

Who needs accountability?

The limited usefulness of accountability for researching the ECB

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Abstract

Accountability is a central concept in legal studies of the European Central Bank (ECB). It is seen as necessary to improve the democratic legitimacy of the bank. This article presents two arguments why the emphasis on (democratic) accountability is problematic with regard to the ECB. First, accountability does not offer a clear normative standard, as it is not constitutionally embedded. The discussions on ECB accountability therefore do not engage with the issue that a low level of accountability is itself the result of democratic decision-making. Second, accountability-studies neglect the intertwinement of tasks of the monetary and fiscal policy makers and thereby neglect the key mechanism through which an independent central bank is connected to other public entities.

Keywords: European Central Bank; accountability; democratic legitimacy; over-constitutionalization; monetary dialogue; fiscal dominance.

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A. Introduction

The monetary policies of the European Central Bank (ECB) are difficult to comprehend, in terms of the types of actions it encompasses, the scale of the activities and their impact. The Public Sector Purchases Programme of the ECB, for example, involved the purchase of over 2 trillion euro of bonds of Member States.¹ But this two trillion-euro intervention was perhaps less important for the Eurozone than the statement by ECB president *Draghi* during the euro-crisis: “within our mandate, we will do whatever it takes [to protect the integrity of the Eurozone]”.² With a few words, *Draghi* changed the dynamics in the Euro-crisis. However, this influence or power of the ECB appears problematic, given its independence. Other EU institutions and national governments cannot give instructions to the ECB regarding its monetary policy. How can the independent exercise of such important competences be squared with the requirements of democracy? Should the ECB not be under the control of the European Parliament, or other officials that have a clear democratic mandate? This question gained prominence during the euro-crisis, stayed on the agenda during the COVID19-pandemic and the current discussion on the climate transition, but has been part of academic and political discussions since the inception of the ECB in the Maastricht Treaty. But where the question is phrased in terms of democracy or democratic legitimacy, the answer is often phrased in terms of accountability.³ I argue that that is the wrong way to answer the question.

Starting with the book by *Amttenbrink*⁴ in 1999 on the democratic accountability of the ECB from a comparative perspective, the central argument in the legal literature on the ECB has been that accountability of the ECB, especially towards the European Parliament, is crucial for the democratic legitimacy of the ECB. An example of accountability is the monetary dialogue, in which the President of the ECB comes to a committee of the European Parliament to explain the choices made in the exercise of the competences of the ECB and to answer questions from members of the European Parliament. Accountability supposedly is the other side of the coin of the independence of the ECB.⁵ Accountability is what makes the independent exercise of competences by the ECB acceptable from the perspective of democracy, although most scholars working on this topic readily acknowledge

1 *ECB*, Asset purchase programs, available at: <https://www.ecb.europa.eu/mopo/implementation/html/index.en.html> (17/1/2025).

2 *ECB*, Verbatim of the remarks made by Mario Draghi: Speech by Mario Draghi, President of the European Central Bank at the Global Investment Conference in London 26 July 2012, available at: <https://www.ecb.europa.eu/press/key/date/2012/html/sp120726.en.html> (17/1/2025).

3 See e.g. *Lastra/Skinner*, Virginia Journal of International Law 2023/63:3, pp. 405–406. For critical accounts, see *Puntscher Riekmann*, Comparative European Politics 2007/5, pp. 121–137 and *Heidelberg*, in: Dawson (ed.), pp. 45–62.

4 *Amttenbrink*, pp. 1 et seq.

5 *Petit*, Maastricht Journal of European and Comparative Law 2019/1, p. 18, with further references.

that the accountability of the ECB is deficient in its current form and requires improvement.⁶ Especially the expansion of the responsibilities of the ECB during the euro-crisis, and the formulation of mitigating climate change as a goal of monetary policy are seen as triggering the need to improve the accountability of the ECB. As *Grünwald* and *van 't Klooster* recently wrote: the “ECB’s fundamental transformation [...] must be counterbalanced by a strengthening of the institutional structures for its democratic accountability”.⁷ To be clear, most arguments that are about improving ECB accountability are not legal arguments in the sense that they seek to explore what the law, as it currently stands, requires.⁸ They are about holding the current institutional arrangements of the ECB against the yardstick of accountability to measure the democratic legitimacy and if the required level is not reached, to make policy proposals or other types of recommendations.

This article argues, firstly, that accountability is a bad yardstick to measure the democratic legitimacy of the ECB. Consequently, most suggestions to improve the accountability of the ECB would do little to improve the democratic legitimacy of the ECB. The reason for this is that calls for more ECB accountability to improve democratic legitimacy are paternalistic, in the sense that they disregard what has already been democratically decided when the Maastricht Treaty was approved. The fact that parliaments approved the Maastricht Treaty and subsequent EU Treaties, and thus, the institutional arrangements of the ECB, does of course not mean that the ECB is beyond reproach in this regard. However, it does mean that in order to challenge the democratic legitimacy of the ECB, we primarily need to examine the democratic legitimacy of the EU Treaties.

