

SPEECH

# The rule of law as a constitutional pillar of European central banking

**Keynote speech by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, at the Italian constitutional court**

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## Introduction

Thank you very much for inviting me.

The writings, judgments and speeches of many among this distinguished audience have shaped our understanding of the rule of law. I find it a privilege – and slightly daunting – to address you today on such a fundamental issue.

Today I am speaking to you as a central banker and banking supervisor. However, before I do so, allow me to take a moment to speak from a more personal perspective. Not as an official, but as the young law student I once was, reflecting on how I first came to understand and appreciate the rule of law.

As a law student at the University of Amsterdam in the early 1990s, I often cycled past a monument to Henk van Randwijk, a member of the anti-Nazi resistance during the Second World War. The monument is simple. A plain red brick wall, bearing the final lines of Van Randwijk's most famous poem in simple white lettering:

*“een volk dat voor tirannen zwicht  
zal meer dan lijf en goed verliezen  
dan dooft het licht ...”*

*“a people that bows to tyrants  
will lose more than body and belongings  
then, the light goes out ...”*

I would sometimes stop, park my bicycle against a tree, and contemplate these words, hearing the echo of the heinous crimes committed on the streets of Amsterdam, and far beyond, during those hellish years when the light had indeed gone out.

I would think of the US military cemetery in Margraten, in the South of the Netherlands, where my parents used to take me and my sisters as children to see the endless rows of meticulously kept graves, each

honouring one of the 10,000 US soldiers buried there, who had given their lives so that the light might shine once again in all its splendour.

I would continue my way to law school, thinking of one of the most fundamental lessons our professors had taught us: if the horrors of the past are to be avoided, if minorities are to be protected, if the individual is to be free, democracy needs to be accompanied by the rule of law. We studied the small, but fundamental, book, “Democracy and the Rule of Law”, which I keep on a shelf facing my desk to this day. Our professors never tired of explaining how vital the word “and” is in that title: the rule of law is both a precondition for democracy, and an essential limit to majority rule. For tyranny, which Van Randwijk’s poem so poignantly warns against, can be exercised not only by a single ruler, but also by half the population plus one. Put succinctly, democracy protects the majority against the minority, while the rule of law protects the minority, even a minority of one, against the majority. And this, so we were taught, is why we need both.

Although the importance of the rule of law has been impressed on me since my earliest days, I am not speaking to you today as a historian, a legal scholar, or a young law student. Today I speak to you as a central banker and banking supervisor. Today, I intend to show that the rule of law is of the highest relevance for us as a central bank and supervisor to deliver on our mandate. In addition, I will present the case that we have a specific role to play in upholding the rule of law.

The rule of law is not merely the bedrock upon which lawyers, judges and legal scholars build their work. In recent years, its pivotal role in fostering economic prosperity has come to the forefront of public debate, underscoring its profound relevance far beyond the boundaries of the legal profession.

The rule of law is not a binary concept – it is not simply present or absent. Instead, it exists on a continuum, shaped by various factors such as constraints on government powers, independent courts, the absence of corruption, and respect for human rights. Its strength is also wide-ranging, varying significantly across jurisdictions, and it evolves over time. For many decades, the global rule of law experienced a steady and encouraging ascent. However, some recent indicators suggest that this progress may have reached its peak, while others point to signs of retreat.<sup>[1]</sup>

Today I will discuss how the rule of law supports central banks in delivering on their price stability mandate, and banking supervisors in fostering financial stability.

It is worth emphasising that the connection between the rule of law and a thriving economy is well-established: a strong rule of law correlates consistently with robust and sustained economic growth.<sup>[2]</sup>

Last year, economists Daron Acemoglu, Simon Johnson and James Robinson were awarded the Nobel Prize in Economics for their groundbreaking research, which persuasively demonstrated not just such a correlation, but a causal relationship between weak institutions – closely linked with a poor rule of law – and lower economic growth.<sup>[3]</sup> Their findings highlight an important insight: economies thrive when institutions are strong, as institutional strength enables investors, entrepreneurs and consumers to make long-term decisions with confidence, knowing that contracts will be enforced, corruption fought and

property rights upheld. Institutional reliability thus forms the backbone of innovation, creativity and sustained growth.

However, this relationship is not one-directional. Strong economic growth, in turn, reinforces institutional resilience, creating a virtuous cycle in which institutional strength and economic prosperity feed into one another.<sup>[4]</sup>

Central banks are a crucial part of this mutual dependence. They are significantly more effective in delivering on their mandates when the rule of law is strong. At the same time, strong central banks and strong supervisors are essential institutions in supporting a strong economy. As such, within their mandates, central banks and prudential supervisors have a vital role to play in upholding, promoting and, when necessary, determinedly defending the rule of law.

