

# **Governance and accountability of the Eurosystem and the SSM**

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**6th International Seminar on Central Banking  
Challenges, Trends and Best Practices**

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## A. Reasons for accountability and transparency

### Principle of democracy:

#### European principle of democracy

Article 10 TEU: The functioning of the Union shall be founded on representative democracy.

#### German principle of democracy as part of the constitutional identity

(to be respected as competences were transferred to the ECB)

- ❖ Requires a feedback between the (state) bodies which have executive powers and the people concerning the exercise of (state) executive powers.
- ❖ Public institutions should be accountable to society or at least to society's elected representatives.

### Principles of good governance:

Any public institution which is given a certain degree of autonomy should operate in a clear legal and operational framework in a transparent manner.

# B. The Eurosystem

## I. Governance of the Eurosystem

### ECB: decision-making bodies

#### Governing Council



Comprises the members of the Executive Board and the Governors of the NCBs of the Member States whose currency is the euro.

#### Executive Board



Comprises the President, the Vice-President and four other members (all appointed by the European Council)

Preparation of meetings

#### NCBs

- Integral part of the ESCB.
- Shall act in accordance with the guidelines and instructions of the ECB.

- Adoption of guidelines and decisions
- Formulation of the monetary policy.

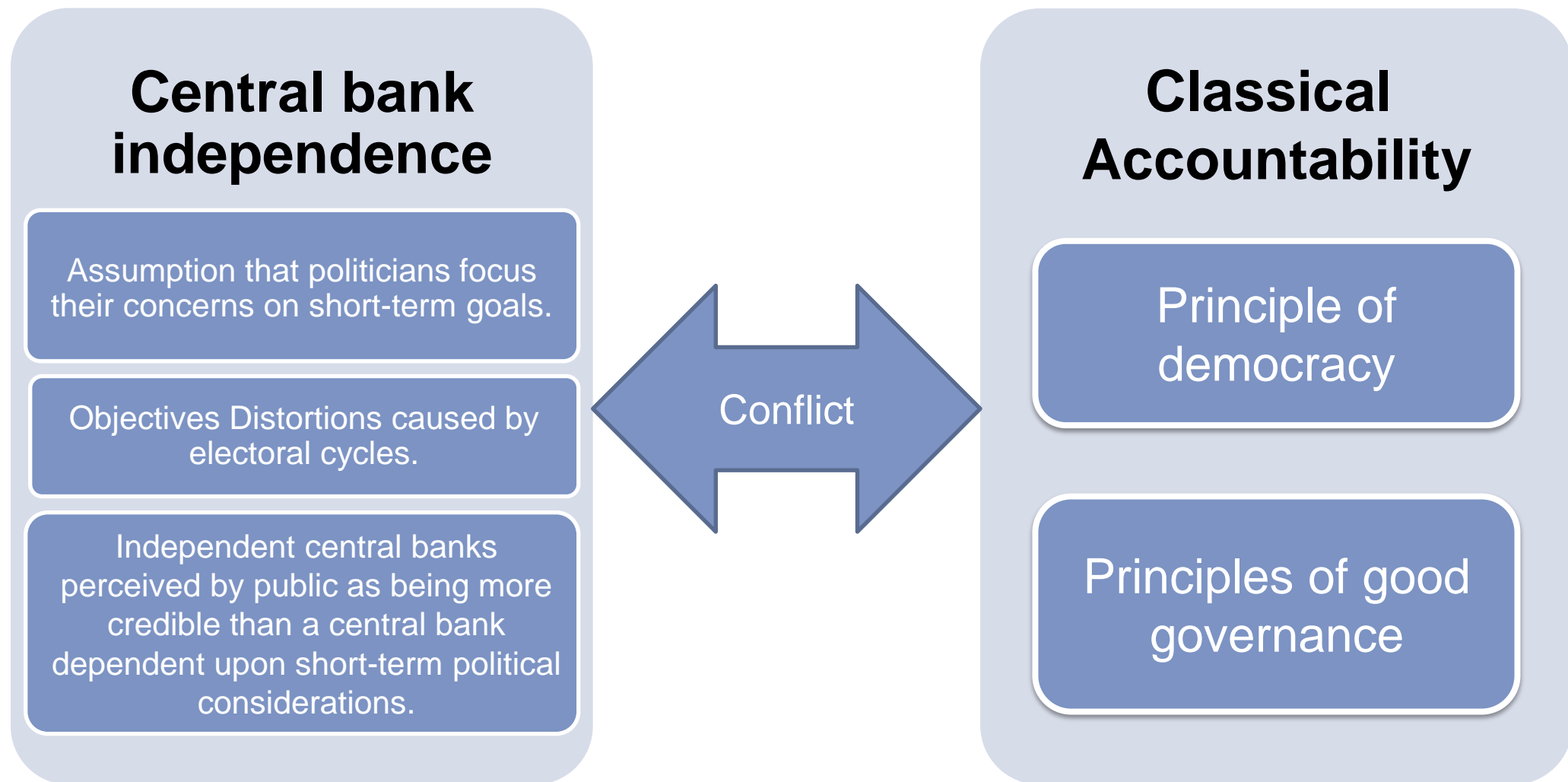
Day-to-day business

Implementing the monetary policy in accordance with the guidelines and decisions laid down by the Governing Council.

Source of the pictures: [www.ecb.europa.eu](http://www.ecb.europa.eu)

## B. The Eurosystem

### II. Accountability: Correlation with central bank independence



# B. The Eurosystem

## II. Accountability: Correlation with central bank independence

### Independence of the ECB and NCBs:

- ❖ Article 130 TFEU:
  - ❖ When exercising their powers and carrying out their tasks, neither the ECB, nor a NCB, nor any member of their decision-making bodies shall seek or take instructions from EU or Member States.
  - ❖ EU and Member States must not influence or instruct the ECB or an NCB in the performance of their tasks.
- ❖ Development of understanding of central bank independence in the EU mainly through:
  - ❖ Specifications in Convergence reports of ECB [EMI] and Commission
  - ❖ Opinions of the ECB on draft legislative provisions (Article 127(4) TFEU, Article 4 ESCB Statute, Council Decision 98/415/EC)
  - ❖ [Jurisprudence of ECJ]

## **B. The Eurosystem**

### **II. Accountability: Correlation with central bank independence**

#### **Independence of the ECB and NCBs:**

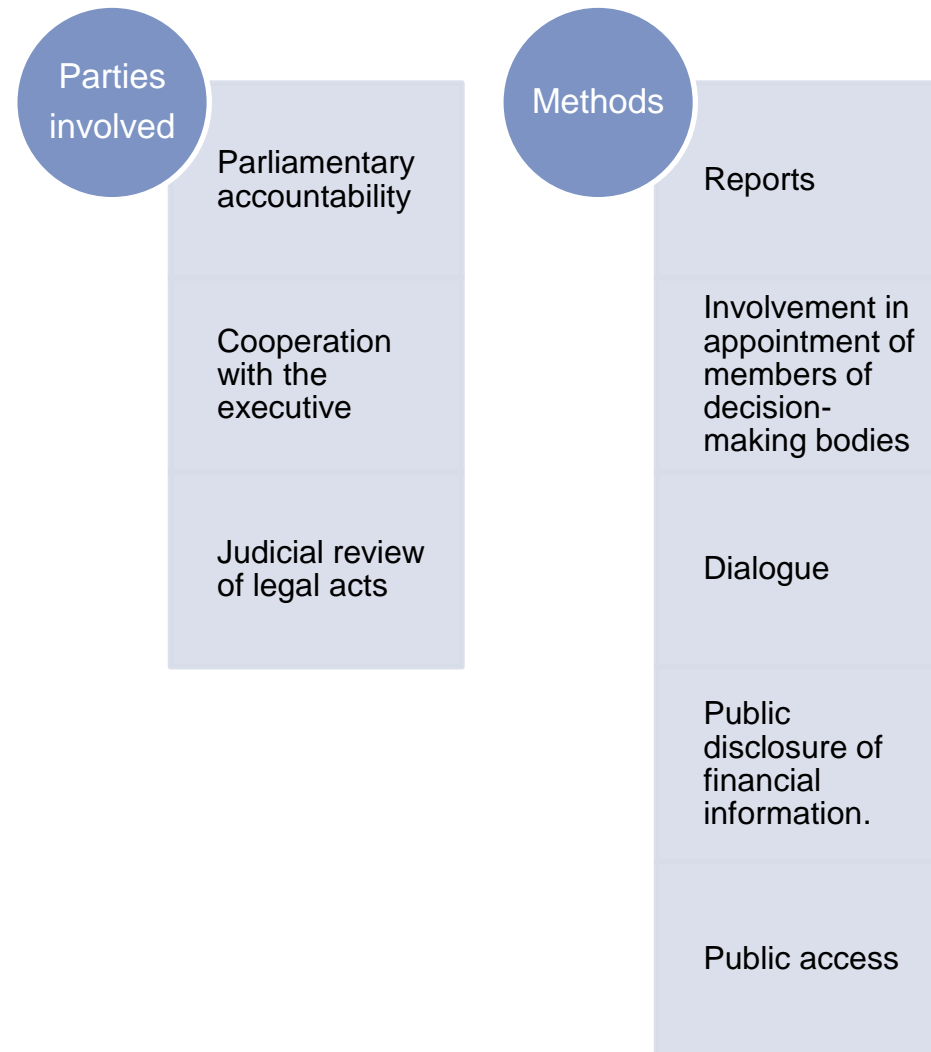
❖ Four aspects of central bank independence:

1. Functional (statutory objectives, tasks, instruments)
2. Institutional (influence of 3rd parties on central bank decisions)
3. Personal (concerns members of decision-making bodies involved in ESCB tasks)
4. Financial (sufficient means to avail itself of its tasks)

❖ Independence leads to limited accountability of the Eurosystem.

# A. The Eurosystem

## III. Accountability framework of the Eurosystem - basics





## B. The Eurosystem

### III. Accountability framework of the Eurosystem - details

#### Accountability

- **European Parliament and its Committees**
  - ECB annual report on the activities of the ESCB and on the monetary policy
- **Committees of the European Parliament**
  - Executive Board members may be heard by at request (Article 284(3) TFEU)
- **Council**
  - Possible participation of Council President in meetings of the Governing Council
  - Participation of ECB President in Council meetings concerning objectives and tasks of the ESCB (Article 284(1) and (2) TFEU)
- **Commission**
  - Participation of a Commission member in GC meetings
  - ECB annual report on the activities of the ESCB and on the monetary policy
- **European Court of Auditors**
  - Operational efficiency examined (Article 27.2 ESCB Statute)

## B. The Eurosystem

### III. Accountability framework of the Eurosystem - details

#### Accountability: Judicial control

- Review of the legality of acts of the ECB by the European Court of Justice
- Article 263 TFEU: The Court of Justice of the European Union shall review the legality of (...) acts of the (...) European Central Bank (...).
- European Court of Justice in OLAF ruling:
  - The independence of the ECB “does not have the consequence of separating it entirely from the European Community and exempting it from every rule of Community law. (...)
  - The ECB is (...) subject to various kinds of Community controls, notably review by the Court of Justice and control by the Court of Auditors.
- However, new discussions as regards the judicial control of unconventional measures (OMT-case).

## B. The Eurosystem

### III. Accountability framework of the Eurosystem - details

#### Transparency

- **Access to documents for the public**
- **Publications**
  - Press releases
  - Monthly bulletin
- **Press conferences**
- **Public speeches, interviews**
- **Accounts**
  - Press release of 3 June 2014: “ECB intends to publish accounts of its monetary policy discussions from January 2015.”

## B. The Eurosystem

### IV. Balance between Independence and Accountability



- ❖ **Problem with independence as regards democratic legitimacy:**
  - ❖ Only limited feedback between ECB and NCBs and the people concerning the exercise of executive powers in the field of monetary policy.
- ⇒ The independence of the ECB affects the principle of democracy as it limits democratic legitimation.