The second part of this article examines accountability not as a way to evaluate the ECB, but as a way to understand the ECB. Accountability-studies have led to a certain way of looking at the institutional relations of the ECB that ignores the peculiarities of the European Monetary Union (EMU), in particular the fact that whilst the monetary union is highly integrated and centralized, the economic union is not. The lopsided nature of EMU affects the institutional relations of the ECB, which is so far largely ignored by the accountability studies of the ECB. A comparison with the German *Bundesbank* (pre-euro) will show the historical background of this argument. Although the second part of the paper focuses on the analytical side of academic work (understanding rather than evaluating), it deepens the problems described in the first part.

Before going further, a short comment on the definition of accountability is in order. Accountability-studies have developed various conceptions of accountability, many of them highly nuanced and applicable to various situations. Also with regard to the ECB, there are attempts to develop the concept in a more critical direction.⁹

6 See, e.g., *Antenbrink/Markakis*, in: Beukers/Fromage/Monti, pp. 265–291.

7 *Grünwald/van 't Klooster*, Common Mkt. L. Rev. 2023/4, p. 962.

8 An interesting counter-example is found in *Tuori*, Maastricht Journal of European and Comparative Law 2024/4 who argues for “accountability to the public”, which appears to consist of the ECB focusing on its primary objective of maintaining price stability.

9 See on this *Dawson/Bobić/Maricut-Akbik*, European Law Journal 2019/1, pp. 75–93.

However, the emphasis is here on the dominant strain of ECB accountability research, which builds on the view of accountability as a structured relationship between an actor and a forum, where the actor explains its actions to the forum, which may ask questions and pass judgement as a result of which the actor can face sanctions.¹⁰ Where relevant, it will be shown how different approaches to accountability impact arguments presented in the rest of this article. Since this article is concerned with the relation with democracy, the focus here is on political or democratic accountability, meaning accountability towards institutions with a democratic mandate.¹¹ This means parliaments, which, in most cases, are directly elected, and governments, as they either hold a direct democratic mandate (presidential system), or are supported by parliament (parliamentary system). It must also be noted that there are several concepts closely associated with accountability, but which should not be wholly subsumed under it. For example, accountability and transparency are closely linked, with the latter often being seen as a precondition for the former.¹² However, this does not mean that legal requirements regarding transparency must necessarily be seen from an accountability perspective, as transparency can also serve other goals, such as the rule of law.

B. Accountability and the democratic legitimacy of the ECB

I. Accountable independence

In the discussions leading up to the Maastricht Treaty and the creation of a single currency it was clear that central bank independence would be a key feature of the new single currency.¹³ Especially for Germany, but also for other Member States such as the Netherlands, it would have been unacceptable to join a monetary union if the central bank responsible for the new currency would not enjoy a high level of independence.¹⁴ As a result, the Maastricht Treaty not only stated in clear terms the independence of the ECB in what is now Art. 130 TFEU, it also regulated many other aspects of the new central bank. These include its primary and secondary objective (Art. 127 TFEU), its competences, its organizational structure, its finances, its hierarchical relation with the national central banks, and its relations with other EU bodies and institutions. These latter rules include the provision that the President of the Council and a member of the Commission are allowed to participate in meetings of the Governing Council of the ECB¹⁵ and that the president of the ECB

10 *Bovens*, West European Politics 2010/5, p. 951. Most authors on ECB accountability start with this definition, but then modify it, in various ways, in relation to the ECB. See, e.g., *Petit*, Maastricht Journal of European and Comparative Law 2019/1, p. 20 and *Markakis*, p. 9.

11 See Art. 10 para. 2 TEU.

12 *Markakis*, p. 14, with reference to *Antenbrink*.

13 A comprehensive analysis of the history of the monetary union is provided by *James*.

14 For a Dutch perspective on the negotiations of the Maastricht Treaty, see the account by *Szász*.

15 Art. 283 para. 2 TFEU.

may be heard by a committee of the European Parliament.¹⁶ One of the things that was not settled in the Maastricht Treaty was the exact legal status of the ECB within the EU/EC, which lead to the question whether secondary legislation that was adopted by the Council and the European Parliament could be applicable to the ECB. After the CJEU ruled in 2000 that secondary legislation could be applicable to the ECB,¹⁷ but should respect its independence, the legal status of the ECB was clarified in the Nice Treaty. The ECB is now listed as one of the institutions of the EU.¹⁸ Otherwise, the Treaty provisions on the ECB and monetary union have seen very few changes.

The high level of independence of the ECB in the Maastricht Treaty raised concerns. In its famous Maastricht-judgement, in which the German Constitutional Court expressed its vision on the Member States being the *Herren der Verträge*, the Court also discussed the independence of the ECB, calling it an exception to the principle of democracy.¹⁹ That exception was justified according to the Court, based among other things on the experience in Germany with the independence of the *Bundesbank* (the German Central Bank). (Legal) scholars also expressed concern regarding the independence of the ECB, with the lack of accountability being part of their analysis. For example, *Verdun* highlighted several aspects of the democratic deficit of the ECB, such as that the independence and objectives of the ECB were part of the Treaty, and thus, difficult to change.²⁰ The lack of accountability of the ECB towards the European Parliament was another issue in her analysis. In their article on the democratic deficit of the ECB, *Gormley* and *De Haan* discussed several elements that are important for the setup of central bank independence and accountability, but mentioned the democratic legitimacy of the ECB only in light of the inability of the European Parliament to change the legal framework of the ECB.²¹ The main conclusion was that the European Parliament should have control over the “rules of the game”, with the ECB being responsible for playing the game. In other words, in both articles, accountability plays a role in the overall analysis of the ECB, but the connection to democratic legitimacy is far from clear.