## **Why does the rule of law matter for the European Central Bank?**

The Treaty on European Union proudly declares that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. The rule of law forms the backbone of some of the most tangible and far-reaching achievements of our European Union – ranging from the single market and the protection of human rights to the mutual recognition of judgments. Few aspects of European integration reflect its unity more clearly than the shared commitment to upholding the rule of law.

For the ECB, the rule of law is a critical foundation of its mandate in multiple important ways. Today, I will focus on three closely connected areas: first, the role of the rule of law in laying the very foundations for, and safeguarding trust in, money; second, the importance of the rule of law for delivering on our mandates; and third, the role of the rule of law supporting price and financial and price stability by ensuring the independence of the central bank.

## **Money**

Let me start with trust in money. Aristotle declared long ago that money was introduced by convention as a kind of substitute for a need or demand, and its value is derived not from nature but from law.<sup>[5]</sup> While money has classically been thought of as serving the functions of medium of exchange, store of value, unit of account and means of payment, it is the law which determines whether a thing is money and what nominal value is attributed to it. It is the law which determines which things are legal tender.<sup>[6]</sup>

Modern money is “fiat money” meaning that it has no intrinsic value. Following the end of the gold standard with the collapse of the Bretton Woods system in 1971, its value is also no longer tied to physical assets like gold. Instead, the value of our money rests entirely on trust – trust in public authorities, trust in the institutional frameworks that uphold it, and, fundamentally, trust in the central bank as the issuing authority.

Consider the euro banknotes in your pockets. The paper itself holds no intrinsic value. The worth we collectively assign to those €10, €20 or €50 banknotes is rooted in a strong legal foundation. Law gives

central bank money legal tender status, meaning that it must be accepted for settling a debt. Trust in all other forms of “money”, such as commercial bank deposits, ultimately rests on convertibility at par with central bank money. The law thus helps preserve the value of today’s banknotes as well as the savings in your bank account.<sup>[7]</sup>

We are currently taking a pivotal step in adapting central bank money to the digital age, by progressing towards the possible issuance of a digital equivalent: a digital euro. As cash today, which will remain available, a digital euro builds on the treaty-based competence to issue legal forms of public money, leveraging advanced technology within a robust legal framework to ensure people trust the numbers on their screens. The rule of law underpins these frameworks, transforming algorithms into a reliable and trustworthy form of public money.

## **Delivering on our mandates**

Let me now turn to the function of the rule of law in enabling central banks to effectively deliver on their mandates.

For central banks to effectively fulfil their mandate of price stability, they must carefully assess the economic outlook. This assessment requires leveraging models and historical patterns to forecast economic developments. However, for us to be able to predict and forecast economic developments, the economy must operate within a framework of consistent and transparent rules. The rule of law plays a vital role in this regard. By fostering predictability and stability, it provides the essential foundation for robust economic analysis and informed monetary policy decision-making.

The effectiveness of the ECB’s banking supervision mandate to promote the safety and soundness of banks also hinges on a strong legal system with enforceable supervisory decisions. The laws give the supervisor a broad toolkit to ensure that banks remain safe and sound. For instance, this toolkit includes the power to require banks to hold more capital as part of the bank-specific annual Supervisory Review and Evaluation Process, and the power to sanction banks if they do not adhere to prudential rules.

Beyond these broader principles, a sound legal system is indispensable for central banking operations in practical terms. For instance, the legal requirement for adequate collateral is a cornerstone of both monetary policy implementation and financial stability. Yet collateral can only be deemed adequate if the legal framework guarantees that central banks can enforce their rights over it when necessary.

Another example is the central bank’s reliance on accurate statistics to carry out its mandate effectively. To ensure that reporting agents fulfil their obligations, central banks require enforceable sanctioning powers.

All these examples show that the rule of law is a precondition of central banking and prudential supervision.

## **Central bank independence**

The effectiveness of a central bank in achieving its price stability mandate rests on its independence. Like the judiciary and other independent agencies, independent central banks are part of a constitutional model

that recognises the role of independent institutions as checks and balances on executive and legislative power. Most legal systems in advanced economies ensure that the power to create money should be entrusted to bodies operating outside the electoral cycle to mitigate a time-inconsistency problem: the tendency of policymakers to prioritise short-term gains over long-term stability.<sup>[8]</sup> Independence insulates the central bank from the short-term pressures of daily politics, enabling it to focus on its mandate.

