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MJ

Maastricht Journal of European and
Comparative Law
1–14

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maastrichtjournal.sagepub.com
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ECB independence and accountability today: towards a (necessary) redefinition?[1]

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Abstract

This introductory article sets the ground for the analysis performed in the articles included in this Special Issue. It shows why a new analysis of the European Central Bank (ECB)'s accountability is required by referring to recent developments, and by underlining how much the ECB's role and standing have changed since its creation 20 years ago. Indeed, its resorting to unconventional monetary policies in response to the recent economic and financial crisis, as well as the creation of the Banking Union, have significantly affected the ECB. This introduction also recalls the main elements of the debate on the balance between accountability and independence, and shows how this balance has evolved. On the basis of the findings of the articles included in this Special Issue, some conclusions and hypotheses as to the way forward are formulated.

Keywords

European Central Bank, accountability, independence, Banking Union, Unconventional Monetary policy

1. This Special Issue is the result of an initiative funded by the Law Faculty of Maastricht University, the *Universiteitsfonds Limburg* (SWOL) and the Centre for European Research in Maastricht (CERiM – a Jean Monnet Centre of Excellence funded by the Erasmus+ Programme of the European Union).

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1. The ECB's accountability: a topical and increasingly relevant issue

The Eurozone crisis pushed the European Central Bank (ECB) in another dimension. Its role in saving the single currency from total collapse,[2] its ambitious interpretation of its own mandate, and the new powers it has been endowed with, be it as a member of the Troika or as the financial supervisor of the Eurozone, profoundly altered the ECB's role, standing and function within the European Union (EU). It may have taken a while, but the political class, and the general public, have grown aware of the ECB's renewed status and the extensive powers it enjoys in the post-crisis era. As a consequence, attempts to place the Bank under tighter public scrutiny have intensified over the past few years. It is sufficient to look at the headlines of the past few months to be convinced of this change.[3] For instance, the appointment of the former Spanish Minister of Finance, Luis De Guindos, as Vice-President of the ECB in March 2018, was heatedly debated within the European Parliament (EP), and widely commented upon in the media.[4] In a similar fashion, Mario Draghi's membership of the G30, an opaque club of top figures in the world of banking and finance, was vehemently criticized by the European Ombudsman, and attracted substantial media attention.[5] The recent corruption scandal within the Latvian central bank, and the impact it had on the ECB itself, can also be mentioned.[6] Likewise, the resorting to quantitative easing by the ECB, and the case brought before the German Federal Constitutional Court, have received significant attention.[7] The ECB itself recently published an article on the evolution of its

2. A. Mody, *Euro Tragedy – A Drama in Nine Acts* (Oxford University Press, 2018), Ch. 6; M. Sandbu, *Europe's Orphan – The Future of the Euro and the Politics of Debt* (Princeton University Press, 2015), p. 157–161.
3. Media attention on the ECB has grown significantly since the outbreak of the financial crisis. N. Fraccaroli, A. Giovannini and J.-F. Jamet, 'The Evolution of the ECB's Accountability Practices during the Crisis', 5 *ECB Economic Bulletin* (2018), Chart 1, p. 55.
4. Inter alia: J. Valero, 'MEPs demand improving nomination process to support De Guindos', *Euractiv* (2018), https://www.euractiv.com/section/economic-governance/news/meps-demand-improving-nomination-process-to-support-de-guindos/; A. Robert, 'EU Parliament expects more cooperation from Council on future appointments', *Euractiv* (2018), https://www.euractiv.com/section/future-eu/news/eu-parliament-expects-more-cooperation-from-council-on-future-appointments/; J. Valero, 'Spain's former central banker: "De Guindos led us to disaster"', *Euractiv* (2018), https://www.euractiv.com/section/economy-jobs/news/spains-former-central-banker-de-guindos-led-us-to-disaster/; European Parliament, 'Decision of 14 March 2018 on the Council recommendation for appointment of the Vice-President of the European Central Bank (N8-0053/2018 – C8- 0040/2018 – 2018/0804(NLE)), P8_TA(2018)0071', *European Parliament* (2018), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0071+0+DOC+XML+V0//EN&language=GA.
5. Les Echos, 'BCE: Mario Draghi refuse de quitter un club lié à la finance', *Les Echos* (2018), https://www.lesechos.fr/2018/04/mario-draghi-refuse-de-quitter-un-club-lie-a-la-finance-971321; EUObserver, 'Ombudsman insists Draghi leaves G30 bankers group', *EUObserver* (2018), https://euobserver.com/institutional/142299; European Ombudsman, 'Recommendations of the European Ombudsman on the involvement of the President of the European Central Bank and members of its decision-making bodies in the "Group of Thirty" (1697/2016/ANA)', *European Ombudsman* (2018), https://www.ombudsman.europa.eu/en/recommendation/en/88592.
6. A. Robert, 'Latvia: The governor's corruption undermines the ECB', *Euractiv* (2018), https://www.euractiv.com/section/economy-jobs/news/latvia-the-governors-corruption-undermines-the-ecb/.
7. Financial Times, 'German Court Raises Doubts about ECB Stimulus Programme; Quantitative Easing', *Financial Times* (2017), https://www.dw.com/en/germanys-top-court-raises-doubts-about-ecb-asset-purchases/a-40092440. More generally on the Federal Constitutional Court's references: H. Hofmann, 'Controlling the powers of the ECB: Delegation, discretion, reasoning and care what Gauweiler, Weiss and others can teach us' *ADEMU Working Paper Series* No. 2018/107 (2018), http://ademu-project.eu/wp-content/uploads/2018/06/107-Controlling-the-Powers-of-the-ECB.pdf; and A. Lang, 'Ultra Vires Review of the ECB's Policy of Quantitative Easing: An Analysis of the German Constitutional Court's Preliminary Reference Order in the PSPP Case', 55 *Common Market Law Review* (2018), p. 923–952.

