

This book has been written by a group of friends of Paolo Zamboni Garavelli in memory of his human qualities and to honour his wide-ranging career as a central bank lawyer. I knew Paolo Zamboni Garavelli for many years, and witnessed his personal and professional excellence. Therefore I am pleased to be able to add my modest contribution to this book.

The authors are all, or have all been, central bank lawyers, engaged collectively in the preparation of the institutional and operational framework of the ESCB, as well as in the many supplementary and subsequent tasks entrusted to the Working Group of Legal Experts of the EMI (WGLE) and to the Legal Committee of the ESCB (LEGCO).

This book also commemorates 10 years of work of the WGLE and LEGCO and their contribution to the legal framework for the introduction of the euro, as well as to the general legal framework of the ESCB and the Eurosystem.

Central bank lawyers operate in an environment of economists. Their ‘client units’ and decision-making bodies are the policy makers, normally professional economists. Lawyers are therefore required to have a sound understanding of economic processes and paradigms, in order to take into account the economic effects of legal decisions.

The relationship and interaction between law and economics is as old as the study of economics as a distinct science. Adam Smith, Jeremy Bentham, Karl Marx, to name but a few, addressed this relationship. Also on the lawyers’ side there has been and still exists a systematic approach to the economic foundation or effects of legal institutions, such as in the theory of Rudolph von Ihering on the impact of private interests in the law, or the work of Max Weber on the effects of law on sociology and collective behaviour, or in contemporary works of legal philosophy by Professor Guido Calabresi of Yale University, or the US Supreme Court Judge Antonin Scalia, both of Italian origin. Since the sixties this relationship has been the subject of a whole area of academic research, with Nobel Prize recognition in the cases of Friedrich Hayek, James Buchanan, Ronald Coase, Gary Becker and Douglas North. It has many aspects. The school of ‘economic analysis of the law’ initiated at the University of Chicago by Professor Richard Posner, which, starting from the observation that the behaviour of persons is determined by the legal system, suggests that the common law approach reflects an ‘efficiency logic’ whilst civil law systems serve other objectives (such as fairness, reduction of uncertainties, etc.); the school of ‘public choice’, which analyses how private interests operate in the public law domain and have an impact on law-making, as well as the role of the public sector in correcting the effect of market forces; the ‘game theory’, studying the effect of rules on interaction between people, based on the fact that one person’s choices depend on what other persons choose and vice versa; the ‘institutionalist’

school, focusing on the impact of institutions in the economy; etc. These many facets of the relationship between law and economics show that ‘reductionism’ of the issue into a ‘form versus substance’ relationship, the former being the law and the latter the economy, is inaccurate. Both interact and are interdependent, and lawyers as well as economists, despite their different backgrounds, need to understand this interdependence.

The work of central bank lawyers is of enormous relevance in this context. Central banks are core institutions of the financial system and therefore of the economy. Satisfying the ‘institutionalist’ theory, the setting-up of the ESCB itself has had an important impact on the European economic scene and on the behaviour of economic operators. The rules governing its operational framework reflect ‘public choices’ that have an effect on markets. The advisory contribution of central banks to rule-making in the Community and in the Member States has indeed shaped future economic decisions. I encourage central bank lawyers to deepen their sensitivity towards the economics of legal acts and decisions, as befits the role and responsibilities of central banking in modern societies.

Paolo Zamboni Garavelli was for a period of his professional life the Head of a newly-created Office for the Law of the Economy in the Banca d’Italia. A department composed of lawyers and economists, mandated precisely to analyse the economics of draft national legislation in order to enhance the advisory contribution of the Banca d’Italia to the law-making processes affecting the Italian economy. Some important pieces of advice and proposals for legislation came out of this department. It is both his due, and also fitting, that a group of central bank lawyers, also immersed in this complex area of the relationship between law and economics, have decided to honour his memory in the manner that he would most appreciate: by a series of legal articles on the ESCB.