

## ADEMU WORKING PAPER SERIES

### Calibrating central banks' mandate

# Central banking objectives, tasks, and measures within unitary and federal constitutional settings

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### Abstract

In a context of institutional flexibility and political necessity, central banks' responses to the recent crises modelled the scope of their mandate, in law and in action. The current mandates of the European Central Bank, the Federal Reserve System, the Bank of Canada, and of the Bank of England are examined in their constitutional, statutory, and/or legal sources. This inquiry is complemented with recent policy statements and institutional discourse to interpret the mandate of those central banks in action and their underpinning objectives, tasks, and measures, during and in the aftermath of the crises. The central banks' mandate is furthermore contextualised within the examined central banks' organisational structure and the constitutional settings of the EU and of the states in which the central banks are embedded.

**Keywords:** central banking, mandate, European Central Bank, Federal Reserve System, Bank of Canada, Bank of England, monetary policy, prudential supervision, financial stability, constitutional settings.

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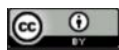
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The gathering of central bankers in Jackson Hole in August 2017 has been reported as dominated by discussions that are ‘largely beyond central banks’ power to influence’,<sup>2</sup> under the symposium theme ‘Fostering a Dynamic Global Economy’. Such reactions should be read in a context in which different – creative and proactive – responses from central banks were globally triggered by the turmoil of the financial, banking, and sovereign debt crises.

Calibrating central banking objectives, tasks, and measures is a meaningful exercise to understand the role undertaken by central banks during the crises. If until the crises the monetary policy function was dominant in the common perception of central banks’ mandate, since then, there has been a significant shift. *Calibrating* implies, consequently, at least two elements: measuring, and benchmarking.<sup>3</sup> The measurement includes both a quantitative and qualitative aspect. If the number of objectives, tasks, and measures could be (fastidiously) evaluated, the qualitative and normative assessment is not the object of this paper either. However, the second element – benchmarking – is adequate in a comparative analysis exercise, namely by using a standard for comparison. That is why preliminary definitions of central banking are suggested as a comparative element, including the functions and objectives of central banks.

Providing a functional definition of central banks’ mandate applicable globally seems difficult as far as the bundle of functions<sup>4</sup> (or tasks) assigned differs significantly amongst jurisdictions. One common denominator is said to be the reunion of monetary policy and means of settlement within one agency.<sup>5</sup> Regarding central banks’ objectives,<sup>6</sup> as a means to achieve an end, an objective often serves as an indicator to evaluate the performance of the actor entrusted with the objectives. In other words, it is distinct from the mandate which has a broader reach. However, the determination of clear objectives in quantifiable terms is not always possible, and is intrinsically linked with qualitative terms. One can wonder whether and to what extent financial stability can be quantify, the same way the inflation target operates for monetary policy.<sup>7</sup> Reporting a purposive definition of central banks’ mandate is

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<sup>2</sup> Financial Times, ‘Central bankers meld optimism with anxiety at Jackson Hole’ (27 August 2017).  
<sup>3</sup> ECB, ‘Calibrating unconventional monetary policy’, P. Praet, Frankfurt am Main (6 April 2017). Available on: [www.ecb.europa.eu](http://www.ecb.europa.eu).  
<sup>4</sup> See Bank for International Settlements (BIS), ‘Issues in the governance of central banks’, A report from the central bank governance group, May 2009, p.17 (hereinafter ‘BIS Report’).  
<sup>5</sup> *Ibid.*, p.21.  
<sup>6</sup> The difference between objectives and functions is admittedly thin, the Report from the BIS uses the metaphor of the chickens and eggs, *ibid.*, p.18.  
<sup>7</sup> *Ibid.*, pp.25-6.

equally delicate. Three main objectives would be mandated to central banks according to Goodhart:<sup>8</sup> to maintain price stability, to maintain financial stability, and to support the state's financing needs at times of crisis.<sup>9</sup> More broadly, the functions of modern central banks would include monetary policy, some form of responsibilities for financial stability,<sup>10</sup> for an effective payment system, in liquidity management and the related function of lender of last resort (LOLR), for the financial system infrastructure, in services to the government and other public good functions.<sup>11</sup> This extensive definition from 2009 should be revised as soon as the central banks' functions and objectives remain stable and anchored in their mandate. That is also why the comparison exercise starts from the features of the European Central Bank's mandate.<sup>12</sup> From a legal perspective, the mandate of the central bank is studied in its constitutional, statutory, and/or legal sources. In this regard, the mandate includes the legal mechanisms which establish the central bank and endow it with rights and responsibilities.<sup>13</sup> The mandate is also partly studied in its policy implementation through analysis of recent policy statements and institutional documents. Analysing central banks' institutional discourse and practice helps specifying their mandate and the measures adopted to implement objectives and tasks. The interpretation of the central banks' mandate is therefore based on speeches, policy statements, and agreements.

The underpinned constitutional, statutory, or legal objectives are introduced, including price stability, maximum employment, growth, economic and financial welfare, and relating to the stability of the financial system (including supervision and macroprudential policies). In the current era of central banking, the common 'single versus dual' mandate distinction might have become obsolete insofar the objectives are more numerous. However, this depends on the restrictive or extensive interpretation of the *mandate*. Restrictively, the mandate is distinct from central banks' *objectives, functions* or *tasks*,<sup>14</sup> and the policy *measures* used to achieve them. Extensively, the substance of the mandate may be stretched with a broader scope when the mandate is practically exerted, and triggers an inversion or adaptation of the hierarchy of the objectives (when in plural form). Indeed, central banks' mandates have been slightly adjusted during and in the aftermath of the crises, with the recourse to non-conventional measures. Therefore, in a context of institutional flexibility and political necessity,<sup>15</sup> central banks' responses to the recent crises modelled the scope of their mandate, in law and in action.

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<sup>8</sup> C. A. E. Goodhart, 'The changing role of central banks', *BIS Working Papers No 326*, November 2010, p.1.

<sup>9</sup> However, in normal times, to prevent the misuse of state's financial powers, *ibid.*.

<sup>10</sup> See the conceptual analysis from A. Smolenska and T. Beukers, 'Central Banks and Financial Stability in Comparative Perspective', paper presented at the ADEMU Conference, *The New ECB in Comparative Perspectives*, 19-20 September 2017, European University Institute, Florence (hereinafter 'ADEMU Conference 2017').

<sup>11</sup> See BIS Report, n.4, pp.28-49.

<sup>12</sup> Also in line with the theme the *New ECB in comparative perspectives*.

<sup>13</sup> According to the definition in BIS Report, n.4, p.57.

<sup>14</sup> 'Task' is the terminology used in European studies, whereas 'function' is used for examining functionally the central banks' mandate.

<sup>15</sup> See A. Blinder, M. Ehrmann, J. de Haan and D.-J. Jansen, 'Necessity as the mother of invention: Monetary policy after the crisis' (2017) *Economic Policy* 32(92), 707-755, including a forward-looking perspective on the future development of central banks' mandates. See also T. Beukers, 'The New ECB and Its Relationship with the

The comparative analysis exercise is completed by keeping the European Central Bank (ECB) under central focus, to specify the *New ECB*, while calibrating with other jurisdictions. The sample includes elements from analysing the Federal Reserve System (FED), the Bank of Canada (BoC) and the Bank of England (BoE). The central banks selected for this paper are embedded within different constitutional settings thanks to a sample including federal and unitary states (with, admittedly, a specific constitutional setting for the EU). It seems that even federal states favour a rather centralised structure for central banking, due to the need for unity and uniformity of central banks' decision-making.

