

# THE MANIFESTATION OF THE EUROPEAN CENTRAL BANK'S LEGAL PERSONALITY AT NATIONAL, EUROPEAN AND INTERNATIONAL LEVEL

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## Abstract

*The European Central Bank is one of the world's most important central banks, responsible for the monetary policy covering the 17 member States of the Eurozone. Established by the European Union in 1998, it was given the exclusive right to authorize the issue of banknotes within the European Union. The European Central Bank has legal personality under public international law. As article 282, paragraph 3 of the Treaty on functioning of the European Union and article 9, paragraph 1 of the Statute of the European System of Central Banks and of the European Central Bank states, the European Central Bank and the National Central Banks enjoy their own legal personality. The European Central Bank, given its important role in the economic integration, is the single institution of the European Union which has legal personality. This is a premise for it to fulfill its objectives. In this framework, the purpose of my paper is to analyze the effects of the European Central Bank's legal personality from a complete perspective: at national, European and international level. Therefore the objectives of my study are: an introspection in the concept of legal personality, the identification of the reason why it was entrusted to a single institution of the European Union and a detailed analyze of the effects of the European Central Bank's legal personality.*

**Keywords:** legal personality, effects, national level, european level, international level.

## 1. Introduction

My paper covers the concept of legal personality in relation with one of the most important institutions of the European Union, the European Central Bank. The concept will be analyzed from a complete point of view: at national, European and international level.

The importance of the study lays in the fact that The European Union is certainly the most prominent scheme of international economic integration and the European Central Bank was created as one of its essential institutions and, more than that, it is the single institution of the European Union which was entrusted with legal personality.

On January 1, 1999, the European Central Bank became one of the most powerful European Union Institutions, affecting the lives of all people living in the member states of the Euro-Zone, as the monetary policy in the euro area has been delegated to it.

Therefore, the reason for what it was entrusted with legal personality should be in close relation with its important functions, aspect which will be clarified among the pages of the study and appears as the main objective of my study. The other two objectives are: to fully understand the concept of legal personality and to analyze its manifestation at national, European and international level.

In order to answer at these objectives I will start by understanding what legal personality means at national and international level, having this understood I will try to reveal why it was entrusted to a single institution of the European Union – the European Central Bank, and afterwards, approaching step by step to the final objective, how it is manifested in practice.

Therefore, in order to answer to these objectives, I will divide my paper in four sections:

- The legal personality at national level;
- The legal personality at international level;

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- The European Central Bank as a European institution with legal personality;
- The manifestation of the European Central Bank's legal personality

The existent specialized literature has debated this subject, but this paper will present the concept of central bank legal personality from a complete point of view, starting from the concept, revealing why the European Central Bank was designed in this way and including the practical aspects, meaning the way central banking legal personality is manifested.

## 2. Paper content

### The legal personality at national level

In 1928, about 80 years ago, Bryant Smith judged that “to be a legal person is to be the subject of rights and duties”. A very short definition but concise and still available nowadays, if we consider the different legislations of the members of the European Union or even of the world's. To confer legal rights or to impose legal duties, therefore, is to confer legal personality.<sup>1</sup>

Whatever the controversies about the “essential nature” of legal personality, there seems to be a uniform concurrence in these as respectively the test of its existence in a given subject, and the manner in which is conferred, whether upon a natural person or upon an intimate thing.

Among definitions to be found in discussion of the subject, perhaps the most relevant and common is the capacity for legal relations.

The **legal personality** (also known as **artificial personality**, **juridical personality** and **juristic personality**) is the characteristic of a non-living entity regarded by law to have the status of personhood.

A **legal person** (Latin: *persona ficta*) (also **artificial person**, **juridical person**, **juristic person**, and **body corporate**, also commonly called a **vehicle**) has a legal name and has rights, protections, privileges, responsibilities, and liabilities under law, just as natural persons (living beings) do. Natural persons are distinct from juridical persons. The concept of a legal person is a fundamental legal fiction. It is pertinent to the philosophy of law, as is essential to laws affecting a corporation (corporations law) (the law of business associations).