accountability practices during the crisis, demonstrating its own attention to the matter,[8] and in October 2018 its President gave a lecture specifically on central bank independence in which he defended the ECB's actions as well as the need for accountability.[9]

Of course, concerns about the accountability of the ECB are not recent. The need for accountability, as a counterbalance to the ECB's independence, was identified as an essential component of its institutional design long before its actual inception. The Delors Report, in 1989, referred to 'accountability' as one of the two central features of the ECB's status, next to its independence.[10] Whilst the ECB was already operating in relatively benign monetary conditions, with relatively few policy targets, it was always fully aware that the independence and the powers it enjoys come with grave responsibilities. In 2002, it had already acknowledged that 'in modern democracies, independent institutions bestowed with a public function must be held accountable for their actions. Therefore, the high degree of independence granted to the ECB goes hand in hand with well-defined ways of holding the latter accountable.'[11] Accountability has therefore traditionally been viewed by the ECB as a 'core element of its legitimacy'.[12]

Yet, in the post-crisis era, holding the ECB to account has become ever more complex,[13] and, at the same time, ever more necessary. Indeed, the issue of the ECB's accountability becomes all the more existential when the institution innovates in policy terms, relies on unorthodox instruments, uses its powers and competences in an unconventional manner, and is endowed with novel prerogatives well beyond the limited realm of monetary stability. Now that the ECB evolves in a more complex economic environment, is responsible for new tasks and wields new powers, it becomes imperative to ask how its accountability is actually discharged. This is the aim of this Special Issue focused on the ECB's accountability in a multi-level, post-crisis, European order.

2. The ECB and its evolution over the last 20 years

It is beyond any doubt that the ECB has changed fundamentally since January 1999, when it assumed responsibility over common monetary policy. Its functions, tasks and even objectives have evolved, and this evolution can only have critical implications for the framework and demands for the ECB's accountability. In particular, the changes imposed by and during the great financial crisis (GFC) hardly followed the EU central banking model designed in the Maastricht Treaty. A brief account of these fundamental changes is provided below as a common background for the ECB's accountability, which is discussed in the articles in this Special Issue.

A. The origins of the ECB

The ECB was established in June 1998, after the Council made the decision that 11 EU Member States were ready to move to Stage Three of the Economic and Monetary Union (EMU) in the

8. N. Fraccaroli, A. Giovannini and J.-F. Jamet, 5 *ECB Economic Bulletin* (2018).
9. M. Draghi, 'Central bank independence', *First Lamfalussy Lecture at the Banque Nationale de Belgique* (2018), https://www.bis.org/review/r181029d.htm.
10. J. Delors, 'Report on Economic and Monetary Union in the European Community. Presented April 17, 1989 (commonly called the Delors Plan or Report) By Committee for the Study of Economic and Monetary Union', *EU Commission Working Document* (1989), p. 22.
11. European Central Bank, 'The Accountability of the ECB', *Monthly Bulletin* (2002), p. 45–57.
12. H. Scheller, *The ECB – History, Role and Function* (European Central Bank, 2006), p. 125 et seq.
13. N. Fraccaroli, A. Giovannini and J.-F. Jamet, 5 *ECB Economic Bulletin* (2018), p. 53.

beginning of 1999. Before the euro was launched, the ECB announced its monetary policy strategy, and also its monetary policy framework, which contained both the institutional and intellectual framework for the common monetary policy.

The Maastricht Treaty and its protocol on the Statute of the European System of Central Banks (ESCB) and of the ECB provided the key constitutional building blocks for the new institution and common monetary policy,[14] anchoring the ECB firmly in EU primary law. The designing of the ECB in the Maastricht Treaty and the ESCB Statute was advised by two sets of preparatory work: the Delors Report[15] concerning the general outline and principles of the EMU, as well as draft Treaty provisions proposed by the Committee of Governors.[16] Thus, it was mainly EU central bankers who were responsible for drafting the institutional and substantive parameters for common monetary policy. The key elements, including the primacy of the price stability objective, central bank independence and the prohibition of central bank financing of governments, were accepted by the Member States and elevated to the level of EU primary law. Arguably, this narrow and independent model of central banking was following the economic and monetary policy paradigm of its time, but it could also be seen as following the template of the German *Bundesbank*, the *primus inter pares* among EU central banks. The main deviations from broader central banking models were the absence of concrete financial stability and banking supervision responsibilities. The model also made a seemingly clear separation between enumerated monetary policy tasks and other economic policy functions that remained national responsibilities. The newly established ECB gave a more concrete embodiment of its interpretation of the Treaty and Statute provisions in its published monetary policy strategy and operational framework. The price stability objective was given a numerical value of an annual increase in consumer prices of less than 2%.[17]

The functioning of the common monetary policy followed the model envisaged in the Treaty and the ECB strategy during its first decade of existence. The role of the ECB in the economy was limited to maintaining price stability, which was mostly achieved at the aggregate euro area level and over the medium term, as defined by the ECB. Apart from a standard monetary policy of defining short-term policy interest rates and allocating short-term funding to banks, the ECB made brief interventions in the foreign exchange markets to signal its perception that the euro had become undervalued. It did comment on fiscal policy, and also on financial stability issues, but mainly on structural issues and at a general level, carefully avoiding taking responsibility over issues it was not assigned to.