The central banks' organisational structures observed demonstrate the specific features with which central banking would almost be *per se* associated with centralised decision-making, but with a different degree of decentralised implementation or decentralised representation. The existence of a *system* is one keystone of these differentiated structures. The central banks examined are either located in a central banking system whose mandate is determinative for the central bank, or exist on a 'stand-alone' basis and is the direct owner of the mandate. After some unsuccessful experiments of decentralisation in central banking in the past,<sup>16</sup> could one observe a centralised organisation of central banking hermetic to the specific constitutional settings?

The paper begins with the examination of central banks' mandate for the ECB, the FED, the BoC, and the BoE, through the analysis of their constitutional, statutory, and/or legal framework, in combination with the interpretation conveyed by some policy statements and elements of the institutional discourse. The underpinning objectives and tasks implemented as well as some measures adopted are contextualized. The central banks' organisational structures are finally situated within their respective constitutional settings.

## I. Central Banks' mandate in context

The paper hinges on statutory acts and institutional texts to examine central banks' mandate, that is an approach of lawyering. The central banks' practice in the post-crisis era is illustrated with their institutional discourse, *lawyering* being paired with *interpreting*. The analysis of extra-statutory/extra-constitutional elements enhances the understanding of the substance and scope of the mandate, including the measures to exercise the mandate. As the focus is on the *New ECB*, the examination of the central banks' mandate begins with the ECB, followed by the FED, the BoC, and the BoE. This part aims at inquiring into how central banks' responses to the recent crises modelled the scope of their current mandate, both in their letter and interpretation.

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Eurozone Member States: Between Central Bank Independence and Central Bank Intervention' (2013) *Common Market Law Review* 50:6, 1579-1620, esp. p.1591.

<sup>16</sup> Regarding previous experiences, decentralisation of structures in central banking has proved inefficient or problematic. See the examples of the Federal Reserve System of the United-States of America and the Bank of German States, C. Zilioli and M. Selmayr, *The Law of the European Central Bank* (Hart Publishing, 2001), pp.68-70.

## A. Lawyering Central Banks' statutes and legal framework

The examination of the central banks' mandate starts with the institutional definition, followed by its functional aspects, as written in the texts.

Institutionally, the European System of Central Banks (ESCB) is composed of the ECB and the national central banks (NCB) of the Member States<sup>17</sup> while the Eurosystem is composed of the ECB and the NCBs of the Member States whose currency is the euro. The FED includes especially the Board of Governors, twelve Federal Reserve Banks, and the Federal Open Market Committee (FOMC). The BoC has a Board of Governors, with some regional offices representing the central bank, similarly to the BoE with agencies settled in different regions in the United Kingdom (UK). The BoE is overseen by the Court of Directors (equivalent to a board of directors) and central banking responsibilities are divided amongst different committees.

This paper refers to the ESCB as the ESCB/Eurosystem because derogations still apply to some Member States.<sup>18</sup> Therefore, functionally, the ECB's mandate includes the tasks of the ESCB/Eurosystem, expressly composed of four elements:<sup>19</sup> the definition and implementation of the Union monetary policy,<sup>20</sup> the conduct of foreign-exchange operations, the responsibility of the official foreign reserves of the Member States, the promotion of the smooth operation of payment systems. In addition to those tasks, the ESCB/Eurosystem must contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.<sup>21</sup> Since 2014, the ECB has been conferred by secondary legislation<sup>22</sup> the competence for banking supervision<sup>23</sup> of participating Member States' significant credit institutions, and both significant and less significant credit institutions for the common procedures covering their birth, marriages, and death.<sup>24</sup> All in all, this conferred task gives concrete existence to a responsibility to contribute

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<sup>17</sup> Article 282(1) TFEU and Article 1 of Protocol no 4 on the Statute of the European System of Central Banks and of the European Central Bank, protocol as annexed to the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2010/C 83/01) (OJ C 83, 30.3.2010, p. 230), (hereinafter 'ESCB and ECB Statute').

<sup>18</sup> Article 139(2) TFEU. Due to the Member States with a derogation, some articles in the remit of the ESCB's mandate, referring to Member States, must be read instead by Member States whose currency is the euro. More precisely, the objectives and tasks of the ESCB as set forth in Article 127(1) to (3) and (5) TFEU must not apply to Member States with a derogation (Article 139(2)(c) TFEU).

<sup>19</sup> Pursuant to article 127(2) TFEU and article 3 TEU.

<sup>20</sup> It should be noted that the Eurosystem is in charge of the conduct of the monetary policy (article 282(1) TFEU).

<sup>21</sup> Article 127(5) TFEU and Article 3(3) of the ESCB and ECB Statute.

<sup>22</sup> Legally based on Article 127(6) TFEU and Article 25.2 of the ESCB and ECB Statute, to the exception of insurance undertakings.

<sup>23</sup> Article 1 of the SSM Regulation, Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, (OJ L 287/63, 29 October 2013).

<sup>24</sup> See the combined reading of articles 4 and 6(4) of the SSM Regulation on authorisations, acquisitions of qualifying holdings, withdrawal of authorisations.

to the stability of the financial system,<sup>25</sup> as well as for microprudential supervision.<sup>26</sup> Lastly, the ECB has been given some macroprudential responsibilities by the same secondary legislation<sup>27</sup> which are shared responsibilities of the ECB and national authorities within the Banking Union. The ECB may tighten some prudential measures<sup>28</sup> by setting higher requirements for capital buffers in addition to own funds requirements, including countercyclical rates, and more stringent measures to address systemic or macroprudential risks<sup>29</sup> at the level of credit institutions.

This introduction of the different tasks already shed light on the complex institutional arrangements between the ESCB/Eurosystem's tasks, the ECB's responsibilities to implement those tasks on its own or through the NCBs<sup>30</sup> forming the Eurosystem for the conduct of the monetary policy, and the ECB's responsibilities within the Single Supervisory Mechanism,<sup>31</sup> for European Banking Supervision. In this regard, looking at the European case requires examining both the ESCB/Eurosystem's mandate strictly, and the ECB's mandate including those new responsibilities. Admittedly, there is a sort of ellipsis in using the *ECB's* mandate to cover all those realities. The *New ECB* theme indicates a necessary consideration of the strict and broad understanding of the mandate. This paper, nevertheless, focuses on central banking and considers on a secondary level whether central banking goes with(out) supervision.<sup>32</sup>

Defining the mandate requires looking more precisely at the objectives underpinning those tasks. The ESCB/Eurosystem benefits from a constitutional and statutory anchored primary objective underlying the definition of the monetary policy. Indeed, the primary objective is to maintain price stability, in accordance with the Treaty on the functioning of the European

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<sup>25</sup> In accordance with Article 127(5) TFEU. See also to what extent this conferral of supervisory task aims at safeguarding the financial stability of the Union. The SSM Regulation in its Recital 55 reads: 'The conferral of supervisory tasks implies a *significant responsibility* for the ECB to safeguard financial stability in the Union' (emphasis added). The paper will not go into the semantic (financial stability vs stability of the financial system) nor develop the comprehensive illustration and justification found in EU primary and secondary law. See G. Lo Schiavo, *The role of financial stability in EU law and policy* (Alphen aan den Rijn, The Netherlands : Wolters Kluwer, 2017), esp. pp.46-57.

<sup>26</sup> The emphasis being here rather on the contribution to the safety and soundness of credit institutions, at the micro level.

<sup>27</sup> Article 5 of the SSM Regulation, 'Macroprudential tasks and tools'.

<sup>28</sup> Set out in the Capital Requirements Directive IV and the Capital Requirements Regulation.

<sup>29</sup> See A. Kern for whom the monitoring of systemic and macroprudential risk across the financial system is the European Systemic Risk Board's responsibility, even though a soft law body. A. Kern 'The European Central Bank and Banking Supervision: The Regulatory Limits of the Single Supervisory Mechanism' (2016) *European Company and Financial Law Review*, 13:3, 467-494, esp. p.477.