Through several academic works, most notably those by *Amttenbrink* and *Lastra*, a clear connection was established between democratic legitimacy and accountability.²² This starts with the observation that independent central banks are often created through an act of the legislator (usually involving parliament):

16 Art. 283 para. 3 TFEU.

17 ECJ, Case 11/00, *Commission v. ECB*, judgement of 10 July 2003, ECLI:EU:C:2003:395, paras. 67, 135–137.

18 Art. 13 TEU.

19 BVerfGE 2 BvR 2134/92, 2159/92, para. 96. On judicial approaches to central bank independence, also see in this issue the contribution by *Benjamin Letzler* and *Michael Waibel*.

20 *Verdun*, Journal of Public Policy 1998/2, p. 108.

21 *Gormley/De Haan*, Eur. L. Rev. 1996/2, p. 112.

22 See, e.g., *Amttenbrink*, p. 32; also *Lastra*, Harvard International Law Journal 1992/2, p. 481; *Markakis*, pp. 13–17.

“Legitimacy starts with the inception of an independent institution: independent central banks are generally created within a democratic process as a result of legislation bringing alive the institution itself and granting it independence. In the case of the ECB, this democratic process was ultimately rooted within the parliamentary processes within all Member States and resulted in the adoption of the EU Treaties which established the ECB as an independent institution.”²³

However, it is then noted that the act of creating the independent institution is not, in itself, sufficient for democratic legitimacy.

“While this first source of legitimization addresses the establishment of the independent institution, it is not sufficient to ensure that the exercise of power of this institution is also legitimate.”²⁴

As the legal act that creates the central bank cannot provide sufficient legitimacy, accountability enters the picture. The focus here is on the book from 1998 by *Amttenbrink*,²⁵ in which he connected central bank accountability to central bank independence through the objective of monetary policy. Firstly, central bank independence was justified by *Amttenbrink* through its connection to price stability.²⁶ Elected politicians have short time-horizons, as they want to be re-elected. Monetary policy must be set with a longer time-horizon, and thus be kept out of the hands of elected politicians to secure price stability. Independent central banking contributes to price stability. Secondly, central bank accountability would then be about evaluating the performance of the central bank against its objective.²⁷ For the ECB, this objective was included in the Maastricht Treaty: price stability. Preconditions for accountability are then the existence of a specified goal, and transparency about the how, why and effects of monetary policies. The actual holding a central bank to account then occurs through instruments or mechanisms, such as dismissal of the central bank director or through an override mechanism by a parliament or government.²⁸ The focus is always on evaluating the performance of the central bank, in light of its objective. *Amttenbrink* warned that “mechanisms of accountability lose their purpose where the central bank is effectively prevented from pursuing sound monetary policy without the danger of being overridden on

23 *Lastra/Dietz*, Maastricht Journal of European and Comparative Law 2023/4, p. 388. Also see *Grünwald/van 't Klooster*, Common Mkt. L. Rev. 2023/4, p. 975. They argue that “[t]he fundamental basis for the ECB’s democratic legitimacy is the legal mandate conferred upon it by the 1992 Maastricht Treaty.”

24 *Lastra/Dietz*, Maastricht Journal of European and Comparative Law 2023/4, p. 388.

25

26 *Amttenbrink*, pp. 11 and 379.

27 Also see *Grünwald/van 't Klooster*, Common Mkt. L. Rev. 2023/4, pp. 979–980.

28 The override mechanism means that the “central bank may be overridden in case of sub-optimal performance”, or if the Government needs to assert its overall responsibility for economic policy. See *Amttenbrink*, p. 354.

any grounds”.²⁹ If properly conceived, accountability thus has the same purpose as central bank independence. The two concepts do not (necessarily) conflict with each other, giving rise to the notion of accountable independence.³⁰

This approach had several benefits. Firstly, it structured the search for accountability to several specific conditions and instruments and provided a clear framework how the different components of accountability relate to each other.³¹ Secondly, it connected political-economic research on central bank independence to the legal framework of EMU, whilst allowing some critical distance to the law. The approach was not a mere explanation or description of the law, but offered a separate tool to evaluate the construction of the EMU. For example, *Amttenbrink* criticized the Maastricht Treaty, as the primary objective of price stability was not precise enough: “it is easier to control a narrowly defined target than a broadly defined objective”.³² Moreover, in his view, the instruments for accountability were underdeveloped in the treaty.³³ For example, by including the provisions on the ECB in the Maastricht Treaty, the use of legislation as an instrument of the European Parliament and the Council to hold the ECB accountable had been disabled. A third benefit of this approach is that it provides a clear answer to the question of what exactly is problematic with the setup of the ECB, and how it can be remedied: the democratic “problem” of the ECB lies in its lack of accountability.