Legal personality allows one or more natural persons to act as a single entity (a composite person) for legal purposes. In many jurisdictions, legal personality allows such composite to be considered under law separately from its individual members or shareholders. They may sue and be sued, enter contracts, incur debt, and own property. Entities with legal personality may also be subjected to certain legal obligations, such as the payment of taxes. An entity with legal personality may shield its shareholders from personal liability<sup>2</sup>.

The European Convention on Human Rights extends fundamental human rights also to legal persons, which can file applications with the European Court of Human Rights in Strasbourg in case of a violation by one of the 47 signatory states.

### The legal personality at international level

From the international point of view, **International legal personality** refers to entities endowed with rights and obligations under public international law. The term includes both human and non-human entities. Generally, international legal entities are states, international organizations, nongovernmental organizations, and to a limited extent private individuals and corporations within a state.

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<sup>1</sup> Bryant Smith, Yale Law Journal, no. 3, January 1928

<sup>2</sup> The Juristic Person. I, George F. Deiser, University of Pennsylvania Law Review and American Law Register, Vol. 57, No. 3, Volume 48 New Series. (Dec., 1908), pp. 131-142.

According to the international laws, international legal personality is defined as “The capacity to bear legal rights and duties under international law”<sup>3</sup>

Therefore an “international legal person” can be said to an entity that is having powers to act independent on the international plane.

In right to this we can therefore see that international personality is therefore bench marked on the power that is given to the entity. If the entity does not have the power to force the power that has been granted under the international laws, therefore it cannot be said to be an international person.

This is the reason why the definition of an internal individual may not be the same as the normal definition since it will be referring to a specific entity rather those specific human beings.

This means that the international community is taken as a being made up of “persons” who posses powers to act on behalf of the international community.

This definition hence takes in the factors of power that is granted to the specific individual to implement the powers for the international community. While in our normal definition we may be referring to specific humans, the international community recognizes the states alone.

But the non-governmental organization has also been given the same power of recognition in the international community as states. While the international law clearly defines an international person as “an entity that has the capacity to bear legal rights and duties under the international law” non-governmental organizations have been able to bear the foresaid legal right and duties<sup>4</sup>.

International organizations are also given legal entity in the internal community. While the aim of the international law is to bring together the world, it has been changing from time to time in order to accommodate other emerging influential entities like the sates. Originally the states which are political arrangement in a country have been given the sole membership to the body. However there has been other emerging center of power that also need to be recognized by the international law. There has been development of other organization like the non-governmental organization that needs to be recognized by the body.

With an aim of consolidating or bringing the world together, the international law must therefore seek to address the needs of various segments in the world. It must recognize that changing arrangement in the world. The emergence of trade blocs and non-governmental organization that need to be given the same legal entity to the international community has been well defined in the laws.

There is a further elaboration of the international legal personality in light of this. While the state has the totality of all the right that are granted under the international law or it has totally of international right duet as recognized by the international laws, the right and the duties of other entity like an international organization has to be defined in another way. There is a regulation that the entity of such an organization

“Must depend on its purposes and function as specified or implied in its constituent document and developed in practice”

Therefore we see that there is clear distinction between the personality of belonging to a nation and personality of belonging to the international community. Personality of individual to a nation is based on the rights of being born or staying for some time in a nation and therefore it does not depend on the capacity of the individual person.

However in the international arena, legal personality is based on the capacity of the individual personality as defined to have the legal right and capacity to carry out duties as per the international laws. Therefore there is a factor of capacity that brings the difference between the two entities.

Under the doctrine of the international law, therefore the capacity of the entity is more exemplified by the way in which the given entity is recognized. This means that the legal personality

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<sup>3</sup> Ian Brownlie, *Public International Law*; (Oxford University Press, 6th Edition, 1990), p. 680-683

<sup>4</sup> DW Greig, *International Law*, (1996, Macmillan, London), p. 32

as defined must therefore have laws in itself that are in line with the provision of the international law. It must have domestic laws that are in line with the requirements of the international laws.<sup>5</sup>

There are usually incidence when the domestic law comes to conflict with the international law. In this regard there is usual a question of superiority of the laws. But as defined by the capacity description in the internal law, any entity that has ratified the internal law is also obliged to live to its ratification. Therefore in most instances when the domestic law conflict the international law, the personality will have to bear the capacity to implement the international laws and therefore it is the international law that will carry the day. The legal entity will have to live to its ratification and therefore carry out the internal laws as agreed.<sup>6</sup>

**As a conclusion**, it is evident here that the legal personality in the face of international law is quite different from the legal entity of the domestic law. While in the domestic law it may be based on some factors of residence, it is contrary to the international law. The legal personality in the international laws is based on the legal capacity of the entity to carry out duties as depicted in the internal laws. This means that legal personality here is defined by the capacity of in the “individual person” to carry out duties as required by the internal law.