<sup>30</sup> Article 9.2 of the ESCB and ECB Statute.

<sup>31</sup> G. Monti and C. A. Petit, 'The Single Supervisory Mechanism: legal fragilities and possible solutions' (2016), *ADEMU Working Paper Series*, WP 2016/016.

<sup>32</sup> See M. Goldmann, 'United in Diversity? The Relationship between Monetary Policy and Banking Supervision in the Banking Union', *SAFE Working Paper No. 178*, esp. pp.11-9.

Union (TFEU)<sup>33</sup> and the Statute of the ESCB and the ECB.<sup>34</sup> Moreover, secondary law provides for the ECB's objectives within banking supervision, namely to ensure the safety and soundness of credit institutions and to contribute to the stability of the financial system within the Union and each Member State.<sup>35</sup> The letter of the foundational texts is clear as to the ESCB/Eurosystem secondary objectives, that is to say to support the general economic policies in the Union, acting in accordance with the principle of an open market economy with free competition.<sup>36</sup> The TFEU legal basis refers directly to the broader contributory objectives set in the Treaty on the European Union (TEU) as far as the ESCB/Eurosystem is to contribute to the objectives of the Union, namely, a sustainable development of Europe based on balanced growth and price stability, aiming at full employment and social progress.<sup>37</sup> That said, those objectives are unquestionably hierarchised, with an overriding importance given to the price stability objective (whose main instrument and measures will be discussed in Section B. below).

The statutory goals of the FED are threefold<sup>38</sup> to promote *maximum employment, stable prices, and moderate long-term interest rates*, whereas the mandate is commonly described as dual (see below section B.) The instruments to achieve those objectives<sup>39</sup> include money and credit supply maintained in accordance with the long run potential to increase production, that is to say to conduct monetary policy. Within this mandate, the FED covers other functions, among those, banking supervision. Indeed, the official title of the Federal Reserve Act makes clear that the act is 'to establish a more effective supervision of banking in the United States'. Regarding payment systems, the FED is partly involved<sup>40</sup> in supervisory and regulatory functions for financial market utilities' infrastructures designated as systemically important by the Financial Stability Oversight Council (FSOC). Furthermore, the FED is responsible to

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<sup>33</sup> Articles 119(2), 127(1) and 282(2) of the TFEU. The constitutional status of the Treaties as the 'basic Constitutional charter' has been recognised by the Court of Justice in the landmark Case 294/83 *Les Verts* v. *Parliament* [1986] ECR 1339, paragraph 23, and confirmed in Opinion 1/91 EFTA [1991] ECR I-6079, paragraph 21.

<sup>34</sup> See n.17, ESCB and ECB Statute.

<sup>35</sup> 'with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage' in accordance with Article 1 of the SSM Regulation. See P. Schammo, 'The European Central Bank's Duty of Care for the Unity and Integrity of the Internal Market' (2017) 42 *European Law Review*, 3-26. See also more broadly, M. Lamandini, D. Ramos, and J. Solana, 'The European Central Bank (ECB) as a catalyst for change in EU Law. Part 1: The ECB's mandates' (2016) *Columbia Journal of European Law* 23(2), 1-54.

<sup>36</sup> Article 127(1) TFEU.

<sup>37</sup> Article 127(1) TFEU indeed refers to Article 3(3) TEU.

<sup>38</sup> 12 U.S.C. § 225a. Dec. 23, 1913, ch. 6, § 2A, as added by act of November 16, 1977 (91 Stat. 1387) and amended by acts of October 27, 1978 (92 Stat. 1897); Aug. 23, 1988 (102 Stat. 1375); and Dec. 27, 2000 (114 Stat. 3028), hereinafter 'Federal Reserve Act', including the amending acts.

<sup>39</sup> The word *goal* is from the letter of the Federal Reserve Act (*ibid.*); however, in this paper, objective is used to cover all central banks' goal/objective.

<sup>40</sup> This partial responsibility stems from the shared involvement for regulation and supervision of the Financial Stability Oversight Council, the FED Board of Governors, Commodities Futures Trading Commission, Securities & Exchange Commission, and Federal Deposit Insurance Corporation, under Title VIII of the Dodd-Frank Act 'Payment, Clearing, and Settlement Supervision'. Dodd-Frank Wall Street Reform and Consumer Protection Act, 21 July 2010, Pub.L. 111-203, H.R. 4173 (hereinafter 'Dodd-Frank Act').



regulate and supervise at the micro and macro level different financial entities. However, depending where the institution chooses to operate and to be chartered (either federal or state level), and which authority (either federal or state) grants the permission for the business operations, the supervisory and regulatory responsibility might be exerted by other federal regulators<sup>41</sup> in addition to the supervision of the chartering state. Therefore, the FED shares part of its functions at the federal level, and with individual state banking departments at the state level. Finally, during the crisis, the financial stability mandate of the FED has been reinforced, with the creation of the FSOC by the Dodd-Frank Act.<sup>42</sup> The FSOC has three purposes: to identify risks to the financial stability of the United States, to promote market discipline and to respond to emerging threats to the stability of the United States financial system.<sup>43</sup>

The BoC's mandate is defined in the Preamble of the Bank of Canada Act 'to promote the economic and financial welfare of Canada'.<sup>44</sup> Admittedly, the links between monetary policy and macroprudential policies (economic policy) are expressly recognised. The Minister of Finance is consulted by the governor on monetary policy and its relation to general economic policy,<sup>45</sup> and his opinion overrides the Governor's in a case of difference of opinion concerning the monetary policy to be followed.<sup>46</sup> More precisely, monetary policy is operationalized in an inflation-control target framework to guide Canadian monetary policy, under an agreement between the BoC and the Minister of Finance,<sup>47</sup> reaffirming price stability as the central objective of monetary policy (see below Section B). The BoC has also the responsibility for the oversight of payments and other clearing and settlement systems,<sup>48</sup> for the purpose of controlling systemic risk.

The BoC pursues the promotion of the stability of the Canadian financial system.<sup>49</sup> It should be noted that the Minister of Finance is responsible for financial stability with the support of other federal agencies whose mandate contribute to financial stability, including the Bank of Canada, the Office of the Superintendent of Financial Institutions (OSFI) and the Canada

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<sup>41</sup> For instance, the Office of the Comptroller of the Currency (OCC) supervises institutions chartered at the federal level, whereas the Federal Deposit Insurance Corporation (FDIC) supervised institutions that are not members of the FED.

<sup>42</sup> Dodd-Frank Act, §§111. For a deeper analysis on the financial stability mandate in a comparative perspective including the FED, the BoE and the ECB, see F. Della Negra and G. Lo Schiavo, 'Financial stability and central banking: legal evidence from the ECB in comparative perspective', paper presented at the ADEMU Conference 2017.

<sup>43</sup> Dodd-Frank Act, §§112.

<sup>44</sup> Bank of Canada Act, R.S.C., 1985, c. B-2 (hereinafter 'Bank of Canada Act').

<sup>45</sup> *Ibid.*, Section 14(1).

<sup>46</sup> After consultation with the Governor and with the approval of the Governor in Council, the Minister of Finance may give a written directive concerning monetary policy, in specific terms and applicable for a specified period. *Ibid.*, Section 14(2).

<sup>47</sup> Adopted first in 1991, renewed several times since, most recently in 2016 to the end of 2021.

<sup>48</sup> Payment Clearing and Settlement Act.

<sup>49</sup> Bank of Canada Act, Section 18(g).