B. The crisis impact on euro area central banking

The crisis changed the role of the ECB and monetary policy, roughly following two steps. In the first step, starting from the collapse of Lehman Brothers in September 2008, the ECB worked alongside other major central banks in ensuring the liquidity of interbank markets, and thus of the economy at large. A key element was an expansion in the list of collateral that banks could use to

14. Protocol (No. 4) on the Statute of the European System of Central Banks and of the ECB, [2016] OJ C 202/230.
15. J. Delors, *EU Commission Working Document* (1989).
16. The Committee of Governors brought together the governors of the central banks of the European Economic Community.
17. Later added with a qualification of ‘close to’.

get funding from the central bank.[18] Also, the weekly main refinancing auctions were changed back to using a fixed interest rate, and they were now conducted with full allotment, meaning that banks that had some collateral could get all the short-term funding they needed at a fixed interest rate.[19] Mere short-term liquidity provision was not, however, deemed sufficient in the face of mounting distrust and insolvency fears among banks, and they were complemented with regular ECB special longer-term auctions with increasing maturity of operations. The policy of supporting the banking sector and economy through the provision of funding to banks culminated in two unprecedented three-year auctions, the first in December 2011, and the second in February 2012. In the meantime, the policy interest rate was also frequently lowered to reach a mere 1%.[20] It could thus be argued that traditional monetary policy was pushed to its limits towards the end of 2011.

As a second step, and alongside traditional monetary policy, in May 2010 the ECB started its unconventional and more controversial monetary policy operations, when the Greek debt crisis started questioning the very existence of the euro area. The first measure was the Securities Market Programme (SMP), which was used to purchase government bonds of the Member States that were perceived to be incorrectly priced. The SMP was openly opposed by some Governing Council members, perhaps symbolizing the unclear territory between monetary policy and other economic policies. At the same time, the ECB also became part of the Troika investigating and negotiating adjustment programmes for the troubled Member States. The unconventional monetary policy continued with the Outright Monetary Transactions (OMT) programme in summer 2012, when concerns related to Italy and Spain were perceived to question the ability of the European rescue mechanisms.[21] The OMT was the programme that embodied President Draghi's 'We will do whatever it takes' statement, and which, without actually being put to work, constituted thus far the most far-reaching intervention of the ECB in the sphere of public finances, in effect guaranteeing short-term financing for the Member States under some conditions. Just like the SMP before it, the OMT programme was closely tied with the new role played by the ECB as a member of the Troika, in the framework of financial assistance provision to sovereigns. Finally, in early 2015, the ECB formally announced its quantitative easing programme as an extension to the Asset Purchase Programme (APP), involving unprecedented purchases of mainly government bonds of the euro area Member States.[22] The APP ran until the end of 2018 and totalled more than €2.6 trillion.

18. The decision was quickly made in the form of ECB Regulation (ECB/2008/11), because it amended, albeit temporarily, ECB Guideline ECB/2000/7, and needed to have direct applicability throughout the Eurosystem and soon after adopted the respective ECB Guideline on temporary changes to the rules relating to the eligibility of collateral (ECB/2008/18).
19. European Central Bank, 'Changes in tender procedure and in the standing facilities corridor', *European Central Bank* (2008), https://www.ecb.europa.eu/press/pr/date/2008/html/pr081008_2.en.html.
20. A broader description can be found in K. Tuori, *The Eurosystem and the European Economic Constitution* (University of Helsinki, 2017), Ch. 7, p. 255–290.
21. The programme was famously announced only as a press release, see European Central Bank, 'Technical features of outright monetary transactions', *European Central Bank* (2012), https://www.ecb.europa.eu/press/pr/date/2012/html/pr120906_1.en.html.
22. European Central Bank. 'ECB announces expanded asset purchase programme', *European Central Bank* (2015), https://www.ecb.europa.eu/press/pr/date/2015/html/pr150122_1.en.html; and Decision 2015/774/EU of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme, [2015] OJ L 121/20.

As a further reaction to the crisis, the ECB was assigned the main responsibility for banking supervision in the euro area.[23] The creation of the Single Supervision Mechanism (SSM) was part of the so-called Banking Union, and also a condition for using European Stability Mechanism (ESM) funding for bank recapitalizations. As national supervision of banks had failed with detrimental consequences for the EMU, it was perceived that maintaining financial stability of the euro area as a whole, among other things, required bank supervision and resolution at the euro area level. After an extensive examination of the solvency of all the significant banks, the ECB took over their supervision in November 2014.[24]

C. The new paradigm in euro area central banking

The original ECB and its central banking paradigm relied on a technocratic model, whereby the monetary policy function was clearly separated from other aspects of economic policy (most notably fiscal and wage policies). It had a clear primary objective of price stability, which it was perceived to be able to guarantee by using traditional monetary policy instruments, mainly by adjusting the very-short-term risk-free interest rate. With this clear focus, the paradigm suggested, the ECB would also make the best contribution to the economic prosperity and stability of the euro area. The accountability mechanisms in place and fundamentally provided for in the Maastricht Treaty were based on this model of central banking. The underlying tension between independence and accountability favoured the former as the means to ensure price stability as a cornerstone of the economic framework.[25]

It is all but clear what the fate of this central banking paradigm going forward might be, but in the meantime the picture of common central banking has become more multifaceted. The changes during the GFC have led the ECB to assume far larger roles than was envisaged in the original model. The ECB has largely replaced the short-term cross-border interbank markets with a side-effect that Trans-European Automated Real-time Gross Settlement Express Transfer System (Target2) balances between euro area central banks have become enormous, the importance of which is fiercely debated. The Eurosystem is also the main actor in all euro government bond markets, and it has become the main creditor of the Member States. The earlier selective bond purchases are already in the phasing-out phase, but they have opened the door for direct interventions in the pricing of Member States' financing, and were accused of questioning the borderlines between monetary policy and other economic policies. The Troika-related tasks entrusted to the ECB further contributed to blurring the crucial distinction between these two policy fields. Finally, the inclusion of banking supervision in the ECB's tasks was an enormous change, not only with regard to the types of tasks the common central bank holds, but also in the size of the independent institution. It also arguably created a potential source of conflict of interest between the ECB's price stability and financial stability objectives.