The euro-crisis muddled the picture but left the message intact.³⁴ Price stability could no longer be at the centre of the relationship between accountability and independence, as the ECB also assumed the objective of protecting the integrity of the Eurozone.³⁵ The objectives of monetary policy became more complex. The ECB moreover had started using different instruments for its monetary policy, such as the large-scale purchase of government and private bonds. The use of these instruments highlighted the re-distributive effects of monetary policy,³⁶ raising the question why accountability should be limited to only monitoring the achievement of price stability. This breakdown of the original model of the connection between accountability and independence explains the surge of new publications on ECB ac-

29 *Amttenbrink*, p. 61. A very similar warning is issued by *Lastra/Dietz*, *Maastricht Journal of European and Comparative Law* 2024/4, p. 388: “Accountability mechanisms may never be construed in a way to allow the executive to de facto instruct the institution with regard to those aspects and tasks for which the institution enjoys independence and/or discretion. Accountability mechanisms are no substitution for executive command and control, but ensure that the institutions acts within its mandate and the existing legal framework according to the given objectives and tasks, while safeguarding its independence.”

30 *Lastra*, *Harvard International Law Journal* 1992/2, pp. 475–519. For a critical note, see *Amttenbrink*, p. 60.

31 *Dawson/Maricut-Akbik/Bobic*, *European Law Journal* 2019/1, p. 77.

32 *De Haan/Amttenbrink*, *West European Politics* 2000/3, p. 181.

33 *Amttenbrink*, pp. 359 and 370.

34 See, e.g., *Amttenbrink*, *Maastricht Journal of European and Comparative Law* 2019/1. Also see *Fromage* et al., *Maastricht Journal of European and Comparative Law* 2019/1, pp. 3–16.

35 ECJ, Case C-62/15, *Gauweiler*, judgement of 16 June 2015, ECLI:EU:C:2015:400.

36 *Dermine*, *Maastricht Journal of European and Comparative Law* 2019/1, p. 120.

countability.³⁷ Some of these publications focus on individual measures, such as the recent decision by the ECB to pursue climate change mitigation as a secondary objective under Art. 127 TFEU. From the model of accountability as sketched above, the use of the secondary objective is problematic, as it is questionable why it is the ECB that defines this goal,³⁸ and because it becomes more difficult to check how and whether the ECB achieves its goals. Others seek to re-examine the purpose of accountability,³⁹ or use accountability to examine the whole setup of EMU, beyond the ECB.⁴⁰ What remains unquestioned is the assumption that accountability is key to the democratic legitimacy of the ECB.

II. Accountability and legislation

As mentioned above, a strength of *Antenbrink*'s conceptualization of the connection between accountability and independence was that it focused on the same theme as the Maastricht Treaty: price stability. It was the Maastricht Treaty itself that set price stability as the primary objective of the ECB. But this "initial legitimization" of the ECB supposedly cannot justify the absence of accountability mechanisms.⁴¹ Accountability then is necessary for the democratic legitimacy of the ECB. This section examines the claim that there is a gap in the democratic legitimacy resulting from the insufficiency of the original legal act. The next section examines the claim that accountability fills the gap.

The argument about the insufficiency of the original legal act is not convincing, as it merely focuses on the creation of the independent central bank, and disregards considerations about the necessity of accountability. As described above, the provisions on the ECB included rules on the relations with the European Parliament and the Council. These provisions might have created a low level of accountability, but that was not by accident or coincidental; it was key to the setup of the ECB. This is not only the case for the ECB (to which I return below), but for many independent bodies and agencies that have been created through legislation. The argument that accountability is necessary because the original legal act is insufficient to legitimize the central bank is paternalistic. It discounts the opinion of parliament, as a (co-)legislator, to strengthen the position of parliament as a check on the independent institution. At the risk of simplifying the legislative procedure and the creation of legitimacy in the legislative process, parliaments are often involved in passing legislation that creates independent bodies, and can therefore take a position on the manner in which such a body should relate to other institutions, including parliament itself. Accountability mechanisms may support parliaments in their con-

37 *Antenbrink*, Maastricht Journal of European and Comparative Law 2019/1.

38 *van 't Klooster/De Boer*, Journal of Common Market Studies 2023/3, pp. 730–746.

39 *Akbik/Dawson*, in: Dawson (ed.); see also *Dawson/Bobić/Maricut-Akbik*, European Law Journal 2019/1, pp. 75–93.

40 See *Markakis*. The research on the democratic accountability of the ECB is moreover complemented by research on the judicial accountability of the ECB. See *Bobic*.

41 *Antenbrink*, p. 35.

trol of the executive or executive agencies, such as central banks, but that does not mean they are necessary as such from the perspective of democratic legitimacy. It remains unclear why parliaments should not be trusted with making the assessment about the level of accountability of an independent central bank when it helps to create that central bank. The paternalism is unwarranted.

Within political science, a focus on the creation of new forms of governance and the level of accountability therein is quite common. *Kelemen*, for example, studied the wave of new agencies being created throughout the 1990's in the EU, examining why new agencies were created in comparison to attributing greater powers to the Commission. In doing so, he considered the role of the European Parliament and its preferences regarding accountability.⁴² Gaps in accountability, or low levels of accountability, are often the result of a conscious choice in the construction of independent agencies or bodies.