Deposit Insurance Corporation (CDIC).<sup>50</sup> The supervisory tasks are, however, separated and conferred to a distinct entity – the Office of the Government (OSFI), over which the Minister presides and keeps responsibility.<sup>51</sup>

For the purposes of conducting monetary policy or promoting the stability of the Canadian financial system, the BoC may lead financial instruments selling and purchasing, as expressly provided for in the Bank of Canada Act.<sup>52</sup> Finally, the BoC may also act as agent for the Government of Canada in the payment of interest and principal and generally in respect of the management of the public debt of Canada, when required by the Minister.<sup>53</sup>

The BoE has been conferred responsibility for monetary policy,<sup>54</sup> formulated and implemented by the Monetary Policy Committee (MPC). The monetary policy objective is also geared towards price stability, whose definition is made in a statement by the Government (see below Section B). In relation to monetary policy, the objectives of the BoE are to maintain price stability, and subject to that, to support the economic policy of the Government, including its objectives for growth and employment.<sup>55</sup> This sets a clear hierarchy between those objectives for which the MPC interacts closely with the Financial Policy Committee (FPC).<sup>56</sup> Indeed, the FPC and the MPC have both the secondary common objective to support the economic policy of the Government, including the objectives for growth and employment.<sup>57</sup>

The BoE has in addition a statutory financial stability objective,<sup>58</sup> with the support of the Financial Stability Committee (FSC), to protect and enhance the stability of the financial system of the UK. The FPC contributes also to the BoE's financial stability objective<sup>59</sup> ensuring the protection and enhancement of the UK financial system resilience.<sup>60</sup> By contributing to this objective, the FPC is a macroprudential entity which coexists besides the MPC as a price

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<sup>50</sup> The CDIC is the federal deposit insurer, as well as resolution authority since amendments to its mandate in 2017.

<sup>51</sup> OSFI Act, Section 4(1). Both financial institutions and pensions are regulated.

<sup>52</sup> See Bank of Canada Act, n.44, Subsection 18(g)(i), to the exception of instruments that evidence an ownership interest or right in or to an entity; however, under exceptional circumstances, i.e. a severe and unusual stress on a financial market or the financial system, this exception is suspended, under 18(g)(ii). This buying side is similar to the quantitative easing, see below Section B.

<sup>53</sup> Bank of Canada Act, Section 24(2).

<sup>54</sup> Bank of England Act 1998, whole Part II.

<sup>55</sup> Bank of England Act 1998, Section 11.

<sup>56</sup> However, this hierarchy may be reversed in exceptional circumstances, see the discussions below under Section B.

<sup>57</sup> See further than the supportive objective as phrased in Bank of England Act 1998, Section 11, for the FPC, Section 9(c)(1) and (4).

<sup>58</sup> Bank of England Act 1998, Section 2A, as amended by the Banking Act 2009, the Financial Services Act 2012, and the Bank of England and Financial Services Act 2016.

<sup>59</sup> Bank of England Act 1998, Section 9(c)(1).

<sup>60</sup> *Ibid.*, Section 9(c)(2). The FPC is primarily responsible for the identification of, monitoring of, and taking of action to remove or reduce, systemic risks with a view to protecting and enhancing the resilience of the UK financial system.

stability entity<sup>61</sup> within the BoE. The financial stability objective is a collective responsibility, as the BoE must work with other bodies, including the supervisors. Indeed, beside the FPC, the Prudential Regulation Authority (subsidiary of the BoE)<sup>62</sup> and the Financial Conduct Authority (FCA),<sup>63</sup> are also involved from the microprudential supervision perspective. In this respect, the BoE's functions for the PRA are exercised through another Committee, the Prudential Regulation Committee (PRC), which aims at promoting the safety and soundness of PRA-authorized persons.

The examination of the four central banking systems' and central banks' statutes and/or legal framework shows to some extent the alignment with the definitions set forth at the global level for modern central banks. Monetary policy, as a traditional central banking task and its related price stability objective, is accompanied by other objectives reflecting economic policies' (in)direct considerations (financial stability, employment, growth, economic and financial welfare) even though with different levels of priority (equal to price stability objective, secondary, contributory, or implied). The hierarchy of objectives is better grasped by interpreting the recent practice (considering the measures adopted) in complement to a strict textual reading of the central banks' mandate.

## B. Interpreting Central Banks' mandate

The scope and content of the central banks' mandate are examined further thanks to extra-statutory elements. The implementation of the objectives of the mandate materialises in the adoption of specific measures or instruments.

The main elements of the ECB's stability-oriented monetary policy strategy were further agreed to rely on a defined price stability objective,<sup>64</sup> which was clarified to strike out deflation.<sup>65</sup> During and in the aftermath of the crises, some unconventional measures have been adopted, described as a way to 'secure the ECB mandate'.<sup>66</sup> Those unconventional measures are at least threefold in the European case: negative deposit facility rates, targeted

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<sup>61</sup> T. Shakir and M. Tong, 'The Interaction of the FPC and the MPC' (2014), *Bank of England Quarterly Bulletin* 2014 Q4, pp.400-1.

<sup>62</sup> Status of Company, but wholly-owned subsidiary. Section 7AA introduced by section 137(3) of the Financial Services (Banking Reform) Act 2013.

<sup>63</sup> As amended by the Bank of England and Financial Services Act 2016.

<sup>64</sup> ECB, Press release, 'A stability-oriented monetary policy strategy for the ESCB', 13 October 1998.

<sup>65</sup> From a year-on-year increase in the Harmonised Index of Consumer Prices (HICP) for the euro area of below 2% to rates below, *but close to*, 2% over the medium term (emphasis added, which corresponds to the clarification).

<sup>66</sup> 'The ECB has taken a series of unconventional measures to enhance the transmission of monetary policy and secure its mandate'. ECB, 'The interaction between monetary policy and financial stability in the euro area' (2017), M. Draghi, Madrid (24 May 2017). Available on: [www.ecb.europa.eu](http://www.ecb.europa.eu).

longer-term refinancing operations (TLTROs) and an expanded asset purchase programme as part of its quantitative easing (QE).<sup>67</sup>

Unconventional measures for monetary policy could also be partly interpreted as the exercise of a function of LOLR.<sup>68</sup> If this function is not expressly stated in the statutory and legal texts, the practice witnesses a certain role assumed by the ECB for the euro area during the crisis<sup>69</sup> which consists in what has been called the 'monetary approach' to LOLR.<sup>70</sup> For instance, regarding the LTRO, they turned from three month-long to a duration extended to six months (2008) and even to three years (2011). This is the 'classical approach of [the ECB] LOLR responsibilities' according to Peter Praet,<sup>71</sup> whose statement acknowledged the nature of the responsibilities undertaken.

In the LOLR function, macro level and micro level liquidity supply should be distinguished<sup>72</sup> and are related respectively to monetary policy operations and liquidity provisions to individual institutions. In a systematic definition, this leads to differentiate between the monetary approach and the credit approach to LOLR.<sup>73</sup> The liquidity shock within the system was addressed in the first – monetary – approach to LOLR, whereas the liquidity stress and issues faced by solvent credit institutions, in the second – credit – approach, notably through the instrument of emergency liquidity assistance (ELA).<sup>74</sup> In this respect, part of the LOLR function was not fully exercised by the ECB, but by the NCBs. The rule found in the ESCB and ECB Statute<sup>75</sup> has been complemented by an agreement on the provision of ELA<sup>76</sup> to clarify the ECB's role in the provision of ELA by the Eurosystem NCBs. The ELA agreement implements the statutory framework and provides details for assessing whether such ELA provision interferes with the objectives and tasks of the ESCB/Eurosystem. The ELA agreement helps understanding the credit approach side of the LOLR function, which remains at the national level formally, provided there is no interference with the ESCB/Eurosystem mandate.