23. Along the lines outlined in H. Van Rompuy, J.M. Barroso, J.-C. Juncker and M. Draghi, 'Towards a Genuine Economic and Monetary Union', *European Council* (2012), https://www.consilium.europa.eu/media/33785/131201.pdf; and A Roadmap towards a Banking Union, COM(2012) 0510 final.
24. Council Regulation No. 1024/2013/EU of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, [2013] OJ L 287/63.
25. See a description of the model in K. Tuori and K. Tuori, *The Eurozone Crisis – A Constitutional Analysis* (Cambridge University Press, 2014), for instance p. 186 et seq.

The current model is mainly a product of the crisis. As is the case with the whole EU and euro area economic framework, the GFC has led to monumental changes. The fate of these changes has already differed: some are fully implemented while others have been actively forgotten. In this evolution, the scientific community takes an active part, of which this Special Issue is one example. The problems and implications of the new model are identified and critically assessed. The question of accountability under the current central banking model, and the way it is balanced with the principle of ECB independence, are among the issues that require most attention in order to ensure that European values are also upheld in the new model or paradigm.

3. Independence and accountability: what balance for the ECB?

The debate around the institutional design of central banks is almost as ancient as central banking itself. Historically, central banks, to the extent that they existed, were focused on maintaining the value of the currency, and had a more profound role in public finances only during exceptional times. After the Great Depression, and particularly after the Second World War, the conduct of monetary policy was viewed as a deeply political activity, and central banks were closely entangled within government structures, most often placed under the direct control of treasuries. Until recently, central bank independence was more an exception than a rule.[26] The paradigm shifted in the 1970s, when studies based on game theory and rational expectations argued that optimal macroeconomic outcomes are more likely to be achieved when monetary policy is structured around credible pre-commitments, and conducted by an independent central bank, shielded from political interference.[27] The classic economic argument in favour of central bank independence goes as follows: monetary policy, and the pursuit of price stability, is subject to significant time lags, and therefore constitutes a long-term endeavour. Politicians, because of the electoral cycles, seek to secure immediate gains, and are therefore prone to short-term thinking. They are thus likely to conduct monetary policy in a way that may be beneficial in the short run (most notably by relying on what is known as 'surprise inflation'), but at the expense of long-term monetary stability. This phenomenon, colloquially known as the 'time inconsistency' problem, is made worse by the public anticipation that the politically led central bank will betray their trust in any case, making an optimal longer-term solution impossible to achieve. Against this background, the prevailing view is that monetary policy needs to be taken away from politicians, and entrusted to a central bank fully insulated from the political process, endowed with the skills, expertise and institutional status to design monetary policy on the basis of long-term

26. The most notable, and famous, exception being that of the German *Bundesbank*, which was, for obvious political reasons, endowed with a considerable degree of independence, from its creation in 1957.
27. See for example, F. Kydland and E. Prescott, 'Rules rather than Discretion – The Inconsistency of Optimal Plans', 85 *Journal of Political Economy* (1977), p. 473–492; D. Hibbs, 'Political Parties and Macroeconomic Policy', 71 *American Political Science Review* (1977), p. 1467–1487; R. Barro and D. Gordon, 'Rules, Discretion and Reputation in a Model of Monetary Policy', 12 *Journal of Monetary Economics* (1983), p. 101–122; K. Rogoff, 'The Optimal Degree of Commitment to an Intermediate Monetary Target', 100 *Quarterly Journal of Economics* (1985), p. 1169–1189; A. Alesina and L. Summers, 'Central Bank Independence and Macroeconomic Performance – Some Comparative Evidence', 25 *Journal of Money, Credit and Banking* (1993), p. 151–162. For a contrasting view, see M. Friedman, 'Should There be an Independent Monetary Authority?', in L. Yeager (ed.), *In Search of a Monetary Constitution* (Harvard University Press, 1962), p. 219–243.

considerations.[28] These views quickly gained widespread academic and political acceptance, and contributed to the wide diffusion of the independence model, under various forms and degrees.[29]