III. Accountability as a constitutional value?

By connecting accountability to the democratic legitimacy of the ECB, the suggestion is made that accountability is part of our constitutional values, more specifically, the value of democracy.⁴³ Accountability is necessary for democratic legitimacy, and since democracy is a core aspect of our constitutional system, problems with the accountability of the ECB must be remedied. Hence, most legal contributions on the accountability of the ECB are normative, in the sense that they stress that accountability *must* or *should* be improved, but without referencing a specific legal rule that would require such action.⁴⁴ Instead, the requirement appears to flow, often implicitly, from the value or principle of democracy.

One implication of the argument that accountability is a part of the constitutional value or principle of democracy is that it would also entail a limitation of the discretion of parliaments, in their capacity as (co-)legislators, to create an independent central bank with a low level of accountability. The argument would be that a legal act that creates a central bank but which does not provide for sufficient accountability would not respect a foundational value of our constitutional system. Hence, the legislator should not adopt such an act. Below, I discuss the specific situation of the ECB being created not through an ordinary act of legislation, but by Treaty. Here, I first discuss whether accountability should indeed be seen as being part of the constitutional value of democracy, and therefore as a limitation of the powers of parliaments.

A large part of constitutional theory is already devoted to the question of defining the boundaries of the power of democratic majorities. Without doing justice to the depth of constitutional theory, limits can generally be found in the following areas: the preservation of democracy itself, human rights, the rule of

42 *Kelemen*, West European Politics 2002/4, pp. 102–104.

43 *Antenbrink*, pp. 32–33.

44 See, e.g., *Grünwald/van 't Klooster*, Common Mkt. L. Rev. 2023/4, p. 995.

law and federalism.⁴⁵ Although accountability may touch upon many of these areas,⁴⁶ it is doubtful whether accountability on its own can be framed as a general requirement of constitutional or liberal democracy, and thus, as a restriction upon the discretion of democratic majorities in parliament.⁴⁷ Rather, the arguments for restricting the discretion of parliamentary majorities to create independent and unaccountable organizations must be connected to other lines of argumentation about the restriction of majoritarian authority. Creating an institution or agency with a low level of accountability is thus not – by itself – problematic from a constitutional point of view, in the sense that it does not go against the value or principle of democracy. Parliaments can decide for themselves if they want to create a central bank without accountability-mechanisms in place. Only when it can be shown that unaccountability affects constitutional values or rules, should limits be imposed on the discretion of the legislator.

Not coincidentally, this is also how EU law engages with the issue. EU constitutional law does not *directly* address the issue of accountability as a foundational norm.⁴⁸ The EU Treaties mention accountability twice, both times only with regard to the qualities of national actors participating in European bodies.⁴⁹ Likewise, the CJEU does not refer to accountability as a foundational or general principle of EU law.⁵⁰ As mentioned above, accountability-mechanisms can be used to support the position of parliament in relation to executive agencies, and secondary legislation therefore does include references to it. Prominent examples are the Regulation 1049/2001 regarding public access to documents and the more recent Regulation 1024/2013 on the Single Supervisory Mechanism (SSM).⁵¹ Whereas the former finds, in a recital, a connection between transparency and accountability, the latter uses accountability as the key mechanism to describe the relation between the ECB on

45 See, e.g., *Kumm*, International Journal of Constitutional Law 2016/3, pp. 710–711.

46 To see how several concepts of constitutional law relate to accountability see *Harlow*, in: Bovens/Goodin/Schillemans (eds.), pp. 199, 205.

47 For two critical accounts of the connection between democracy and accountability, see *Heidelberg*, in: Dawson (ed.), pp. 45–62 and *Mansbridge*, Against Accountability, available at: <https://cadmus.eui.eu/handle/1814/15164> (17/01/2025).

48 *Fromage* et al., Maastricht Journal of European and Comparative Law 2019/1, p. 12. They argue that the lack of a reference to accountability is surprising but might be explained by the fact that the concept of accountability is difficult to translate.

49 Art. 10 para. 2 TEU and Art. 300 para. 3 TFEU.

50 But see ECJ, Joined Cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR*, judgement of 9 November 2010, ECLI:EU:C:2010:662, para. 68. The ECJ discusses accountability here in light of the principle of transparency as found in Art. 1 TEU. However, it appears to approach accountability as the *rationale* for transparency, and not as a separate legal principle. Also see ECJ, Case C-41/00, *Interporc*, judgement of 6 March 2003, para. 39. Also see on this *Lenaerts*, International & Comparative Law Quarterly 2013/2, p. 277.

51 Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents, 2001 OJ L 145/43; Council Regulation (EU) 1024/2013 on the SSM conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, 2013 OJ L 287/63.

the one hand and the European Parliament and the Council on the other hand.⁵² Nevertheless, the SSM Regulation could have been adopted without the specific chapter on accountability without violating EU law, demonstrating that the level of accountability is primarily a political question (to be decided by democratic majority) and not a constitutional question. The fact that accountability is not explicitly mentioned in the EU Treaties does not mean that there are no restrictions regarding the creation of independent institutions in the EU legal order. With regards to EU agencies, the *Meroni*-doctrine limits the delegation of discretionary powers to independent agencies and thus sets a limit to the discretion of the Union legislator. Central to the *Meroni* doctrine is the institutional balance, as enshrined in the EU Treaties. Hence, *Meroni* protects the principle of conferral.⁵³ As a result, it only affects delegation *by* Union institutions, not delegation *to* Union institutions by the Member States through primary law, which is why it is of little concern for the setup of the ECB. With regards to national agencies and bodies whose independence and competences are protected by Union law, the CJEU at first sight does appear to require some form of accountability, as it finds “the absence of any parliamentary influence over those authorities [to be] inconceivable”.⁵⁴ However, upon closer inspection it does not appear that the Court speaks of accountability here, as the requirement can be satisfied according to the Court by making parliament responsible for appointing the management of the agency or body, and by imposing regular reporting requirements.⁵⁵ More importantly, even these very minimal requirements flow from the Court’s concern for the constitutional structures of the MS, rather than a need for accountability as such.