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<sup>67</sup> See P. Cour-Thimann and B. Winkler, 'The ECB's non-standard monetary policy measures the role of institutional factors and financial structure' (2013) *ECB Working Paper Series No. 1528, April 2013*, and K. Tuori, 'The Eurosystem quantitative easing programme – a comparative economic-constitutional assessment', paper presented at the ADEMU Conference 2017.

<sup>68</sup> The LOLR is an important function of modern central banking, see Goodhart, n.8. See also the discussions on the LOLR functions within the monetary policy mandate, M. Lamandini, D. Ramos, and J. Solana, n.35, pp.19-22.

<sup>69</sup> See for a *de facto* lender of last resort action: C. Garcia-de-Andoain, F. Heider, M. Hoerova and S. Manganelli, 'Lending-of-last-resort is as lending-of-last-resort does: Central bank liquidity provision and interbank market functioning in the euro area' (2016) *ECB Working Paper Series No 1886, February 2016*.

<sup>70</sup> See below the distinction between the monetary approach and the credit approach to LOLR.

<sup>71</sup> Member of the Executive Board of the ECB. Namely, the ECB expanded the base money (as a result of the observations around the well-known equation  $B*m*V=P*Y$ ) by injecting extraordinary liquidity into the system, even through the use of unconventional measures. ECB, 'The ECB and its role as lender of last resort during the crisis' (2016), P. Praet, Washington DC (10 February 2016). Available on: [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>72</sup> A. Steinbach, 'The Lender of Last Resort in the Eurozone' (2016) *Common Market Law Review*, 53(2) 361–384, p.365.

<sup>73</sup> Praet, n.71.

<sup>74</sup> Put simply, ELA intervenes outside of 'normal' Eurosystem monetary policy operations.

<sup>75</sup> Article 14.4 of the ESCB and ECB Statute.

<sup>76</sup> See Agreement on emergency liquidity assistance, 17 May 2017 (hereinafter 'ELA agreement').

The agreement provides for specific information sharing and consultation procedures.<sup>77</sup> As a matter of fact, ELA operations are submitted to an ECB non-prohibition procedure when ELA operations exceed certain thresholds.<sup>78</sup> Under the ELA agreement and when those thresholds are met, the NCBs are free to undertake the planned ELA operations, *unless* the Governing Council decides to prohibit the execution of the operations, *on the grounds that they interfere with the single monetary policy of the Eurosystem*, within 24 hours of the notification by the NCBs.<sup>79</sup> Therefore, the LOLR function<sup>80</sup> is to some extent within the ECB's and NCBs' mandate (respectively monetary and credit approach).

The FED's mandate is commonly described as dual, which can be surprising considering the three objectives written in the Federal Reserve Act. The third objective – *moderate long-term interest rates* – is barely discussed, this omission is notably justified because only in a stable macroeconomic environment are the long-term interest rates remaining low.<sup>81</sup>

The FED's statutory mandate and underpinned objectives can be interpreted thanks to the FOMC Statements on longer-run goals and policy strategy (hereinafter 'FOMC Statement'). The first FOMC statement from 2012<sup>82</sup> specifies that inflation at the rate of 2 percent, as measured by the annual change in the price index for personal consumption expenditures, is most consistent over the longer run with the Federal Reserve's statutory mandate. This

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<sup>77</sup> *Ibid.* Section 3.2.

<sup>78</sup> *Ibid.* Section 3.3.

Where the size of ELA operations envisaged by one or more NCBs for a given financial institution or a given group of financial institutions exceeds a threshold of €2 billion, the Executive Board decides if the issue needs to be addressed to the Governing Council. In case the Executive Board considers that there is a risk that the ELA operation interferes with the single monetary policy of the Eurosystem, it must request the Governing Council to take a position on this issue at short notice.

See Section 3.2. (b), on a matter of information sharing.

Where the size of ELA operations envisaged by one or more NCBs for a given financial institution or a given group of financial institutions exceeds a threshold of €500 million, the Executive Board is informed by the NCB(s), and the information is provided by the Executive Board to the Governing Council.

<sup>79</sup> See Section 3.3, ELA agreement (emphasis added).

This wording is much stronger than article 14.4 in the ESCB and ECB Statute which provides: 'National central banks may perform functions other than those specified in this Statute unless the Governing Council *finds*, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB.'

This goes without prejudice to state aid rules and the prohibition of monetary financing. See I. Angeloni and N. Lenihan, 'Competition and state aid rules in the time of banking union', in E. Faia, A. Hackethal, M. Haliassos, and K. Langenbucher (eds.), *Financial Regulation: a transatlantic perspective* (CUP, 2015), pp.89-124, esp. pp.115-8.

<sup>80</sup> For further discussions, see N. Xanthoulis, 'ECB as Lender of Last Resort - The evolution of ELA and the quest for a new function in the SSM era: legal basis, institutional cooperation, risk allocation and judicial review', Paper presented at the ADEMU Conference 2017.

<sup>81</sup> F.S. Mishkin, 'Monetary Policy and the Dual Mandate' (2007) address at Bridgewater College, Bridgewater, Va., April 10, 2007.

<sup>82</sup> FED (2012), Press release, Federal Reserve issues FOMC statement of longer-run goals and policy strategy, press release, January 25, 2012 (hereinafter 'FOMC Statement'). Available on: [www.federalreserve.gov](http://www.federalreserve.gov) . First introduced in January 2012, and reiterated annually in January with amendments.

longer-run goal was reaffirmed in the last FOMC Statement amendment.<sup>83</sup> The accompanying press release in 2012 is worth citing insofar the dual mandate is explicitly stated in the following terms: 'Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. (...) To support a stronger economic recovery and to help ensure that inflation, over time, is at levels consistent with the *dual* mandate, the Committee expects to maintain a highly accommodative stance for monetary policy.'<sup>84</sup> The dual mandate, to promote maximum employment and stable prices, is explicit. As far as the hierarchical question between the two is concerned, the first FOMC Statement clearly mentioned a balanced approach in promoting them,<sup>85</sup> maximum employment standing on an equal footing with price stability as an objective of monetary policy.<sup>86</sup>

In a context of lower bound rates (i.e. the federal funds rate near zero) during the crises, two less conventional policy measures<sup>87</sup> were adopted, including large-scale asset purchases (as part of the US quantitative easing) and forward guidance. The latter consists in conveying explicit central bank statements on the future evolution of interest rates. However, with economic recovery and an expected return to a 'normalization' of the level of the federal funds rate, Policy Normalization Principles and Plans inform of the intention to reduce or even renounce to less conventional measures.<sup>88</sup>

Lastly, the FED lists its own functions<sup>89</sup> including (besides the conduct of monetary policy) to promote the stability of the financial system, the safety and soundness of individual financial institutions, to foster payment and settlement system safety and efficiency, and to promote consumer protection (the latter being not covered in this paper). As for the preservation of the stability of the financial system, this function is closely monitored by the Financial Stability Oversight Council (FSOC) whose purposes are to identify risks to the financial stability, to promote market discipline, and to respond to emerging threats to the stability of the US financial system.<sup>90</sup>

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<sup>83</sup> FOMC Statement (2017), Statement on Longer-Run Goals and Monetary Policy Strategy, adopted effective January 24, 2012; as amended effective January 31, 2017. Available on: [www.federalreserve.gov](http://www.federalreserve.gov).

<sup>84</sup> Emphasis added, FOMC Statement (2012), n.82.

<sup>85</sup> Historically though, it may be discussed whether there have been alternative periods with shifting emphasis on one objective over the other. See A. Steelman, 'The Federal Reserve's "Dual Mandate": The Evolution of an Idea' (2011), *Economic brief, December 2011, EB11-12, The Federal Reserve Bank of Richmond, 6 p.*

<sup>86</sup> FED (2012), Transcript of Chairman Bernanke's Press Conference, B. Bernanke, January 25, 2012, p.2. Available on: [www.federalreserve.gov](http://www.federalreserve.gov).