## B. The Eurosystem

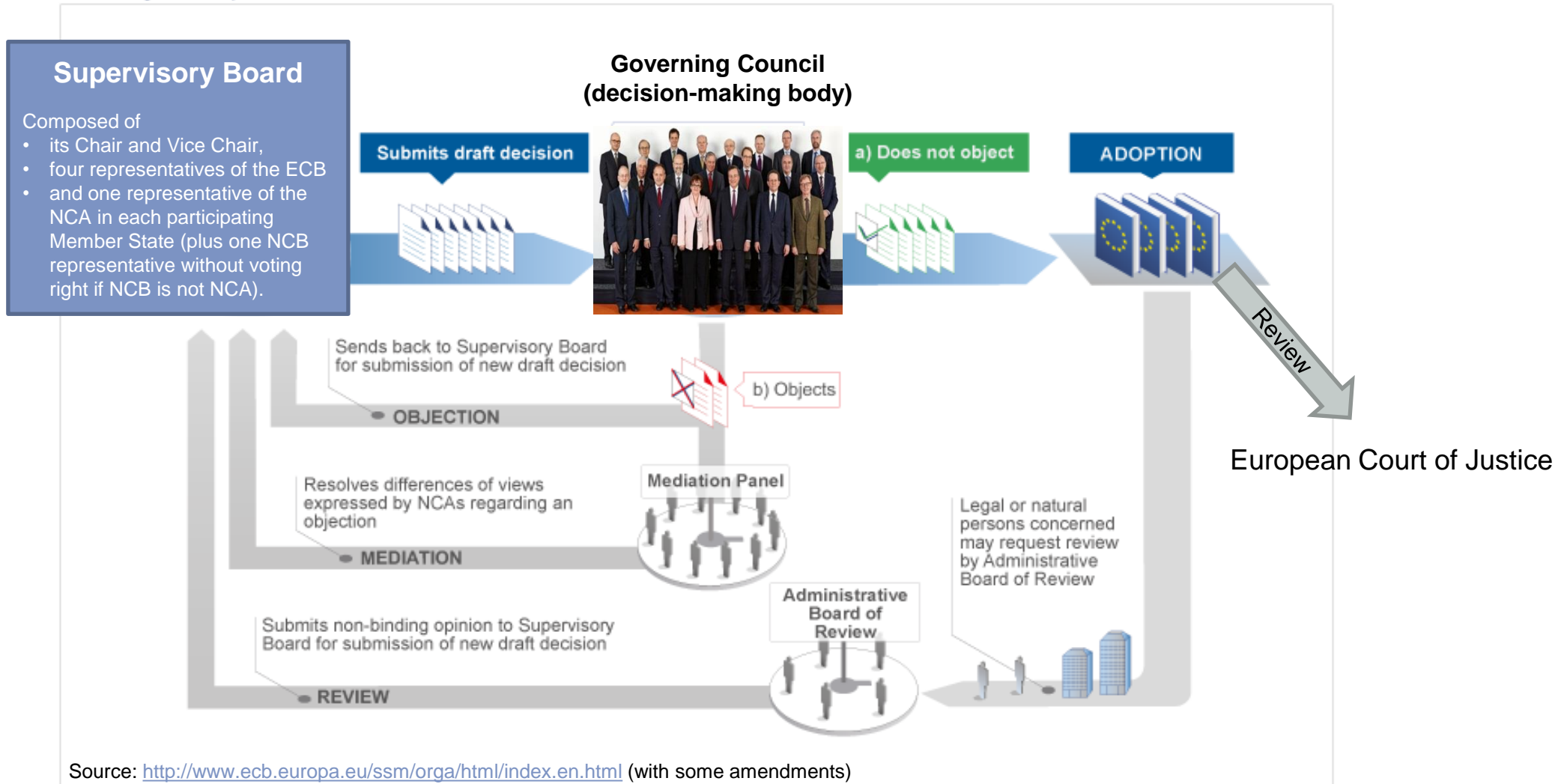
### IV. Balance between Independence and Accountability?

