

# THE LEGAL CONVERGENCE CRITERION AND THE CZECH REPUBLIC

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## **Key Words**

Legal convergence criterion, the independence of national central banks, legal integration of NCB's into the Eurosystem.

## **Resume**

The “Maastricht” criteria are to ensure the convergence of economic performance as a basis for the introduction of the single currency. There are five conditions, grouped in two classes: the economic convergence criteria and the “legal convergence” criterion. The last criterion is the one of the most forgotten in discussions of the “Maastricht criteria”. Article 122(2) of the EC Treaty requires the European Central Bank (ECB) and the Commission to report, at least once every two years or at the request of a Member State with a derogation, to EU Council in accordance with the procedure laid down in Article 121(1). Each such report must include an examination of the compatibility between, on the one hand, the national legislation of each Member State with a derogation, including the statutes of its national central bank (NCB), and, on the other hand, Articles 108 and 109 of the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. This Treaty obligation applying to Member States with a derogation is also referred to as “legal convergence”.

Article 109 of the Treaty requires that national legislation is “compatible” with the Treaty and the Statute; any incompatibility must therefore be removed. Neither the supremacy of the Treaty and the Statute over national legislation, nor the nature of the incompatibility, affects the need to comply with this obligation. The requirement for national legislation to be “compatible” does not mean that the Treaty requires “harmonization” of the NCB statutes, either with each other or with the Statute. National particularities may continue to exist to the extent that they do not infringe the Community’s exclusive competence in monetary matters. Rather, the term “compatible” indicates that national legislation and the NCB statutes need to

be adjusted to eliminate inconsistencies with the Treaty and the Statute and ensure the necessary degree of integration of the NCBs into the ESCB. According to the practice of the ECB the legal convergence means: the independence of national central banks; prohibition on monetary financing and privileged access; the single spelling of the euro; and legal integration of NCB's into the Eurosystem.

The areas of the independence of national central banks are the following:

- Functional independence
- Institutional independence: prohibition on giving instructions; prohibition on approving, suspending, annulling or deferring decisions; prohibition on censoring decisions on legal grounds; prohibition on participating in decision-making bodies of an NCB with a right to vote; prohibition on ex ante consultation relating to an NCB's decisions.
- Personal independence: minimum terms of office for Governors; grounds for dismissal of Governor; security of tenure and grounds for dismissal of members of NCBs' decision-making bodies, other than Governors, who are involved in the performance of ESCB-related tasks; right of judicial review; safeguards against conflict of interest.
- Financial independence: determination of budget and the accounting rules.

Legal integration of NCB's into the Eurosystem means that provisions in national legislation which would prevent the performance of Eurosystem-related tasks or compliance with ECB decisions are incompatible with the effective operation of the Eurosystem once the Member State concerned has adopted the euro. Statutory requirements relating to the full legal integration of an NCB into the Eurosystem need only enter into force at the moment that full integration becomes effective, i.e. the date on which the Member State with a derogation adopts the euro.

This paper takes a closer look at the areas of legal convergence criterion and the Czech Republic, especially the independence of national central banks and legal integration of NCB's into the Eurosystem. It can be ascertained that the Czech Republic meets the legal convergence criterion. The Act on the Czech National Bank is essentially harmonised with community law. Therefore gaps occur on the one hand with regard to the accession to the third phase of the EMU and on the other hand in connection with the personal independence, especially the grounds for dismissal of Governor.