<sup>87</sup> Note the difference between the European (*unconventional*) and American (*less conventional*) rhetoric.

<sup>88</sup> FED (2017), Addendum to the Policy Normalization Principles and Plans, 14 June 2017.

This stems notably from an addendum to 2014 Committee's Policy Normalization Principles and Plans. The FOMC decided to reduce the holdings of Treasury and agency securities, and change the target range for the federal funds rate as a primary means of adjusting the stance of monetary policy.

<sup>89</sup> This institutional document is useful from its continuity perspective. FED (2016), 'The Federal Reserve System Purposes & Functions', 10<sup>th</sup> edition, *Federal Reserve System publication* (October 2016).

<sup>90</sup> See 12 U.S.C. § 5322 (Dodd-Frank Act § 112). The FED's Chairman of the Board of Governors is a voting member.

The BoC depicts its four core functions as monetary policy, financial system, currency, and funds management.<sup>91</sup> Regarding monetary policy, in the inflation-control target renewed for five years in 2016, monetary policy is clearly economically driven: 'the primary objective of Canada's monetary policy is to promote the economic and financial welfare of Canadians, by contributing to sustained economic growth, rising levels of employment and improved living standards'.<sup>92</sup> This inflation targeting framework echoes logically the statutory mandate of the BoC and serves as a guidance for setting the appropriate interest rate (target for the overnight rate), aiming at price stability. In the renewal of the inflation-control target, a broader scope is admittedly given to the central bank mandate, as monetary authorities have significantly 'extended the limits of their policy toolkits'.<sup>93</sup>

The function of the BoC for the financial system is shared within a collectively mandated group constituted by the BoC, OFSI, CDIC and Minister of Finance. The contributions to financial stability are reported to the Financial Institutions Supervisory Committee if they are considered as issues. This Committee operates as a more political type of reunion to facilitate the exchange of information among those mandated institutions<sup>94</sup> on matters relating to the supervision of federally regulated financial institutions.

Finally, the LOLR function for the BoC covers both the monetary and credit approach, under specific conditions, requiring a credible recovery and resolution framework for financial institutions to be eligible for emergency lending assistance (Ela) and for designated financial market infrastructures (FMIs) to be eligible for Ela. It should be noted that the framework for Canadian Ela is comprehensive with an agreement.<sup>95</sup>

For the BoE, within its monetary policy mandate, price stability is defined by the inflation target of 2% expressed in annual rate of inflation based on the consumer prices index.<sup>96</sup> The MPC sets monetary policy and its main instruments to meet this target, including the Bank Rate, in a way that helps to sustain growth and employment.<sup>97</sup> The rhetoric is also one of economic policy consideration, in line with part of its mandate (i.e. maintaining price stability, and *subject to that*, supporting the economic policy, including its objectives for growth and employment).

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<sup>91</sup> The latter two are already covered in Section A.

<sup>92</sup> Bank of Canada (2016), Joint Statement of the Government of Canada and the Bank of Canada on the Renewal of the Inflation-Control Target, 24 October 2016, available on: [www.bankofcanada.ca](http://www.bankofcanada.ca).

<sup>93</sup> *Ibid.*.

<sup>94</sup> Including the Financial Consumer Agency of Canada as well.

<sup>95</sup> The Bank of Canada Act, the Payment Clearing and Settlement Act (PCSA), the BoC lending policies and its loan and security agreements, in particular as set forth in the Bank of Canada rules governing advances to Financial Institutions, December 3, 2015 (which is similar to the ELA agreement).

<sup>96</sup> The target is announced each year by the Chancellor of the Exchequer in the annual budget statement.

<sup>97</sup> In accordance with the BoE statute, and as reaffirmed in BoE statements, see for instance:

Bank of England (2017a), Monetary policy Summary, 15 June 2017, and Bank of England (2017b), Monetary policy Summary, 3 August 2017, both available on: [www.bankofengland.co.uk](http://www.bankofengland.co.uk).

The balancing between the monetary policy objective and the more economic ones for growth and employment relies on the interaction between the MPC and the FPC, and their respective objectives. This balancing exercise has some specific features in crisis times. In this respect, the policy statements made by the MPC after the June and August 2017 monetary policy meetings explicitly state: 'the MPC's remit specifies that, in exceptional circumstances, the Committee must balance any trade-off between the speed at which it intends to return inflation sustainably to the target and the support that monetary policy provides to jobs and activity'.<sup>98</sup> This statement shows there is scope for a temporary inversion of the hierarchy between the monetary policy objective and the economic-driven ones.

This trade-off has also been envisaged previously, when the BoE adopted forward guidance as a monetary policy measure. The monetary policy instrument (Bank Rate) was not touched until the unemployment rate<sup>99</sup> had reached a certain threshold subject to some conditions. This witnesses a *de facto* inversion of priority where the employment objective is privileged, in exceptional circumstances. The rhetoric around the conditions focused on the significant threat to financial stability posed by the stance of monetary policy,<sup>100</sup> which combines with financial stability as another objective of the BoE.<sup>101</sup> The exceptional circumstances led the BoE to have recourse to the forward guidance measure, which is considered instrumentally to foster the common understanding on the balance the MPC seeks between its monetary policy task ('returning inflation promptly to the target') and the broader textual secondary objective within the BoE mandate ('providing support to the economic recovery').<sup>102</sup> The exceptional circumstances have not yet fully disappeared and also relate to economic policy as well as supervisory considerations.<sup>103</sup>

In conclusion, the inquiry through the texts, recent institutional discourse and practice of the central banks studied witnesses a turning point. The evolution of the scope of the mandate can be observed through the recourse to diverse, innovative, creative measures and instruments to achieve central banks' objectives and functions. Exceptional circumstances

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<sup>98</sup> *Ibid.*

<sup>99</sup> Labour Force Survey (LFS) headline.

<sup>100</sup> Namely, the FPC judges that threat cannot be contained by the substantial range of mitigating policy actions available to the FPC, the Financial Conduct Authority and the Prudential Regulation Authority in a way consistent with their objectives. However, the price stability objective priority is still formally included, in the following terms: 'until the margin of slack within the economy has narrowed significantly, it will be appropriate to maintain the current exceptionally stimulative stance of monetary policy, provided that such an approach remains consistent with its primary objective of price stability and does not endanger financial stability.'

Bank of England (2013), 'Monetary policy trade-offs and forward guidance', August 2013, p.5. Available on: [www.bankofengland.co.uk](http://www.bankofengland.co.uk)

<sup>101</sup> See Section A., n.58. BoE financial stability objective has been reinforced with several amendments to the Bank of England Act between 2009 and 2016.

<sup>102</sup> Bank of England (2013), n.100, p.6.

<sup>103</sup> See references to the Brexit negotiations in the August Monetary policy summary: the exceptional circumstances cover new international trading arrangements (including eventual trading relationship with the EU), weaker real income growth that is likely to accompany that adjustment over the next few years, and also taking into account the effects of the recent prudential decisions of the FPC and the PRA. Bank of England (2017b), n.97.



may justify using specific measures and instruments, which make the mandate evolving in scope by its actual exercise. Some specific less/unconventional measures were used by all central banks, such as forward guidance in a context of lower bound interest rates.<sup>104</sup> Nevertheless, those unconventional measures may end. In the introductory statement to the press conference following ECB's Governing Council meetings, the reference to acting by using all the instruments available within its mandate was deleted.<sup>105</sup> Similarly, the FED has already engaged in a process of normalization. The new tasks and related measures endorsed as a result of the crises have led to an extended interpretation of the scope of the mandate and its underpinning objectives.

## II. Central Banks' organisational structure within constitutional settings

This section is articulated in a twofold dimension: identifying the organisational structure of the central banks to serve their mandate, and situating the central banks within specific constitutional settings.