When the European sovereigns decided to go down the path of monetary integration, they inevitably had to confront the difficult question of the institutional design of the central bank they would be establishing. The choice they made in Maastricht has already been recalled: the ECB was established as a fully-fledged EU institution, endowed with a high level of independence, immediately consecrated in the fundamental charter of the Union.[30] The Treaties endowed the Bank with the proper means to safeguard its independence: institutional (prohibition of political instructions; Article 107 Treaty of the European Community (ex TEC; now Article 130 Treaty on the Functioning of the European Union (TFEU)), Article 7 of the ECB Statute), operational (full control of relevant policy instrument; ex Article 108(a) TEC (now Article 132 TFEU)), personal (secured tenure; ex Article 109(2)(b) TEC (now Article 283(2) TFEU)) and financial (own budget; now Article 282(3) TFEU).[31] Such unprecedented setting has brought some commentators to describe the ECB as the most independent central bank in the world.[32] It is, however, crucial to keep in mind that the choice made then was not a compelling one. A plurality of design models were indeed available, with various degrees of independence involved. It is thus deliberately that the route of a strong, constitutionally enshrined independence was taken, because a set of political and economic reasons made this type of independence seem appropriate then. The appeal of the independence model at the time (see *supra*), the influence of the German ordo-liberal tradition,[33] the convincing track record of the *Bundesbank*[34] and the dominance of monetarist views[35] in power circles certainly constituted some of the most compelling factors. One should, moreover, never lose sight of the fact that the question of the institutional position of the ECB was only one element of the grand political bargain struck in Maastricht on the architecture of the currency union. The main proponents of strict independence, led by Germany, only managed to get their preferences through against substantial concessions, most notably on the economic and budgetary pillar of the EMU, much more intergovernmental and decentralized than initially envisaged.[36] Finally, it should be

28. This was confirmed by some of the abovementioned studies, which found a negative correlation between average inflation and the degree of independence of the central bank.
29. See S. Cross, 'Following the Bundesbank – The Spread of Central Bank Independence', 73 *Foreign Affairs* (1994), p. 128–133.
30. This high standard was also passed on to the national level, requiring the Member States participating in the EMU to endow their own central bank with a similar level of independence. In this regard, see Article 131 TFEU.
31. For more in that regard, see, for example, R.M. Lastra, *Legal Foundations of International Monetary Stability* (Oxford University Press, 2006), Ch. 2.
32. See for example, F. Snyder, 'EMU – Metaphor for European Union? Institutions, Rules and Types of Regulation', in R. Dehousse (ed.), *Europe after Maastricht – An Ever Closer Union?* (Beck, 1994), p. 78.
33. In that regard, see E. Dehay, 'La justification ordo-libérale de l'indépendance des banques centrales', 10 *Revue française d'économie* (1995), p. 27–53.
34. It should be kept in mind that the question of the existence and the strength of the correlation between central bank independence and the control of inflation remains highly debated among economists. For a useful overview, see A. Estella, *Legal Foundations of EU Economic Governance* (Cambridge University Press, 2018), p. 72–76.
35. Friedman, in direct line with the Hayekian tradition, was a vocal advocate of central bank independence. See M. Friedman, 'The Role of Monetary Policy', 58 *The American Economic Review* (1968), p. 1–17, especially 16.
36. On the negotiations that led to the creation to the creation of the EMU, and the core compromises made, see K. Dyson and F. Featherstone, *The Road to Maastricht. Negotiating Economic and Monetary Union* (Oxford University Press, 1999), especially p. 291 et seq.; J. Pisani-Ferry, 'Only One Bed for Two Dreams: A Critical Retrospective on the Debate over the Economic Governance of the Euro Area', 44 *Journal of Common Market Studies* (2006), p. 823–844; I.

reiterated that, under the Maastricht compromise, the privileged position of the ECB within the EU institutional system comes with an essential corollary: a narrow mandate, primarily geared towards the preservation of price stability (ex Article 105 TEC (now Article 127(1) TFEU)). Strong institutional independence of the ECB (that is, insulation from the political system and traditional channels of political accountability) was only deemed an acceptable 'derogation from the normal circuit of (democratic) legitimation'[37] if the ECB's mission was to be strictly restricted to the fight against inflation.[38] The risks of 'agency slippage' being particularly high in the case of the ECB, the Member States carefully delineated an 'agency contract' exclusively focused on the realization of one single policy goal.[39] Such rigidity and focalization is in stark contrast with the much more flexible mandate of other central banks around the world.[40]

In its early years, it was still unclear what ECB independence truly meant, and what it practically entailed. Some advocated for an absolute understanding of independence, equating with complete insulation from the EU institutional framework, and claimed that the ECB ought to be considered as an outside institution, a 'fourth Community in the Community'.[41] Others favoured a more nuanced approach, arguing that, despite its specific features, the ECB remained part of the wider institutional system of the Union, thereby limiting the magnitude of its independence.[42] These doubts were famously dispelled by the Court of Justice (the Court) in the *OLAF* case, in which the Court consecrated a functional understanding of ECB independence, strictly justified (and limited) by the pursuance of its stability mandate, which did therefore not warrant its entire separation from the Union and its legal order.[43] The ruling undeniably contributed to bringing about a period marked by a broad consensus on the status, institutional position and defining features of the ECB. Also central to this general agreement was the notion of accountable

Maes, 'On the Origins of the Franco-German EMU Controversies', 17 *European Journal of Law and Economics* (2004), p. 21–39.