### **The European Central Bank as a European institution with legal personality**

The European Central Bank is the core of the European Union monetary policy.

The European Central Bank has legal personality under article 282 of the Treaty on functioning of the European Union and enjoys the most extensive legal capacity accorded to the legal persons under the respective national law of each member state under article 9.1. of the Statute of the European Central Banks and of the European System of Central Banks.

The strong point of the European Central Bank’s meaningful position is its exclusive right to issue money and the responsibility over its value. According to article 106 from the Treaty on the functioning of the European Union, the European Central Bank shall have the exclusive right to authorize the issue of banknotes within the European Union.

The primary objective of the European Central Bank is to maintain price stability in the Euro area. The Treaty on the functioning of the European Union does not define the idea of „price stability”, which gives the European Central Bank relatively free hands to both define and implement its objective. Not disregarding this objective, it shall also support the general economic policies and objectives of the European Union as laid down in Article 2 of the Statute of the European System of Central Banks and of the European Central Bank. On this line, article 2 above mentioned, establishes a clear hierarchy of objectives.

After the Lisbon Treaty, the European Central Bank was officially mentioned among the institutions of the European Union, as article 13 of the Treaty on the European Union states.

According to the mentioned article, each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedure, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation. The provisions relating to the European Central Bank were detailed and set in the Treaty on the functioning of the European Union.

We notice that legal personality is accorded to the European Central Bank, not to the European System of Central Banks. Under the Treaty on European Union, the European System of Central Banks is entrusted with carrying out central banking functions for the euro. However, as the European System of Central Banks has no legal personality of its own and because of differentiated levels of integrations in the European Monetary Union, the real actors are the European Central Bank

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<sup>5</sup> G. Verdirame, *Personality, Statehood and Government*, (2004, Cambridge University).

<sup>6</sup> J. Klabber, *Presumptive Personality, International Law Aspects of the Europe Union*, (Kluwer, 1998).

and the national central banks of the euro area countries. They exercise the core functions of the European System of Central Banks under the name of "Eurosistem".

So, unlike the European Central Bank and the national central banks, the European System of Central Banks has no legal personality, no capacity to act and no decision-making bodies of its own. Instead, the components of the European System of Central Banks – the European Central Bank and the national central banks – are legal persons and actors. They to have the capacity to act, but when they perform tasks assigned to the European System of Central Banks, they act in line with its objectives, the rules of the Treaty and the Statute and the decisions taken by the decision-making bodies of the European Central Bank.

As an organisation created by the Treaty on the European Union, the European Central Bank enjoys genuine powers. These powers have not been delegated by the European Union institutions; they are genuine powers given to the European Central Bank by the Treaty on the European Union and in order for the European Central Bank to exercise them, it must have legal personality.

The legal personality is also a condition for the European Central Bank and of the national central banks to issue banknotes. Since 1 January 2002, the national central banks and the European Central Bank have issued euro banknotes. However, although the competence on issuing euro banknotes may be considered to represent an obligation of the Eurosistem as a whole, it is necessary for the central banks to act as legal issuers because the Eurosistem has no legal personality.

Also, the European Central Bank, which functions under the principle of independence and is known as the most independent central bank in the world, enjoys legal personality as a prerequisite for the independence of the members of the Eurosistem. For the European Central Bank, the legal independence includes the right to bring actions before the European Court of Justice in order to uphold its prerogatives if they are impaired by the European Union's institutions or by the member states.

As a conclusion, the legal personality is one crucial aspect of European Central Bank powers and a prerequisite in order for it to exercise its powers.

