ibid* pp. 45-47

And last but not the least influence of the ECB in EU candidate and potential candidate countries in regard to business development is by means of financial aid. This financial aid or assistance is mainly provided through IPA. We already discussed all about this instrument in the chapter about the enlargement but here we are emphasising on business, particularly on SME sector. For the IPA 2011-2013 programming process the following sector objectives have been considered: improving the institutional and legal framework as well as the coordination and harmonisation of SME related public policies; advancing the implementation of the European Charter for Small Enterprises and the Small Business Act through assisting the introduction of entrepreneurship learning in secondary and vocational school; creating a better business environment, strengthen the business support infrastructure; and increasing competitiveness in growth sectors including tourism, through the introduction of EU technical standards and the development of tailored export.²⁴⁹ Results of this IPA programmes are very successful and Bosnia and Herzegovina already enjoys some benefits made by this aid. There is an ongoing next phase of similar programmes under IPA II and its results are expected in 2020. Given the data from the first phase expectations are high.

We are showing here impacts and results of just one from many EU-funded Local Economic Development Programmes (LED). Even though the ECB was only indirectly involved it, it gave its contribution in light of its competence in regard to IPA. The programme was 5.2 million EUR worth and implemented by 11 grant projects throughout the Bosnia and Herzegovina.²⁵⁰ The aim of these projects were to improve the business environment at a local level for generating growth, investments and employment through better business infrastructure and services to existing and new SMEs in agro processing, wood, metal industry and tourism.²⁵¹ Results of the programme is that some 400 entrepreneurs have been supported, of which 40 are start-ups and, most importantly, some 500 new jobs have been created with EU support.²⁵²

To conclude, through various financial instruments the European Union has provided about 55 million EUR in order to support development and competitiveness of Small and Medium-sized Enterprises in Bosnia and Herzegovina on its path toward the European integration. Through IPA II programme further 15 million EUR is planned for next support of business development.

²⁴⁹ Private sector development (*Delegation of the European Union to Bosnia and Herzegovina*)

<http://europa.ba/?page_id=598> accessed 29 December 2016

²⁵⁰ EU assists in creation of more than 500 jobs (*Delegation of the European Union to Bosnia and Herzegovina* 13 December 2016) <<http://europa.ba/?p=46690>> accessed 29 December 2016

²⁵¹ *ibid*

²⁵² *ibid*

6. Conclusion

From its emerging the union on European territory was imagined as a borderless area in which all possible economic activities can be freely performed. Biggest proof for this statement is establishing of the first common market between original six Member States in 1953 which in fact represents the embryo of today's European Union. But even before this official action, in the late 1950s, Jean Monnet, who had fathered the idea of European integration through common institutions, proposed a European Reserve Fund. So we are concluding that the idea of the ECB existed much before it was realised. The idea of a common currency for the EEC Member States was first launched in the European Commission's Marjolin Memorandum from 1962.

Although, the economic and monetary union became a formal goal of the Community in 1969 on The Hague summit, actions for establishing functional EMU started parallel with actions to transform common market into internal or single market. Efforts made by the Monetary Committee and Committee of Governors of Central Banks, by Barre Report, Werner Report and finally by Delors Committee were very important in achieving of the ultimate goal of single currency – the Euro and the independent European Central Bank.

This thesis brings discussions on impacts which the ECB has on enlargement of the Union. These impacts are divided into two groups. First is significance that the ECB had on the enlargement even before it was officially established and launched its operations. In corresponding chapter and subchapters we argued that the idea of future monetary union was very attractive for the countries which were potential candidate countries at that time. Presented arguments and previous researches show that in fact this idea of single central bank and single currency, even at that time only in the air, was one of the most important force which led countries into the membership of the Union.

Second is the significance of the ECB on the enlargement in the light of current accession procedure. Conclusions here are that the ECB is doing a lot of work with every EU candidate and potential candidate country. Most importantly it is producing country's assessments of monetary, fiscal and exchange rate policies, the document that is necessary for every step of accession process. Furthermore, the ECB is doing coordinated projects with national central banks. We showed evidences about this coordination between the ECB and the CBBH.

In next part of the thesis, we examined all influences that the ECB has on business development throughout the European Union and in candidate countries. By ECB's core objectives it has the obligation of maintaining price stability which is necessary for any kind of investment for business development. Moreover, diligent governing of the euro and monetary policy causing the positive inflation is crucial for all business operations. And finally the ECB is included in decisions about the financial help coming from Union's pre-accession instruments for business development in the countries on their path to EU accession.

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