37. S. Baroncelli, 'The Gauweiler Judgment in View of the Case Law of the European Court of Justice on Central Bank Independence', 23 *Maastricht Journal of European and Comparative Law* (2016), p. 93.
38. This exclusive focus on price stability is sometimes referred to as the principle of monetary dominance.
39. Interestingly, one shall note that the Treaties do foresee that the ECB is to support the general economic policies in the Union (Article 127(2) TFEU), and may be involved in prudential supervision (Article 127(5)(6) TFEU). In that context, it may well pursue alternative policy goals, but only on an ancillary basis, and never at the expense of the primary objective of price stability
40. As an example, the US Federal Reserve is tasked with a triple mandate: price stability, maximum employment and moderate long-term interest rates (Section 2A of the Federal Reserve Act). In a similar way, the Bank of England is to jointly pursue objectives of price stability, growth and employment, and financial stability (Sections 2A and 11 of the Bank of England Act). The Bank of Japan is tasked with preservation of price stability and financial stability, and with the sound development of the national economy (Articles 1 and 2 of the 1997 Bank of Japan Act). To add further flexibility, these mandates are enshrined in legislative acts, and can therefore be amended by mere legislative revision.
41. See C. Zilioli and M. Selmayr, *The Law of the European Central Bank* (Hart, 2001), p. 9; M. Selmayr, 'Die EZB als Neue Gemeinschaft: ein Fall für den EuGH', *Europa-Blätter* (1999), p. 170.
42. See for example, J.-V. Louis, 'A Legal and Institutional Approach for Building a Monetary Union', 35 *Common Market Law Review* (1998), p. 44; R. Torrent, 'Whom is the European Central Bank the Central Bank of?: Reaction to Zilioli and Selmayr', 36 *Common Market Law Review* (1999), p. 1229–1241; F. Amtenbrink and J. De Haan, 'The European Central Bank – An Independent Specialized Organization of Community Law', 39 *Common Market Law Review* (2002), p. 65–76.
43. Case C-11/00 *Commission of the European Communities v. European Central Bank*, EU:C:2003:395, para. 135.

independence. Developed by several commentators,[44] the concept is closely connected to that of functional independence, and relies on the various mechanisms set up by the EU Treaties to carve out a novel understanding of political accountability, compatible with the Bank's independence: while insulated from politics in carrying out its tasks, the ECB must nonetheless remain responsive to political institutions. Beyond mere 'output accountability' (the ability of the ECB to effectively deliver price stability),[45] the ECB is indeed subject to more proactive forms of accountability, most notably the monetary dialogue it holds with the EP (Article 284(3) TFEU). Of a softer nature, this new type of accountability was to be driven less by unilateral constraint than by mutual exchanges and influence, and contributed to the emergence of a new kind of democratic legitimation for highly technocratic, independent bodies: while independent, the ECB is to remain firmly embedded within the broader political system it is part of, and is still expected to act 'in the shadow' of democratic majorities, which guarantees that its discretion is not misused.

Rather surprisingly though, given the need for an independent institution to be accountable, the TFEU is silent on the issue of accountability. The TFEU only refers to the 'tasks', the 'responsibility' and the reporting obligations of the ECB. By contrast, it is rather detailed on the functional independence of the ECB and the personal independence of the members of its decision-making bodies. Perhaps this seeming omission stems from the fact that in some European languages there is only one word that can refer to both 'accountable' and 'responsible' as, for example, '*responsable*' in French or '*ypefthinos*' in Greek. This may make it more difficult to discuss accountability in languages other than English. The absence of reference to accountability in the primary law of the EU, coupled with the fact that the mechanisms and arrangements through which the ECB is held accountable have been structured mostly around reporting obligations to and dialogues with other EU institutions, also make it important to explore how such arrangements have evolved since 1999, to examine whether these mechanisms and arrangements are sufficient, and consider what else may be done to strengthen them and, in the process, improve both the ECB's effectiveness and its democratic legitimacy.

To this end, it is also important to understand how the ECB itself conceives of its own duty of accountability, and how this understanding has evolved over time (see also Christy-Ann Petit in this issue). The November 2002 issue of the ECB's *Monthly Bulletin* emphasized the role of accountability and stated that 'first and foremost, [accountability] is understood as an obligation vis-a-vis the "political order" prevailing within the EU and as a crucial cornerstone of the legitimacy of the ECB and its policies.'[46] It then explained the meaning of 'input' and 'output' accountability. Because of the complexity and uncertainty of how monetary policy instruments such as interest rates affect inflation – whose control is the ultimate objective of the ECB – the *Monthly Bulletin* argued that sanctions would be 'too blunt' as a means of enforcing accountability. Rather, it suggested that 'constant scrutiny of the central bank's actions by the parliament and the public at large seems the appropriate method for holding an independent central bank accountable.'[47]

44. See P. Magnette, 'Towards "Accountable Independence?" Parliamentary Controls of the European Central Bank and the Rise of a New Democratic Model', 6 *European Law Journal* (2000), p. 326–340. See also, R.M. Lastra, 'The Independence of the European System of Central Banks', 33 *Harvard International Law Journal* (1992), p. 481.
45. C. Zilioli, 'The Independence of the European Central Bank and its New Banking Supervisory Competences', in D. Ritleng (ed.), *Independence and Legitimacy in the Institutional System of the European Union* (Oxford University Press, 2016), p. 131.
46. European Central Bank, 'ECB, Monthly Bulletin', *European Central Bank* (2002), https://www.ecb.europa.eu/pub/pdf/mobu/mb200210en.pdf, p. 45.
47. Ibid., p. 47.

It went on to define the 'notion of "being accountable" as being held responsible for one's decisions and being required to justify and explain them.'[48] Thus, the decision-making bodies of the ECB are accountable for the tasks laid down in the TFEU to the EP and ultimately to the people. For the purposes of this Special Issue, it is also important to examine how the ECB discharges its accountability. The *Monthly Bulletin* refers to reporting obligations, publications, press conferences, testimonies before the EP and replies to questions of Members of the European Parliament (MEPs). As noted above, this concern has remained important over time, and the ECB's accountability practices during the crisis were examined again in 2018. Despite the ECB's concern for its own accountability, neither the 2002 article, nor the 2018 article, make any attempt to present indicators of the ECB's performance or the quality of its decisions. Both articles identify 'justification' as an essential component of accountability, and although they dwell extensively on how the ECB explains its decisions and actions, they are rather silent on how well it has explained them. In other words, they do not tackle the issue of whether the ECB has indeed managed to justify what it does. Yet, the 2018 analysis shows how the dialogue between the ECB and the EP has intensified and improved. Since accountability mechanisms evolve, the next stage in their evolution could perhaps include scrutiny of the ECB's quality of justification of its policy decisions.

