

Central Banks' expanding role and institutional independence

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Innhold

1. Central banks' core function & justification for independence
2. Expanding role of central banks
3. Independence & its limits
4. Control mechanisms & judicial review

1. Central banks & monetary policy

- The specific mandate of a central bank may vary across time and states
- Primary mandate: price stability over time (inflation target)
- Main tool: setting the interest rate

2. Central banks & independence

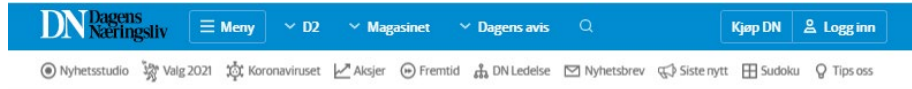
- Majority of western central banks are labeled as independent institutions
- **Independence from whom?** Independence aims to insulate the central bank from short-term political influences (government)
 - Risk that the government would use the central bank to improve its chances to get re-elected
- Theoretic basis: Rules > discretion in monetary policy (Kydland & Prescott, 1977)
 - A time-consistent policy framework likely to produce the best policy over time
 - Rules produce time-consistent outcomes
 - they make policy-makers' promises credible
 - public observes policy-makers and forms expectations of their likely actions
 - Rules are less problematic to delegate to independent institutions

3. Central banks' expanding role

- Financial Stability – after global financial crisis (2008)
 - Supervising/ regulating banks
- Price stability (monetary stability)
 - Quantitative easing - purchasing assets in the market with clearer distributional effects
- Climate
 - Climate risk as a part of monetary and financial stability
 - Climate as an additional responsibility?
- Government Pension Funds

4. Expansion & independence

4. Expansion & independence



1 min Publisert: 18.08.20 – 16.03 Oppdatert: ett år siden



Finansminister Jan Tore Sanner kan risikere å få ansettelsen av ny oljefondssjef på bordet fredag når finanskomiteen på Stortinget kommer med sin innstilling i saken. (Foto: Terje Bendiksby)



Leseliste



PDF



Del

Åshild Langved, Espen Linderud, Tore Gjerstad, Gard Oterholm og Birk Tjeldflaat Helle

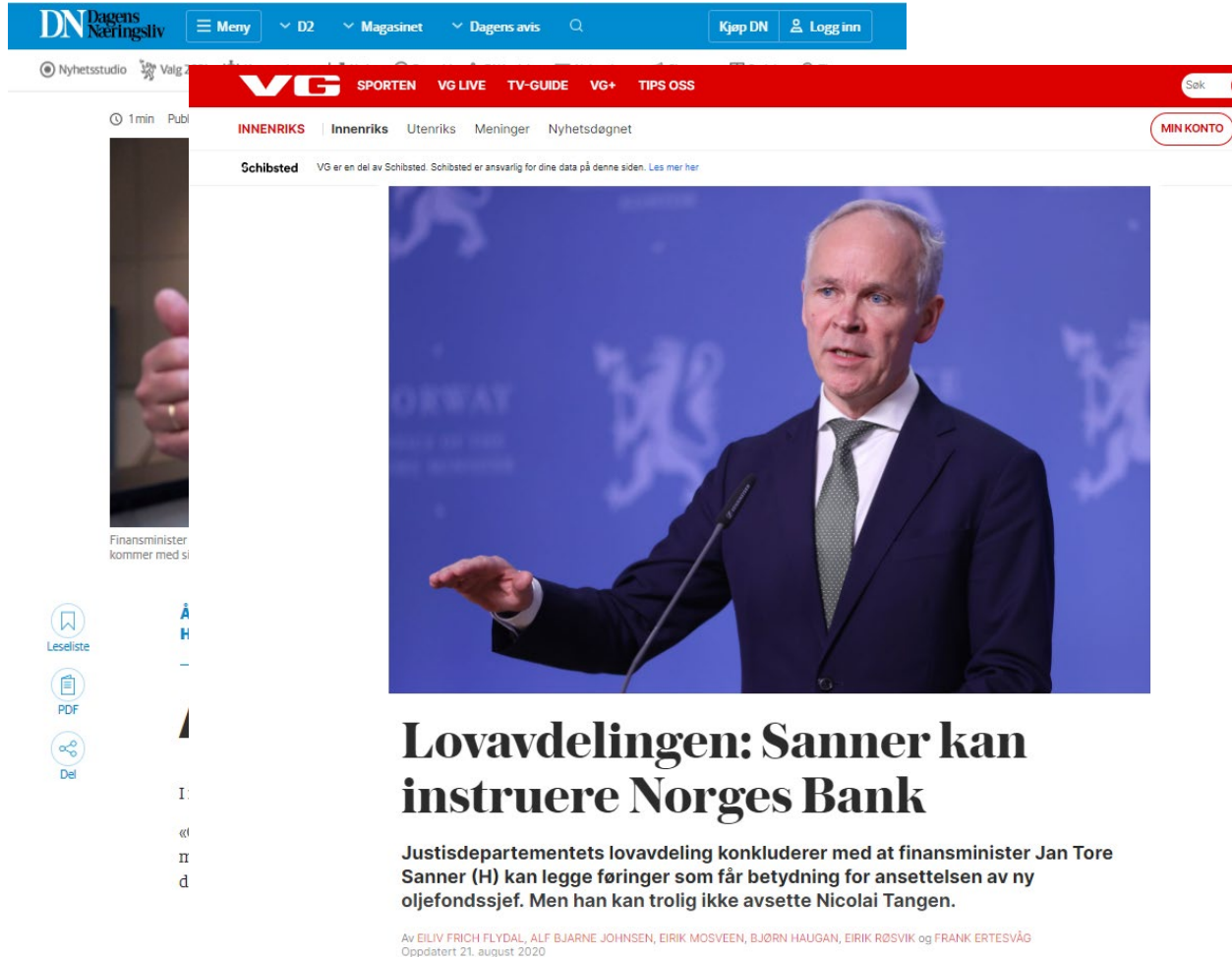
Advokatfirmaet Arntzen de Besche har på oppdrag fra finansdepartementet gitt en juridisk vurdering av om finansministeren kan gripe inn i ansettelsen av ny oljefondssjef.