The main consequence of accountability not being part of the constitutional value of democracy, in that it is neither a value of constitutional democracy, nor of EU constitutional law as such, is that it challenges the notion that accountability is *necessary* for independent agencies and bodies, such as central banks. Several problems follow from this: firstly, the lack of legal foundations causes the definition of accountability to become blurry, as there are no *legal* arguments against unwarranted divergences from a strict or pure approach to accountability. As noted in the introduction, there is a stable practice in the strict application of the concept of accountability, especially by a core group of authors.⁵⁶ However, the concept

52 Recital 2 Regulation 1049/2001; Art. 20 Regulation 1024/2013 on the SSM.

53 See, however, the Opinion of the Advocate General Jääskinen, Case C-270/12, delivered on 12 September 2013, para. 85: “The principle of democracy, enshrined in Art. 2 and 10 TEU, necessarily dictates that any power to adopt an EU measure that can alter the non-essential elements of an EU legislative act must be exercised by an EU institution that is democratically accountable, in other words by the Commission, which is ultimately accountable to the European Parliament.”

54 ECJ, Case C-518/07, *Commission v. Germany*, judgement of 9 March 2010, EU:C:2010:125, para. 43. Also see ECJ, Case C-718/18, *Commission v. Germany*, judgement of 2 September 2021, ECLI:EU:C:2021:662, para. 126.

55 ECJ, Case C-518/07, *Commission v. Germany*, judgement of 9 March 2010, EU:C:2010:125, paras. 44–45.

56 See *Antenbrink*, Maastricht Journal of European and Comparative Law 2019/1.

is easily seized and modified by others, such as the ECB itself,⁵⁷ with the result that the ECB is then seen to have “accountability of a special kind”⁵⁸ or that accountability is “tailor-made”.⁵⁹ From a legal perspective, there is no reason why alternative interpretations of the concept of accountability are mistaken, yet it leads to a broad array of standards being applied to critique the ECB.

The second, more pertinent, problem is the identification of a responsible institution for remedying problems with accountability. Even if the level of accountability is found to be problematic in a specific situation, it remains unclear who should resolve the situation, on what legal ground, and to what extent. Hence, the practice of accountability studies is to offer policy proposals, rather than legal advice, meaning here advice on what the law requires.⁶⁰ Lastly, the lack of a clear institutional responsibility with regard to accountability further compounds the problem of the lack of a clear standard, as, in constitutional law, the problem of what the appropriate standard should be may be intertwined with the question of who should enforce that standard.⁶¹

The misunderstanding might arise here that the argument presented in this part of the article—that accountability lacks constitutional foundations—disappears if we take a slightly broader definition of accountability. The argument here has focused on the supposed need of accountability for executive agencies, such as central banks, towards parliaments. However, numerous relations within constitutional law may be described as a form of accountability.⁶² For example, in parliamentary systems, the relation between the government and parliament can be seen as a form of accountability.⁶³ Even the ability to adopt legislation in order to circumscribe or abolish the powers of an independent agency may be seen as a form of accountability. If various forms of checks and balances between branches of government are a form of accountability, then surely accountability must be seen as a requirement of constitutional democracy? Even if we take such a broad perspective—rephrasing constitutional relations as accountability mechanisms—the issue identified above does not disappear. If we include, for example, the adoption and withdrawal of legislation (or treaties) as a possible avenue of accountability, so that agencies are seen as accountable to parliament because parliament may initiate or adopt legislation concerning that agency, then the question becomes why *that specific form of accountability* is not sufficient to legitimize the exercise of public powers by an independent body.

57 Fraccaroli/Giovanni/Jamet, ECB Economic Bulletin 2018/5, p. 47: “the evolution of its [the ECB’s] role during the crisis was accompanied by a commensurate evolution in its accountability practices”.

58 Fromage/Ibrido, Journal of European Integration 2018/3, p. 297.

59 Bovenschen/Ter Kuile/Wissink, Common Mkt. L. Rev. 2015/1.

60 See, e.g., Markakis, p. 141, and Grünewald/van ’t Klooster, Common Mkt. L. Rev. 2023/4, pp. 959, 982.

61 Maduro, p. 104.

62 For a broader account of accountability, see Olson, pp. 53–55.

63 Amtenbrink, p. 28. Harlow, p. 205.

IV. The over-constitutionalization of the ECB

The focus in the previous section has been on legislation creating independent agencies and bodies, such as central banks. The ECB is, of course, somewhat special in this regard. The creation of the ECB flows from the Maastricht Treaty, and not from ordinary legislation. The principal features of the ECB are regulated in primary law and can only be changed through the unanimous agreement of 27 Member States.⁶⁴ Although several treaty-based features of EMU have been subject to creative re-interpretation during the crisis, the independence of the ECB remains unchanged.