In any event, in the first decade of ECB activities, the compromise between accountability and independence, based on the dual notion of functional and accountable independence, seemed to be one everyone could live with. The ambition of this Special Issue is to show how the Eurozone crisis has disrupted this *modus vivendi*, and its underlying institutional balances. As we shall see, the crisis precipitated an unprecedented overhaul of the political, legal and economic architecture of the EMU. It dramatically impacted the very nature of the role, functions, prerogatives and power of the ECB, forcing us to revisit the notions of accountability and independence.

4. Introducing the contributions

To fulfil this task, this Special Issue focuses on three main aspects. First, it examines *the challenges of the ECB's accountability in the current context*. Indeed, the ECB has recently undergone numerous and profound changes as illustrated above, and trust in the institution has declined. These changes demand a new analysis of the balance between accountability and independence, of the relationship between accountability, transparency and legitimacy and, generally of the accountability standards in place post-crisis. Furthermore, in holding the ECB to account, the different benchmarks to which the Bank is submitted, and their adaptability, need to be considered. In her article, Christy-Ann Petit assesses the balance between independence and accountability by first considering what this balance was like when the ECB was first established before turning to how this balanced has evolved since, while devoting specific attention to the pre- and post-crisis periods. She observes that as time has passed, and as the ECB has been attributed more competences, accountability channels between the ECB and other institutions have intensified, and so has scrutiny. On the basis of her qualitative analysis, she suggests that those evolutions might be a first step towards an ECB that is both equally independent and accountable. Larisa Dragomir examines the institutions in charge of holding the ECB to account, as well as the benchmarks applicable to its different functions. She considers the consequences attached to this accountability exercise. She finds *inter alia* that judicial accountability can have far-reaching consequences in constraining the

48. Ibid., p. 48.

ECB's actions and that 'the principals of the ECB may also take targeted action to bindingly frame future ECB behaviour', although in the monetary policy area, the principals cannot do such a thing in light of the anchoring of the ECB's exclusive competence in the Treaties and its independence. Diane Fromage, in turn, shows that the ECB is involved in a series of bodies and institutions post-crisis and that, as such, it participates in a variety of accountability arrangements. Consequently, she argues that this high level of complexity may, in itself, prevent the guarantee of a satisfactory level of accountability, and she makes some suggestions to improve this situation. Christel Koop and Christine Reh's article focuses on accountability, transparency and legitimacy of the ECB. They critically examine the alleged nexus between the ECB's standards of governance and its legitimacy in the eyes of citizens. They contend that even if accountability and transparency are indeed very important to the good functioning of modern democracies, improving their performance may not be sufficient to improve citizens' support for the ECB, for it is an 'expertocratic institution that operates in a policy area and a political system undergoing a deep crisis of both performance and acceptance'. They additionally find that, in fact, enhancing transparency and accountability may run counter to the objective of increasing the ECB's legitimacy.

The second part of this Special Issue focuses specifically on *the ECB's accountability in its capacity as responsible of the euro area's monetary policy*. It is composed of three articles that examine the ECB's resorting to unconventional monetary policy and the ECB's participation in the financial assistance to the Member States. Anna-Lena Högenauer and David Howarth focus on the ECB's crisis monetary policy. They contend that its resorting to unconventional monetary policies significantly undermines its democratic legitimacy, and the legitimacy of the EMU project as a whole. Klaus Tuori dives into a specific type of unconventional monetary policy, quantitative easing, and considers three of the main challenges that affect the ECB's accountability. He shows how quantitative easing has a deeper reach into societies than traditional monetary policy; he also illustrates the consequences of the ECB having become Member States' largest creditor while it was not supposed to finance them. He furthmore analyses the potential conflict of interest between financial stability and price stability objectives. Finally, Paul Dermine considers the ECB's participation in financial assistance to the Member States and the ECB accountability regime attached to it. He underlines the ECB's constant involvement coupled with the absence of a clear definition of the collaboration regime between the Commission and the ECB, whereby the ECB is probably more involved than it claims. He also shows that important shortcomings remain applicable in the accountability regime.

In the third part of this Special Issue, *the ECB's accountability in the Banking Union* is examined. Issues such as the accountability framework applicable to the SSM, the transparency gap that exists in the framework of the SSM, and the question of the ECB's legal accountability are addressed. Marta Božina Beroš looks at the internal and external transparency regimes within the SSM and compares it to the rules in place in the monetary domain to identify shortcomings, and suggest some improvements. She shows that in the supervisory domain, there is no 'quantifiable yardstick' against which the ECB could be held accountable. She also emphasizes the fact that confidentiality is very much present in the supervisory domain, which, in her views, could be compensated for by including a larger set of stakeholders as observers to the confidential meetings taking place between the ECB and the Committee on Economic and Monetary Affairs (ECON). She also suggests closer cooperation with experts, and better justified refusals of access to document requests. Phedon Nicolaides first examines the accountability framework applicable to the ECB's supervisory activities within the SSM. He finds that, whilst the ECB has increased the level of information it releases and progressively elaborated better on its justification – which are signs in favour of the ECB's commitment towards its own accountability – a performance benchmark against which the actions of the ECB/SSM could be evaluated is still lacking. Furthermore, an expert review of its decisions is also not provided. He suggests that the EP should set up a policy or a regulatory audit by external experts who would examine the ECB's actions on a confidential basis. Lastly, Alexander Türk and Napoleon Xanthoulis turn to the ECB's legal accountability in the framework of the SSM. They first design a conceptual framework based on the legal effects of the acts adopted by the SSM that serves to evaluate their legal (or judicial) accountability. They illustrate under which circumstances the Union Courts are directly responsible for the review, and under which other circumstances they may only conduct such a review indirectly. This leads them to the conclusion that the judicial accountability mechanisms within the SSM mirror the division of competences that exists within the SSM between national authorities and the ECB, thereby forming a 'separate but integrated system of judicial review'.