### A. Central banks' organisational structure

The ESCB has a two-level organisational structure including the ECB and the NCBs. The ESCB preserves to some extent a decentralisation aspect,<sup>106</sup> as far as at the ESCB inception the existing national central banks were not abolished. The temptation is then to describe the ESCB as a federal system. However, if the ESCB structure appears similar to a federal structure at first sight, it is in law a centralized system.<sup>107</sup> The inaccurate character of analysing the ESCB under a federal system is partly due to the absence of autonomous decision-making powers in the NCBs' remit. This gives shape to a rather unitary structure for central banking with centralized decision-making, which has been called 'decisional centralism'.<sup>108</sup> The decision-making power pertains to two bodies within the ECB: the Governing Council and the Executive Board.

In the ESCB, the ECB is *de jure* and *de facto* the central entity of the system. It is not only in charge of the decision-making but also responsible for the effective implementation of its

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<sup>104</sup> On a comparative analysis on the role of forward guidance, see Charbonneau and Rennison looking at how this monetary policy tool was used at the BoC, FED, ECB and BoE. K. Charbonneau and L. Rennison, 'Forward Guidance at the Effective Lower Bound: International Experience' (2015) *Bank of Canada Staff Discussion Paper 2015-15*, November 2015, Bank of Canada, pp.2-3.

<sup>105</sup> See the evolution between the introductory statement to the press conference from 19 January 2017 and the one from 9 March 2017.

<sup>106</sup> T. Padoa-Schioppa, 'Economic Federalism and the European Union', in K. Knop, S. Ostry, R. Simeon and K. Swinton (eds.), *Rethinking federalism: citizens, markets, and governments in a changing world*, (Vancouver : UBC Press, 1995), p.162.

<sup>107</sup> Zilioli and Selmayr, n.16, p.71. Schütze characterises it as a *decentralised unitary* system, R. Schütze, *European Constitutional Law*, (CUP, 2012), p.141.

<sup>108</sup> Zilioli and Selmayr, n.16, p.67.

tasks through the NCBs.<sup>109</sup> The reference *through* is striking and is materialized under instructions and guidelines received, and by the ECB recourse to NCBs to carry out operations forming part of the tasks of the ESCB/Eurosystem. The relationships between the ECB and the NCBs are rather hierarchical, even though NCBs can perform some functions outside the Statute, as far as they do not interfere with the objectives and tasks of the ESCB/Eurosystem (article 14.4 and the example of ELA already examined). Despite this leeway, NCBs are functionally integrated within the ESCB/Eurosystem, even though they remain national authorities with legal personality. The exercise of delegated tasks by the NCBs reveals they are legally subordinated to the ECB. Therefore, the combination of their existence in the national legal order and their integration in the ESCB/Eurosystem gives NCBs an hybrid position.<sup>110</sup>

If the Board of Governors of the FED is an independent agency of the federal government, providing guidance for the System, the twelve Federal Reserve Banks are the operating arms of the system, supervised by the former. The FOMC is composed of Members of the Board of governors and Reserve Banks' Presidents. The Board of Governors as a central body is in charge of the uniform application of the central banking functions. It is not a representation of the Federal Reserve Banks (as thought initially), but a governing institution.<sup>111</sup> The BoC has a Board of Directors as a central strategical body, a Governing Council for policy decision-making, and five regional offices which represent the central bank locally.<sup>112</sup> This organisation is integrated as these local structures are meant for information sharing (the local level giving crucial analysis to the central one) and representation. Finally, the BoE is organised in a similar integrated way, with a Court of Directors at the centre, together with twelve agencies whose role is to analyse the economic conditions in their area, and to explain the BoE's decisions to stakeholders. The particularity of the BoE is the manifold Committees with devoted field of competence to achieve the BoE's statutory mandate and related objectives.

The central banks' organisational structure is further examined with a study of some organisational models in abstract, followed by some correlations made for the case studies, between the central banks' organisational structure and the constitutional settings of their jurisdiction. Could one observe a centralised organisation of central banking hermetic to the specific constitutional settings?

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<sup>109</sup> See article 9.2 in combination with articles 12.1 and 14 of the ESCB and ECB Statute.

<sup>110</sup> Steinbach, n.72, p.366.

<sup>111</sup> D. Blache, *Le droit bancaire des Etats-Unis: le modèle pour l'Europe bancaire ?*, (Paris : Revue Banque, 2006) p.30.

<sup>112</sup> And an additional one in New York.

## B. Central banks' organisational structure within specific constitutional settings

The relations between the centre and regional/local sub-entities can be analysed within decentralisation theories. Within a multi-level structure, different degrees of decentralisation may intervene, differentiating between *déconcentration*, delegation and devolution in this paper.<sup>113</sup>

*Déconcentration*, first, contains a strong hierarchical and dependence element to the centre in the arrangement of the (state) organisation. The lower levels remain subordinated to the central organs. The most important remains the absence of direct decision-making power, and the implementation of (public) policies defined at the centre.<sup>114</sup> Therefore, the delegation of tasks intervenes from the centre to sub-entities to achieve an efficient implementation of the decisions adopted at the central level (the meaning of tasks is, however, different from the functional aspects examined for central banks). Secondly, delegation (also designated by the principal-agent relationship in political sciences) is the transfer of power and responsibility to semi-autonomous entities in a specific matter, which can be described as a functional decentralisation to entities endowed with legal personality. Such delegation entails therefore a function (or power) delegated from the centre (delegator or principal) to the lower level (delegate or agent). Finally, devolution is the strongest form of decentralisation insofar there is a true transfer of competence and responsibility to a legal person at the local level (territorial decentralisation).<sup>115</sup> In general, devolution also implies a transfer of resources necessary to ensure a margin of autonomy to carry on the tasks.

Those concepts represent different degrees of hierarchy or flexibility between the central level and the decentralised – déconcentrated, delegate or attributed – ones. A unitary central banking structure and decentralisation (understood broadly as *déconcentration* and delegation) of certain tasks and functions are not antonymous. On the contrary, the different concepts within decentralisation help identifying models for central banks' organisational structure. Those decentralisation aspects give all a degree of flexibility to the central banking structure, with a more or less integrated status for the central bank.

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<sup>113</sup> These definitions benefit from the research made in a Research program on fiscal federalism by the Agence française de développement. B. Dafflon and T. Madiès, 'Décentralisation : quelques principes issus de la théorie du fédéralisme financier' (2008) *Notes et documents N° : 42, Agence française de développement, Département de la Recherche*, octobre 2008, pp.15-6.

<sup>114</sup> In French public law, following a Charter for Déconcentration since 1992, the déconcentration process consists notably in attributing to local levels of State administrations the power, the means and capacity of initiative *in order to animate, coordinate, and implement public policies defined at the national and European level (...)*. (emphasis added, non-official translation) This definition is extracted from the Decree revising the Charter for Déconcentration in France, see its article 1, *Décret n° 2015-510 du 7 mai 2015 portant charte de la déconcentration*, available on [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr).

<sup>115</sup> In this degree of decentralisation, the transfer can be made to elected entity or at least accountable.

Different models of the organisational structure in central banking may be suggested in a simplified fashion.<sup>116</sup> One model (called '1' for referencing reasons) includes a central banking system with its own legal personality and decision-making bodies. The central bank and the national/regional central banks are two alternative, hierarchically equal, levels to achieve the objectives and tasks of the system. Such an organisational structure embodies a divide similar to a federal organisation. A second model (2) includes also a central banking system, but with a hierarchy between the decision-making bodies at the centre of the system, and a degree of decentralisation at a second subordinated level for some implementing tasks. This model corresponds to decisional centralism.<sup>117</sup> Another model (3) represents fully integrated central banking, without hierarchical elements. Indeed, the central bank is not within a system. This unitary integrated structure may nevertheless include lighter form of decentralisation features through a degree of local representation.