I rapporten fra advokatfirmaet står det at:

«Overordnet statsorgan er derfor innenfor hovedstyrets eksklusive myndighet avskåret fra å gi åpen eller skjult instruks om ansettelsen av daglig leder i NBIM.»

- In 2020:
- Could the Minister of Finance instruct the Norwegian Central Bank in questions related to hiring a new CEO of NBIM?
- The law firm Artzen de Beche said no

4. Expansion & independence



The screenshot shows a news article from VG (Verdens Gang) with the following elements:

- Header:** VG logo and navigation links for SPORTEIN, VG LIVE, TV-GUIDE, VG+, and TIPS OSS.
- Sub-header:** INNENRIKS | Innenriks, Utenriks, Meninger, Nyhetsdegnat.
- Section:** Schibsted (VG er en del av Schibsted. Schibsted er ansvarlig for dine data på denne siden. Les mer her).
- Image:** A photograph of Jan Tore Sanner, the Minister of Justice, speaking at a podium.
- Headline:** Lovavdelingen: Sanner kan instruere Norges Bank
- Text:** Justisdepartementets lovavdeling konkluderer med at finansminister Jan Tore Sanner (H) kan legge føringer som får betydning for ansettelsen av ny oljefondssjef. Men han kan trolig ikke avsette Nicolai Tangen.
- Footer:** Av EILIV FRICH FLYDAL, ALF BJARNE JOHNSEN, EIRIK MOSVEEN, BJØRN HAUGAN, EIRIK RØSVIK og FRANK ERTESVÅG. Oppdatert 21. august 2020.

- The Ministry of Justice said yes

4. Expansion & independence

Norwegian Central Bank Act:

Section 1-4. Independence of the central bank

(1) The King in Council may adopt resolutions on the objectives of Norges Bank, cf. Section 1-2 and Section 1-3. The Bank shall be invited to offer its opinion prior to the adoption of any such resolution. The Storting shall be notified of such resolutions.

(2) Norges Bank shall not be instructed in the performance of its activities under the Act, cf. Section 1-3, except in extraordinary circumstances. Any resolution instructing the Bank shall be adopted by the King in Council. The Bank shall be given the opportunity to express its opinion prior to the adoption of any such resolution. The Storting shall be notified of such resolutions as soon as possible.