These distinct legal foundations of the ECB complicate the argument about the use of accountability as a normative standard in several ways. Firstly, the democratic legitimacy of the EU Treaties does not flow from the European Parliament, but from the national ratification procedures that either involved the electorate directly through referendums, or indirectly, through ratifying acts adopted by national parliaments.⁶⁵ Hence, the European Parliament has not been involved in the creation of the ECB, nor in many other parts of EMU. It was therefore the national parliaments that accepted the low level of accountability of the ECB towards the European Parliament.

Secondly, the involvement of all Member States in the creation and adoption of the Maastricht Treaty, or later the accession to the EU, bestows, *prima facie*, a high level of democratic legitimacy upon the Treaties, and thus, the ECB. Rather than the result of a *majoritarian* decision-making procedure, the ECB is the product of a form of constitution-making. The argument presented above is that the paternalistic approach to accountability is without a proper justification. That argument applies even more forcefully in relation to the ECB, as the Maastricht Treaty was subject to national ratification procedures. Any argument about the lack of democratic legitimacy of the ECB must engage with the fact that the EU Treaties are collectively approved by national electorates and/or the national parliaments, first in the twelve Member States who were the parties to the Maastricht Treaty, and later by those joining the European Union.

The question then is if these parliaments or electorates went beyond what they should have been allowed to decide, based on specific constitutional values or rules. This issue—what may be regulated on the EU primary law level—is indeed gathering attention amongst EU and constitutional law scholars.⁶⁶ *Davies* has argued that “purposive competences”, i.e., EU competences that must be used for a specific

64 Note that several parts of EU primary law concerning the ECB can be amended through ordinary legislation. See Art. 129 para. 3 TFEU and Art. 140 paras. 1, 2 Statute of the European System of Central Banks and of the European Central Bank (Statute of the ESCB/ECB).

65 As discussed above in section B.I.

66 *Cruz*, p. 173. For the effects of the constitutionalisation of EMU, see *van der Sluis*, In Law we Trust: The role of EU Constitutional Law in European Monetary Integration, pp. 1 et seq.

goal, frustrate a genuine political debate in the EU.⁶⁷ Especially in the case where it concerns exclusive competences, where national authorities are prohibited from taking action, connecting the use of a competence to a specific goal is problematic, as it prevents *any* legislator in the EU from achieving certain goals through a specific competence. The issue here is not which competences may or may not be transferred to the EU, but the legal technique of such a transfer. *Grimm* has voiced a similar complaint, as he argued that the over-constitutionalisation of EU law has the effect of insulating the executive and judicial bodies from public pressure.⁶⁸

The main question is then whether those who adopted and ratified the Maastricht Treaty acted within the boundaries of their discretion to create a body with such a high level of independence and a specific set of objectives. The legal standard for such a review can be found either in national constitutional law, which often includes references to the principle of democracy, or, more speculatively, to the notion of unconstitutional constitutional amendments in EU law.⁶⁹ *Grimm* has argued that there “are no universally applicable principles for determining what belongs in a constitution and what does not.”⁷⁰ As I have discussed elsewhere, the notion of inter-generational legitimacy can be used as a starting point for discussing such principles.⁷¹ The argument would be that a (super)majority is not allowed to speak for future generations by empowering future minorities to block the amendment or repeal of constitutional provisions. Only provisions aimed at securing the conditions under which future majorities can legitimately express themselves are then suitable to be elevated to the constitutional level. Over-constitutionalization is thus a restriction of democracy and must be avoided on that ground. In this view, the detailed regulation of the independence of the ECB in the Maastricht Treaty was an abuse of the treaty-making powers of the MS. Independent central banking then is only permissible if it is based on ordinary legislation, so that future democratic majorities can reorganize monetary affairs as they see fit.

C. Mapping the institutional relations of the ECB

The previous section discussed the limited usefulness of accountability as a normative standard for the ECB. This section looks at accountability as an analytical tool to understand how central banks relate to other public bodies.⁷² A key element of accountability-studies of the ECB is that the focus is primarily on the relationship between the ECB and the European Parliament.⁷³ Numerous studies focus then on

67 *Davies*, European Law Journal 2015/1, pp. 2–22.

68 *Grimm*, p. 100.

69 See *Passchier/Stremmer*, Cambridge Journal of International and Comparative Law 2016/2.

70 *Grimm*, p. 87. He goes on to acknowledge on p. 88 that “[t]he function of constitutions is to legitimate and to limit political power, but not to replace it. Constitutions are a framework for politics, not the blueprint for all political decisions”.

71 *van der Sluis*, International Journal of Constitutional Law 2016/2, pp. 480–485.