This Special Issue concludes with *an outlook on the ECB's accountability* by Fabian Amtenbrink. He takes a broad stance at the changes experienced by the ECB and examined in depth by the other contributions to this Special Issue, and concludes that the ECB's legitimacy currently secured by EU primary law is 'strained, to say the least'. Amtenbrink then proceeds to propose specific solutions to remedy this issue.

5. Opening up the debate: taking stock and looking forward

The analyses presented in this Special Issue allow us to take stock of the level of ECB's accountability post-crisis and draw some conclusions for the future.

The question can be asked as to whether the ECB is more or less now accountable. The contributions presented here find that numerous new channels of accountability have been devised, on the one hand, between the ECB and the organs in which it participates; and the EP, the Council and, to some extent, national parliaments, on the other. The ECB has also improved the way in which it shares information: As shown by Petit, pre-crisis it resorted mostly to a communications strategy, whereas post-crisis, a broader range of publications are released, and the number of parliamentary questions has increased; they provide an opportunity to the ECB to justify its actions. The ECB has also started to answer to the resolutions the EP adopts on its annual reports, thereby establishing a dialogue with the EP. Additionally, channels of administrative and judicial accountability have also been reinforced and adapted to reforms such as the SSM, so that the ECB is indeed submitted to a more intense scrutiny. Yet, this may not suffice to increase the ECB's legitimacy, for instance because the assumption often made that increased transparency and increased accountability automatically lead to more legitimacy does not appear to hold, as evidenced by Koop and Reh. Following Božina Beroš' analysis, it also becomes clear that transparency is yet to be fully realized. Even a basic premise such as the principle of ECB (and central bank) independence now appears to be open for discussion, whereas until recently it was deemed an immutable principle. Be this as it may, it remains the case that even if the arena in charge of holding the ECB to account cannot easily draw consequences for the ECB's actions by changing the rules that define its functioning, rules do matter because they allow the determination of the extent to which the ECB is actually responsible for the actions it pursues, that is, how much discretion it has. Some transparency gaps related to confidentiality issues remain in banking supervision, but the question can be asked as to whether this is compensated for by the fact that the ECB's actions in this domain are constrained by those who have to hold the ECB to account. Taken altogether, the contributions to this Special Issue suggest that, despite clear positive developments, the overall trajectory of ECB accountability in the post-crisis era is characterized by continuity, and the difficulty to depart from the traditional templates inherited from the Maastricht compromise, in spite of the radical transformation experienced by the institution over the past 10 years. There is thus a growing discrepancy between the functions the ECB performs and the political clout it has gained on the one hand, and the accountability structures it is subject to, and the institutional position it occupies, on the other.

These findings underline the necessity to amend and potentially strengthen the accountability framework to which the ECB is currently submitted, especially after it has resorted to unconventional monetary policies such as quantitative easing, its participation in the Troika and the assumption of banking supervision functions. The contributions to this Special Issue reveal that several improvements are indeed necessary, although a one-size-fits-all approach does not appear to be suitable in light of the different functions the ECB assumes post-crisis and because of their different features. Rather, the arrangements in place should be designed to fit the specificities of the functions controlled, and they need to be regularly assessed in light of the constant evolution of the mandate and of the governance of the public bodies involved. They should also avoid duplications and increasing complexity and, in fact, aim to reduce the complexity of the arrangements in place. For instance, the numerous hearings before the EP could be combined, and the EP could be more largely involved in the designation procedure of the President of the ECB. The EP could be given some power to pass consequences in view of the ECB's actions instead of being constrained to mere political sanctions. A policy or a regulatory audit by external experts who would examine the ECB's actions in the SSM on a confidential basis could also be set up to review its decisions. Also, the ECB's accountability regime should be reformed to cover the ECB's involvement in the definition of economic conditionality as imposed in the framework of financial assistance programmes.

We thus observe an overall positive evolution towards an improvement of the ECB's accountability regime, although important shortcomings – resulting in part from the ECB's new standing post-crisis – do still need to be urgently tackled. Future research should examine whether these gaps are compensated for by the co-existence of different types of accountability mechanisms. In other words, the sum of the existing mechanisms encompassing all kinds of accountability (that is, democratic, judicial and administrative) should be evaluated to provide a more comprehensive picture. The design of new accountability channels, or the further streamlining of the existing ones, might prove necessary, thereby contributing to the advent of a new accountability paradigm, more in tune with the status and powers of the ECB in the post-crisis era.

Acknowledgement

All papers were presented at a workshop held on 29–30 May 2018 at Maastricht University's campus in Brussels, and we are most thankful to the participants, and in particular to the practitioners, who accepted to take some of their time to share their expertise with the authors on that occasion. Further thanks are owed to all contributors for their excellent collaboration in the preparation of this Special Issue.

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