- ❖ Solution of the problem:
  - ❖ The independence of the Eurosystem is compatible with the principle of democracy because it takes account of the special feature of monetary policy
    - ❖ Independent central banks are more likely to safeguard the monetary value.
    - ❖ “Excellent experience with independence of Deutsche Bundesbank” (Kohl).
  - ❖ However, this justification requires a limited mandate of the Eurosystem.
    - ❖ German Constitutional Court: The German Constitution allows a transfer of powers from the Bundesbank to an ECB if it meets the “strict criteria of the Maastricht Treaty and the Statute of the European System of Central Banks and the priority of a stable currency”.
    - ❖ Historic experiences concerning inflation in Germany after the Government had twice instrumentalised the Central Bank to finance war.
  - ❖ This justification cannot be transferred to other political areas.

# C. New Developments: The SSM

## I. Governance of the SSM

Decision-making process of the Single Supervisory Mechanism:  
Non-objection procedure



Source: <http://www.ecb.europa.eu/ssm/orga/html/index.en.html> (with some amendments)

## C. New Developments: The SSM

### II. Independence of the SSM and accountability

Conferral of supervisory tasks according to Article 127.6 TFEU implies a new responsibility for the ECB.

ECB's independence also covers this new task.

In principle: Art. 130 TFEU

Art. 19 SSM-Regulation:  
When carrying out the tasks conferred on it by the SSM-Regulation, the ECB and the NCAs acting within the SSM shall act independently.

SSM-Regulation sets out a accountability framework (Articles 20, 21).

Practical aspects clarified in:

- an Interinstitutional Agreement between the EP and the ECB;
- a MoU between the EU Council and the ECB.

# C. New Developments: The SSM

## III. Accountability framework of the SSM

### Annual ECB-report on the execution of the supervisory task

- Submission to: European Parliament, Council, Commission, Euro Group and **national Parliaments**.
- Presentation by the Chair of the Supervisory Board in public to the European Parliament and the Euro Group.
- During the transition period: Submission of quarterly reports on the preparations for establishing the SSM.

### Hearings and exchanges of views

- With the Chair of the Supervisory Board in the European Parliament and its committees, in the Euro Group and in **national Parliaments**.

### Answers to questions

- Members of the European Parliament (MEPs), the Euro Group or national Parliaments can address questions to the Supervisory Board Chair.
- MEPs' written questions to, and answers from, the Supervisory Board Chair will be posted on the websites of both the European Parliament and ECB.