To start with the ESCB/Eurosystem, the central banking system could be identified under model 2, that is a hierarchical two-level organised structure, with decision-making bodies at the centre of the system, and some implementing tasks delegated to the NCBs. In the ESCB/EU jurisdictions, the constitutional organisation is deemed as a federation of States.<sup>118</sup> However, the evolution of the mandate seems more significant if the euro area is considered in the ECB/Banking Union jurisdiction (for now), in which the financial stability objective and macroprudential responsibilities are rather in expansion and expected to be reinforced.<sup>119</sup> Regarding the FED, the central banking system could also be analysed under model 2, with a two-level hierarchical organisation, and a high degree of centralisation of decision-making. However, depending on the function, the FED governing body (Board of Governors) and the Federal Reserve Banks are two alternative, hierarchically equal, levels, for instance to achieve banking supervision, which becomes closer to model 1.

The BoC is a stand-alone central bank, without a central banking *system*, which already gives it institutionally a more integrated nature. The existence of five regional offices for representation purposes embodies a thin degree of decentralisation, that is to say under a light form of *déconcentration*. This case is thereby close to model 3, within a federal State.

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<sup>116</sup> The organisational structure has notably been discussed before the ESCB establishment, with two main alternative models as examined by Zilioli and Selmayr, n.16, pp.64-5, which mainly correspond to Model 1 and 2 in this paper.

<sup>117</sup> *Ibid.*, p.67.

<sup>118</sup> Admittedly, this can be discussed further in other fora, but is here taken for granted. For a demonstration of this thesis, see Schütze, n.107, pp.47-77, and concluding, '*The European Union is indeed based on a conception of divided sovereignty and in strictness neither international nor national, 'but a composition of both'. It represents an (inter)national phenomenon that stands on – federal – middle ground. The best way to characterise the nature of the European Union is thus as a Federation of States.*'

<sup>119</sup> See the Review of the EU macro-prudential policy framework, and forthcoming legislative acts as a result of the Commission's November 2016 proposals. See also the SSM Review Report, Report from the Commission to the European Parliament and the Council on the Single Supervisory Mechanism established pursuant to Regulation (EU) No 1024/2013, COM(2017) 591 final, 11 October 2017, pp.15 and 19 on the relationships between Banking Supervision and macro-prudential functions.

Finally, the BoE is not integrated within a central banking *system* either, and has a Committees-silos approach. This division or specialisation among many Committees seems to function thanks to the integrated nature of the central bank organisation. The unitary structure is not contradicted by the existing regional representation with dedicated agencies, within a unitary state.

Consequently, the correlation would be a central banking *system* favours (unsurprisingly) two/multi-level organisation, in the case studies concerned – in a federation of States and a federal state (the ESCB/Eurosystem and the FED). Whereas a 'stand-alone' central bank is closer to an integrated model (not questioned by some specialised committees), without excluding decentralisation features for representation purposes (the BoC and the BoE). However, the link with the constitutional settings shape is broken as the latter organisational structure is observed both for a federal state and a unitary state. Admittedly, a more comprehensive study could design another model to represent a more complex situation, which acknowledges that central banking functions and tasks may be diversely organised. This model would have sub-elements to embody this reality. Notwithstanding integrated central banking functions, for each (or some) of them, the central bank may have equally important entities as counterparts. The latter would be conferred *de facto* (or *de jure*) part of the mandate.<sup>120</sup> Being (or not) hierarchically equal, this counterpart plays a significant role in the achievement of the objectives and exercise of tasks of the central bank. The institutional flexibility necessary during the crises created institutional complexity which could be better grasped under such a model.

Answering the question on a centralised organisation of central banking hermetic to the specific constitutional settings, this hypothesis can be confirmed to the extent that the decision-making is centralised either in a central banking system or with a stand-alone central bank, but the correlation with the constitutional settings needs a broader sample. Looking at the central banks' mandate and organisational models sketched, central banking in those cases can still embrace a degree of decentralised implementation and/or division of responsibilities with other counterparts. Nevertheless, the shape of the central banking organisational structure should not be associated *per se* with the characterisation of the objectives and tasks pursued. In other words, a unitary central banking structure with(out) decentralised features to achieve part of the mandate may not question the unity of the function or task decided at the central level.

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<sup>120</sup> Such a situation questions then the independence status of the central bank and its interactions with other independent bodies and/or the political (in the meaningful term '*le politique*').

## Conclusions

When examining central banks' mandate, the constitutional, statutory, or legal objectives cover explicitly price stability for all central banks studied, as well as, for some central banks, the objective of maximum employment or employment (i.e. the FED and the BoE), the objective of growth (i.e. the BoE), or the objective of economic and financial welfare (i.e. the BoC, and within the EU as part of the secondary contributory objectives). Those central banks are in charge of objectives *relating* to the stability of the financial system, admittedly with different wording to reflect various levels of responsibility (for instance financial stability), including shared responsibility with other agencies or bodies. In addition, some other legal acts and policy statements give prominence to more economic driven objectives for some of the central banks studied. Those objectives have different levels of priority: equal to the price stability objective, secondary, or considered as contributory objectives. Those objectives could also be implied within central banks' mandate if one adopts the broad meaning of the mandate shaped by the reunion of central banks' objectives, tasks, and measures.

In the second part of the paper, the central banks' organisational structures are observed to examine the features with which central banking would almost be *per se* associated with centralised decision-making, nevertheless with a different degree of decentralised implementation or decentralised representation. The existence of a *system* is one keystone of these differentiated structures. The correlation observed is that a central banking *system* favours two/multi-level organisation in two case studies (namely in a federation of States for the ESCB/Eurosystem and a federal state for the FED) whereas a 'stand-alone' central bank is closer to an integrated model and does not exclude decentralisation features for representation purposes (namely for the BoE and the BoC). However, the link with the constitutional settings' shape is distended insofar this second organisational structure is observed both for a unitary state and a federal state.

Identifying opportunities for further research, the correlation with the constitutional settings could benefit from a broader sample, analysing to what extent central banking still embraces a degree of decentralised implementation and/or division of responsibilities with other counterparts to achieve part of central banks' mandate. Nevertheless, a unitary central banking structure with(out) decentralised features to achieve part of the mandate may not question the unity of the function or task decided at the central level. Therefore, a unitary central banking structure and decentralisation (understood broadly as *déconcentration* and delegation) of certain tasks and functions are not antonymous. In addition, legal scholars could focus on the definition of modern central banking – starting from the extensive one provided by the Bank of International Settlements' report –<sup>121</sup> to ensure an accurate representation of the realities of the post-crisis' world, in central banking comparative law. Finally, legal and economic research could question whether and to what extent should one change the

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<sup>121</sup> See *supra*, n. 4.

perception of a restrictive and/or rigid central banks' mandate, whose result would contribute to the traditional literature on rules versus discretion, well-known for monetary policy. Legally, the spectrum from flexible to rigid central banks' mandate also hinges on the revision clause and the accountability and independence principles. The substance and scope of central banks' mandate in their original wording are actually a reflection of social preferences in a given society, with a political choice expressed *ex ante* submitted to diverse legal safeguards in a possible revision or influence *a posteriori*. Indeed, the ability to change central banks' legal framework is generally foreseen legally, with different intensity of flexibility, depending on the nature of their constitutive legal instrument (Constitutional, Statutory, Legal, extra-statutory including soft law instruments) and entrenched in legal traditions and cultures (Civil law, Common law, or even mixed). This has not been questioned in this paper but must be considered in a fully-fledged study of comparative central banking law in the book and in action.