### **The manifestation of The European Central Bank's legal personality**

The European Central Bank has legal personality under article 282 of the Treaty on the functioning of the European Union and enjoys the most extensive legal capacity accorded to the legal persons under the respective national law of each member state, under article 9.1. of the Statute of the European Central Banks and of the European System of Central Banks. In other words, the exact scope is determined by and it varies according to the law of the member state.

The Statute mentions two examples, which means that the powers of the European Central Bank to act are not necessarily restricted to them. Internally, the European Central Bank's legal capacity (to act) includes the following in every member state:

- the European Central Bank has the right to acquire and to dispose of property, both movable and immovable;
- the other important example is that the European Central Bank may be a party to legal proceedings.

So, as a consequence to its legal personality, the European Central Bank may, in particular acquire or dispose of movable and immovable property and may be a party to legal proceedings.

The European Central Bank shall ensure that the tasks conferred upon the European System of Central Banks under article 127 paragraph 2, 3 and 5 of the Treaty on functioning of the European Union are implemented either by its own activities pursuant to its Statute or through the national central banks pursuant to article 12.1 and 14 of the Treaty.

In addition to the possibility to acquire or dispose of movable and immovable property and to be a party to legal proceedings, other effect of the European Central Bank's legal personality it is that the European Central Bank enjoys those privileges and immunities that are necessary to the

performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Communities of 8 April 1965.

The Protocol also applies to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

According to the Protocol, the European Central Bank is, in addition, exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat.

The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank are not subject to any turnover tax.

The privileges and immunities granted to the European Communities and the European Central Bank are largely comparable with privileges and immunities customary in diplomatic relations, as codified under the aegis of the United Nations in the Vienna Convention on Diplomatic Relations (1961; in force since 1964).

Other manifestation of the European Central Bank's legal personality is that, as a legal person, under public international law, the European Central Bank is in a position to, among other things, conclude international agreements in matters relating to its field of competence and participate in the work of international organizations such as the International Monetary Fund, the Bank for International Settlements and the Organisation for Economic Co-operation and Development.

Article 23 of the European Central Banks' Statute authorises the European Central Bank to establish relations with central banks and international (monetary) organisations (first indent) and conduct all types of banking transactions with third countries and international organisations (fourth indent).

The International Court of Justice has given the following definition of the legal personality of an international organisation "That it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims"<sup>7</sup>

Undoubtedly, the European Central Bank has capacity to act internationally, but subject to limitations. Naturally, the scope of the European Central Bank's activities is defined by its tasks (functionally). In addition, the European Central Bank's powers are limited by the competences accorded to the European Union, and in particular the Council of the European Union.

In practice, in matters directly pertaining to its powers, the European Central Bank has concluded agreements with international organisations. The anti-counterfeiting agreements with Europol and Interpol can be mentioned as examples.

Another example is the Headquarters Agreement between the Government of the Federal Republic of Germany and the European Central Bank concerning the seat of the European Central Bank (29.12.1998).

As it concerns the liability, the principles regarding the European Union's non-contractual liability apply to damage caused by the European Central Bank or its servants in the performance of their duties as stated in article 240 Treaty on functioning of the European Union. Pursuant to Article 268 from the Treaty on the functioning of the European Union, the Court of Justice of the European Union has jurisdiction.

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<sup>7</sup> Ian Brownlie, *Public International Law*, Oxford University Press, 6th Edition, 2003; p. 649

### Conclusions

As a conclusion, by analyzing the concept of legal personality at national and international level, we understood how it is manifested in our studied case: the legal personality of the European Central Bank, a core institution of the European Union and the only institution of the European Union which has legal personality.

Also, from the paper resulted that the legal personality of the European Central Bank is a prerequisite for it to fulfil the task conferred by the European treaties and to manifest its independence.

The paper analyzed the European Central Bank's legal personality from a complete point of view, starting from the concept, revealing why the European Central Bank was designed in this way and including the practical aspects, meaning the way central banking legal personality is manifested.

As a suggestion for future researches, I believe that an interesting paper would consist into analyzing the acts issued by the European Central Bank and the control exercised by the European Court of Justice under article 265 of the Treaty on functioning of the European Union.

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