## C. New Developments: The SSM

### III. Accountability framework of the SSM

#### Judicial review

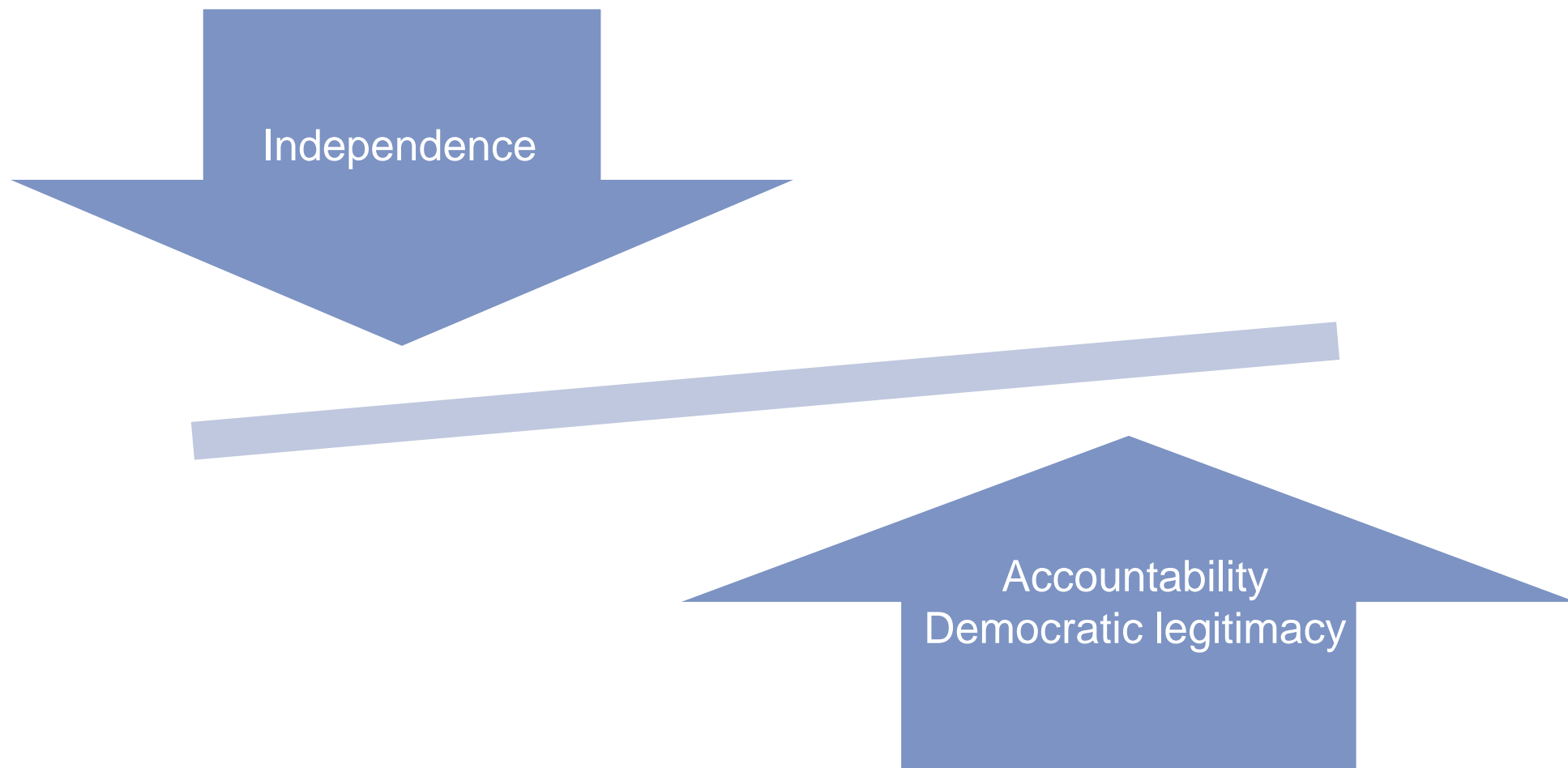
- Administrative Board of Review
- European Court of Justice

#### Financial review by the European Court of Auditors

- Also the supervisory tasks of the ECB are taken into account in examinations concerning the operational efficiency of the management of the ECB.

## C. New Developments: The SSM

### IV. Balance between Independence and Accountability



## C. New Developments: The SSM

### IV. Balance between Independence and Accountability

- ❖ On the one hand:
  - ❖ SSM-Regulation sets out a accountability framework which is more extensive than the accountability framework of the Eurosystem
    - ❖ E.g. participation of national Parliaments.
  - ❖ Legitimacy through:
    - ❖ Application of laws which were adopted by democratically legitimised institutions.
    - ❖ Judicial review.

## C. New Developments: The SSM

### IV. Balance between Independence and Accountability

- ❖ On the other hand:
  - ❖ Supervision of banks is “Eingriffsverwaltung” (“Special Police Law”) which can affect fundamental rights more directly than monetary policy.
  - ❖ No parliamentary supervision rights: Only limited feedback between the SSM and the people concerning the exercise of executive powers in the field of banking supervision.
  - ⇒ The independence of the SSM affects the principle of democracy as it limits democratic legitimation.
  - ⇒ It is questionable whether the framework of the SSM establishes a balance between accountability and independence of the SSM.
- ❖ Special German problem:
  - ❖ Due to historic experiences there has to be a strong democratic legitimation of Policy Law in Germany.
  - ❖ The modification of the principle of democracy cannot be transferred to other political areas: A modification is only justified in the field of monetary policy due to its special feature (German Constitutional Court).



**Thank you for your attention!**