4. Expansion & independence

Norwegian Central Bank Act:

Section 1-3. The central banking activities

- (1) Norges Bank shall be the executive and advisory monetary policy authority.
- (2) Norges Bank shall be an executive and advisory financial stability authority.
- (3) Norges Bank shall issue banknotes and coins, facilitate the central settlement system and oversee the payment system.
- (4) Norges Bank may accept deposits from, and extend credit to, banks and other financial undertakings. The Bank may trade in financial markets and provide all forms of financial services.
- (5) Norges Bank owns the official foreign exchange reserves of Norway, and shall ensure the efficient and sound management of such reserves.
- (6) Norges Bank may also take such measures as are customary or appropriate for a central bank.

4. Expansion & independence

- For central bank operations: instructions allowed only
 - under extraordinary circumstances and
 - by the cabinet jointly (King in Council), cf. § 1-4 of the central bank act
- §1-4 only concerns the operations mentioned in §1-3, which concerns only central bank operations, not asset management
- The asset management is under the authority of the ministry of finance, cf. § 3 of the law governing the government pension fund
 - This gives the ministry a right to instruct

4. Expansion & independence – summary

- **Independence from whom?** - from short-term political influence (government)
- **Independence in what? :**
 - Monetary independence: price-stability is the core of the independence
 - The scope of independence can also be extended to other central bank functions,
 - ...functions closely linked to the conduct of a price-stability oriented monetary policy or
 - ...the law says so (each jurisdiction have their peculiarities)
- Expanded role: the justification for independence varies with tasks/ roles

5. Central banks & control mechanisms

- What if the central bank goes beyond its mandate?
 - Are independent institutions shielded from external control?
 - How is judicial review conducted?

5. Central banks & control mechanisms

Chapter 4 Supervision and control

Section 4-1. Supervision, etc.

(1) The Supervisory Council shall supervisee the operation of Norges Bank and monitor its compliance with the provisions governing its activities. The Supervisory Council shall ensure that the Executive Board's governance and control of the Bank's management and activities are adequate, and that appropriate procedures have been established to ensure that the Bank's activities are conducted in accordance with statutes, agreements, decisions and other regulatory provisions. Its supervision shall not extend to the exercise of discretionary powers by the Executive Board or the Monetary Policy and Financial Stability Committee.

5. Central banks & control mechanisms: judicial review

- ECB is reviewed in last instance reviewed by the Court of Justice of the European Union (CJEU)
- **Discretionary / technical assessments:** a “**manifest error**” test is applied by the CJEU when an institution is allowed broad discretion to make complex forecasts and assessments, notably in economic or technical matters. (**Weiss**, paragraphs 54-57.)
 - A deferential approach, but not without its limits
- **Review of procedural and substantive safeguards:** ...obligation “to examine carefully and impartially all the relevant elements of the situation in question and to give an adequate **statement of the reasons for its decisions**” is of fundamental importance (**Gauweiler**, paragraph 69; **Weiss**, paragraph 30)
 - The obligation to state reasons also arises under Article 296(2) TFEU

5. Central banks & control mechanisms: judicial review

- The expansion of central banks' policy tools to achieve price stability
- The legality of ECBs decisions to purchase financial assets (QE from 2012) → ultra vires?
 - Referral of questions
 - BVerfGE 124, 366 Judgment of 14 Jan 2013 (OMT) → Case C-62/14, **Gauweiler**, ECLI:EU:C:2015:400,
 - BVerfGE 146, 216 , 18 July 2017, (PSPP) → 11 Dec. 2018, **Weiss**, Case C-493/17
- The claim:
 - That the ECB's purchases of sovereign bonds were **economic (fiscal) policy** and therefore outside of ECB's mandate
 - Member States and EU institutions are prohibited by **article 123 and 125 TFEU** from granting financial assistance to other Member States
- The conclusion:
 - Purchasing sovereign bonds is monetary policy, regardless of the fact that it also impact economic policy
 - No manifest error in the assessment of the design/implementation of monetary policy tool

5. Central Bank Control Mechanisms: Sovereign immunity

- Sovereign immunity – protect states and their property
 - From jurisdiction and enforcement measures in foreign courts
- Legal sources: Domestic law and international customary law
- The protection level varies: close to absolute for central banks
 - Monetary policy or also other tasks/ property?