Hence central bank independence, price stability and the rule of law are closely intertwined. Empirical evidence suggests that price stability depends on both the strength of the rule of law and the independence of the central bank. Social trust in the central bank depends on the overall level of trust in the legal system as a whole. If a perfectly independent central bank were to operate in a system with systematic deficiencies in the rule of law, it would not be able to deliver effectively on its mandate.<sup>[9]</sup> In short, an independent central bank can only function if its decisions are seen as credible, and, crucially, credibility depends on the overall system based on the rule of law functioning well.

Moreover, the distinct character of the European System of Central Banks (ESCB) also illustrates the crucial importance of the rule of law for the ECB. As the Court of Justice of the European Union (CJEU) has ruled, the ESCB is based on a highly integrated system that brings together national central banks and the ECB.<sup>[10]</sup> National central banks are not merely national institutions – they are also integral components of the ESCB. Importantly, the governors of the national central banks of the euro area are also members of the ECB's Governing Council, which is responsible for taking monetary policy decisions.

A similar principle applies to the Single Supervisory Mechanism (SSM). For instance, the Joint Supervisory Teams that inspect banks are composed of staff from both the ECB and national competent authorities (NCAs). Likewise, the ECB Supervisory Board includes representatives from both the ECB and NCAs.

Because of the integrated nature of both the ESCB and the SSM, which both bring together national authorities and the ECB, rule of law deficiencies at the national level can affect the functioning of the ESCB, the SSM and the ECB. Respect for the rules governing the organisation and safeguarding the independence of these national components of the ESCB and the SSM are thus essential to achieving their mandates of price and financial stability.

## **What central banks can do to support the rule of law**

Now that we have explored how the rule of law is a precondition for central banks and supervisors being able to deliver on their mandates, let us turn to the other side of the coin: the role of the European Central Bank in upholding and protecting the rule of law.

Clearly, central banks cannot oversee the general conditions of the rule of law – that is not their mandate. But central banks do have specific responsibilities in this context.

First, central banks must themselves adhere to rule of law principles under the scrutiny of courts. And second, central banks have instruments at their disposal that can be used to reinforce the legal fabric that supports the rule of law.

Let me start with the former: central banks are fully embedded in the rule of law architecture. For instance, the Treaties explicitly place the ECB under the jurisdiction of the CJEU, and the ECB's actions – in all areas, including monetary policy, banking supervision and transparency – have been subject to judicial scrutiny.<sup>[11]</sup> Compared with other major central banks, the ECB is among those most frequently brought before court.<sup>[12]</sup> By contrast, most other central banks are practically exempt from the jurisdiction of the courts when conducting monetary policy.<sup>[13]</sup> The preliminary reference procedure has also brought ECB monetary policy measures before the CJEU.<sup>[14]</sup> In essence, even when discretion is granted to the ECB by the courts or the legislature, it is discretion within the bounds of the law – not beyond it – and both its scope and conditions remain subject to judicial review.

This duty of the ECB has both a negative and a positive dimension. Not only is the ECB responsible for remaining within the confines of the law, it also has to react when other institutions with which it cooperates threaten to violate the law.<sup>[15]</sup>

Legal scrutiny by the courts is not the only form the legally required ECB's accountability takes, however. In fact, a key pillar of our transparency and accountability to citizens includes explaining our decisions to the public and reporting regularly to elected bodies. For example, the ECB publishes detailed accounts of the monetary policy meetings of the Governing Council, explains its policies in dedicated press conferences and answers questions from Members of the European Parliament. (MEPs). Moreover, the President of the ECB and the Chair of the Supervisory Board appear regularly in front of the European Parliament to exchange views with MEPs. This not only makes monetary policy and banking supervision more understandable, but also proactively submits our institution to public scrutiny. Public scrutiny is an indispensable element of the rule of law: the law must be seen to be upheld for its acceptance by the general public.

Let me now turn to the ECB's role in maintaining the rule of law. And I would like to be crystal clear again: in the EU, maintaining the rule of law is mainly a task for the courts and the political institutions. But the ECB also has responsibilities in this area, and I will outline five that I think are particularly important.

First, the Treaties give the ECB special powers to monitor respect for central bank independence, in particular personal independence. The Statute of the ESCB, which is a Protocol of the Treaty on the functioning of the EU (TFEU), exceptionally empowers the Governing Council of the ECB and national governors to bring to the European Court of Justice an action for annulment of a national measure that does not respect the independence of central bank governors.<sup>[16]</sup> This is the *only* case where the EU legal order provides for an annulment by the European Court of Justice of a national measure. I am sure that the jurists in today's audience will immediately recognize how exceptional this is. By allowing a direct change of the legal reality within the national legal order by means of an EU remedy, the Statute of the ESCB ensures, very effectively, that the rule of law is upheld.

Second, the ECB Governing Council has the role of acting as guardian of the Treaties vis-à-vis the national central banks in the same way as the Commission is guardian of the Treaties vis-à-vis the

Member States.<sup>[17]</sup> While the ECB has never instituted infringement proceedings against a national central bank before the CJEU, the very existence of this power enables the ECB to ensure compliance by national central banks with the requirements of central bank independence and the prohibition of monetary financing of the public sector. Another as yet unused power of the ECB under the Statute of the ESCB/ECB is the power of the ECB Governing Council, by a two thirds majority vote, to prohibit national central banks from performing functions other than those specified in the Statute where these interfere with the objectives and tasks of the ESCB.<sup>[18]</sup> The existence of this power enables the ECB to ensure that the functions of national central banks do not interfere with ESCB's primary objective of price stability or the monetary policy and other tasks of the ESCB.

Third, the Treaties require national and EU authorities to consult the ECB on any draft legislation that falls within its fields of competence.<sup>[19]</sup> The ECB enjoys a privileged position in directly influencing national legislation at the stage of its adoption and raising issues of legality. The ECB has issued numerous opinions on draft national legislation concerning the institutional structure and governance of national central banks. A recurring theme in many of these opinions has been the compatibility of amendments to the statutes of national central banks with the Statute of the ESCB, particularly regarding Member States' obligation to ensure the independence of their national central banks and the prohibition of monetary financing.

Fourth, the Treaties require the ECB to issue convergence reports.<sup>[20]</sup> At least once every two years, or at the request of a Member State with a derogation from adopting the euro, the ECB reports to the Council on the progress made by the Member States with a derogation on the fulfilment of their obligations regarding the achievement of Economic and monetary union. Last week, the ECB published its report on Bulgaria.<sup>[21]</sup> These convergence reports receive more attention with regard to their economic dimensions, but they also include an important examination of the compatibility between national and EU law.<sup>[22]</sup> Whilst this ECB instrument only addresses the legislation of Member States that have not adopted the euro, it is a means of consolidating and developing EU standards, including where rule of law issues might be at stake.

And last but not least: the Statute of the ESCB provides the ECB with specific powers regarding international cooperation.<sup>[23]</sup> In practice this means that the ECB actively participates in international fora and institutions with a clear direction to uphold their role and the international rule of law. As you all know, public international law, from the World Trade Organization to the very fundamentals of international humanitarian law, is currently under a heavy strain, which makes our role regarding international cooperation all the more relevant.

## Conclusion

Let me conclude.

With these remarks, I hope to have shown that the rule of law is of the highest relevance for central banks and supervisors.

First, it is a necessary condition for us to adequately deliver on our price and financial stability mandates. Here we depend (and count!) on those institutions whose mandate is specifically focused on upholding the rule of law, among which the legislature and, especially, you, the judiciary.

Second, in specific areas the ECB itself has a role to play in safeguarding, nurturing and defending the rule of law. Within the limits of our competences, you can count on us to do so.

The European Union is both creature and guarantor of the rule of law. It is a beacon of legal certainty, strong institutions and the protection of fundamental rights. All of us continuing to play our role – and we will play ours as much as we know that the courts will play theirs – will lead not only to the protection but to the growth of the quality and the depth of the rule of law.

By thus further strengthening the rule of law, we will encourage investment, foster economic growth and enhance the international role of the euro.<sup>[24]</sup> And by doing so we will further solidify the foundations for freedom, peace and prosperity that will ensure that Van Randwijk's light will never fade but will shine more brightly than ever before.

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1.

See, for instance, World Justice Project, [WJP Rule of Law index](#); Our World in Data, [Rule of Law index](#); and Worldbank, [Worldwide Governance Indicators](#).

2.

History has shown that the application of the rule of law may be selective, excluding certain subjects while continuing to foster economic growth at large. However, ultimately the uncertainty of falling within its remit undermines the rule of law.

3.

Acemoglu, D., Johnson, S. and Robinson, J.A. (2001), "The colonial origins of comparative development: An empirical investigation", *American Economic Review*, Vol. 91, No 5, pp. 1369-1401; Acemoglu, D. and Robinson, J.A. (2012), *Why nations fail: The origins of power, prosperity and poverty*, Profile Books, London, pp. 45-47.

4.

International Monetary Fund, for instance, notes that stronger economic performance can lead to institutional changes, with countries potentially needing – and being able to afford – to strengthen legal and regulatory frameworks. IMF (2003), "Chapter 3: Growth and Institutions" *World Economic Outlook*, April, Washington, DC.

5.



Aristotle, *Nichomachean Ethics*, Book 5, Chapter 5 (F.H. Peters trans., 156, 15th edition 1893).

6.

Mann, F.A., *The Legal Aspect of Money* 272 (5th edition, 1992).

7.

Besides the law, the intrinsic value of money also derives from its acceptance as currency, which depends on the central bank's credibility in maintaining its value. Modern central banks operate within frameworks that prioritise transparency, independence, and accountability. These structures, guided by statutory mandates and clear objectives, foster public trust in the stability of the currency. See, Lane, P.R. (2025), "[The digital euro: maintaining the autonomy of the monetary system](#)", speech at the University College Cork Economics Society Conference 2025, 20 March.

8.

The classic time-inconsistency problem arises if monetary policy conducted on a discretionary, day-by-day basis leads to worse long-run outcomes than could be achieved by committing to a policy rule. See, for instance, Kydland, F.E. and Prescott, E.C. (1977), "Rules rather than discretion: The inconsistency of optimal plans", *Journal of Political Economy*, Vol. 85, No 3, pp. 473-491.

9.

Empirical evidence highlights that both central bank independence and a strong rule of law are essential for achieving price stability. However, when the rule of law is weak, the effectiveness of even a formally independent central bank in maintaining price stability is significantly undermined (see Nurbayev, D. (2018), "The rule of law, central bank independence and price stability", *Journal of Institutional Economics*, Vol. 14, No 4, pp. 659-687).

10.

*Ilmārs Rimšēvičs and European Central Bank v Republic of Latvia*, Joined Cases C-202/18 and C-238/18, para. 69; *European Commission v Republic of Slovenia*, C-316/19, para. 83.

11.

In addition, national central banks are also subject to the jurisdiction of their respective national courts.

12.

For supervision, see Smits, R. and Braga de Arruda, T. (2025), *The Banking Union and Union Courts: overview of cases as of 30 April 2025*, available on the [European Banking Institute's website](#).

13.

For the Federal Reserve System, for example, see Ostrowski, S. (2021), "Judging the Fed", *The Yale Law Journal*, Vol. 131, No 2, pp. 726-781; and Egidy, S. (2019), "[Judicial review of central bank actions: can](#)

[Europe learn from the United States?](#)", *Building bridges: central banking law in an interconnected world – ECB Legal Conference 2019*, ECB, pp. 53-76).

14.

The preliminary reference procedure is a mechanism that allows national courts to seek guidance from the CJEU on the interpretation or validity of EU law, and has led to the review of ECB actions within the context of national proceedings, (see, for example, *Peter Gauweiler and Others v Deutscher Bundestag*, C-62/14; *Proceedings brought by Heinrich Weiss and Others*, C-493/17)..

15.

According to the CJEU, EU institutions may breach fundamental rights both by means of a positive act, and by passive behaviour, such as allowing a national authority to take a measure that violates fundamental rights in the context of financial assistance programmes. See *Ledra Advertising Ltd v European Commission and European Central Bank (ECB)*, T-289/13.

16.

*Ilmārs Rimšēvičs and European Central Bank v Republic of Latvia*, Joined Cases C-202/18 and C-238/18, paras. 64-77.

17.

Article 271(d) TFEU and Article 35.5 ESCB/ECB Statute.

18.

Article 14.4 ESCB/ECB Statute.

19.

Articles 127(4) and 282(5) TFEU.

20.

Convergence Reports are issued by the ECB and the European Commission on the basis of Article 140(1) TFEU.

21.

ECB (2025), [Convergence Report, June 2025](#).

22.

More specifically, they examine the legislation of each Member State with a derogation (including the statutes of their national central bank) and Articles 130 and 131 TFEU and the Statute of the ESCB.

23.

Article 6.1 of the Statute of the ESCB.

24.

Lagarde, C. (2025), "[Earning influence: lessons from the history of international currencies](#)", speech at an event on Europe's role in a fragmented world organised by Jacques Delors Centre at Hertie School in Berlin, Germany, 26 May.