72 This section builds on earlier work. See *van der Sluis*, in: Arcuri/Coman-Kund, pp. 91 et seq.

73 See, e.g., *Grünewald/van ’t Klooster*, Common Mkt. L. Rev.2023/4, p. 975.

how this accountability-relationship is used in practice by the ECB and the EP. Although these studies are often normative in nature, as they aim to examine whether the accountability in practice is sufficient to give it democratic legitimacy, they have also shaped our understanding of the institutional environment of the ECB. The effect of accountability studies is that the EP appears to be the main institution for the ECB to interact with. This section aims to correct this understanding and set out a different line of research for the ECB. The suggestion is that the institutional relations of the ECB must be examined by looking at the intertwinement of competences, as they create interdependencies between institutions.⁷⁴ Central banks do not operate in a policy-vacuum, not even the independent ones; to achieve their goals they are dependent on other public bodies and therefore seek to maintain relations with them.

This section proceeds as follows: in the first part, the intertwinement of fiscal and monetary policy is briefly explained in rather general terms. The second part provides historical examples through an analysis of the position of the *Bundesbank* (pre-euro), before explaining in the third part the situation for the ECB.

I. Monetary and fiscal dominance

To understand the interdependencies between economic and fiscal policies on the one hand, and monetary policies on the other hand, it is instructive to start with a quote from ECB Executive Board member *Schnabel* about monetary and fiscal dominance:

“The euro has been built on the principle of *monetary dominance*. This means that the European Central Bank (ECB) pursues its monetary policy objectives, as defined by its mandate in the European Treaties, without being constrained by other considerations. (...) At the time of the Maastricht Treaty, high government debt was seen as a major threat to central bank independence, and it was feared that *fiscal dominance* could induce a central bank to deviate from its monetary policy objectives, endangering price stability.”⁷⁵

Monetary dominance thus refers to a situation where monetary policy effectively sets the conditions for fiscal policy. Fiscal policy is no constraint on monetary policy. Reversely, in a situation of fiscal dominance, the decisions of the fiscal policy maker effectively steer or determine the course of action for the monetary policy maker. It is important to note that these are not legal terms. The fiscal policy maker does not formally coerce the monetary policy maker but changes the conditions

74 The focus of this article is on the relation with other public bodies. Hence, the (problematic) relationship of the ECB with private entities is not examined here.

75 *Schnabel*, The shadow of fiscal dominance: Misconceptions, perceptions and perspectives, available at: <https://www.ecb.europa.eu/press/key/date/2020/html/ecb.sp200911~ea32bd8bb3.en.html> (17/01/2025).

in which monetary policy is conducted.⁷⁶ In this scenario, monetary policy makers *react* to fiscal policy.

To understand these interdependencies, we must look at monetary policy and fiscal and economic policy in (slightly) more detail.⁷⁷ Monetary policy generally seeks to affect the cost of money (interest rates) over the short and medium term and thereby influence the rate of inflation. It does this by, among other things, setting the interest rate that banks receive on the reserves they are obliged to hold at the central bank. This will influence the interest rates that banks charge their customers, and therefore how willing those customers are to take out loans for mortgages or investment. By stimulating or depressing such economic activities, central banks have an impact on the level of inflation. As the actions by central banks are mediated through banks, their effects are commonly aimed at the medium term. The goal of most central banks is then to maintain price stability, interpreted as a low level of inflation as deflation is seen as more harmful than inflation. Sometimes the goal of price stability is combined with other goals, such as a low level of unemployment.

Economic and fiscal policies are very diverse in their goals and functioning. Some economic policies target specific goods, such as housing, whilst fiscal policy can be used for lowering inequality and the stability of the economy as a whole. As a result, economic and fiscal policies interact with monetary policy in various ways.⁷⁸ Economic policies can also affect the demand for money, for example through the tax-benefits connected to interest paid over a mortgage. Fiscal policies also interact with monetary policy. When central bankers raise interest rates, it can limit economic growth and increase the costs of borrowing, both of which may have an effect on economic and fiscal policy. For example, recent interest rate rises of the ECB particularly affected green investments.⁷⁹ Conversely, expansive fiscal policies can stimulate economic growth and thereby lead to inflation. For example, the fiscal stimulus packages adopted in response to the pandemic contributed to the surge in inflation.⁸⁰ Due to the overlap in how monetary and economic/fiscal policy tools achieve their goals, monetary policy makers and fiscal/economic policy makers are co-dependent.

76 In *Schnabel's* account of fiscal dominance, central bankers would deviate from their monetary policy objectives. In other descriptions of fiscal/monetary dominance, central bankers are not seen as deviating from their objectives, but as being prevented from attaining their objectives due to the fact that certain pre-conditions for effective monetary policy are not met.

77 See also *Padoa-Schoppa*, p. 3.

78 The economic impacts of monetary policy are also highlighted in the German Constitutional Court decision on the ECB's Public Sector Purchase Programme (PSPP) initiated in 2015. See also *BverfGE*, 2 BvR 859/15.

79 *Jourdan/van Tilburg/Simić/Kramer/Bronstoring*, Sustainable Finance Lab Working Paper 2024, p. 13.

80 *Ascari et al.*, Fiscal Policy and Inflation in the Euro Area, available at: https://www.dnb.nl/media/uf1fw2kc/working_paper_no-820.pdf (17/01/2025).

Obviously, these interdependencies sketched out above are rather crude descriptions of the complex interaction between economic and fiscal policy and monetary policy. In reality, the interactions are complex, capricious and contested. In the speech quoted above, *Schnabel* argues that in a situation where interest rates reach the effective lower bound, meaning that they cannot go lower, fiscal policy becomes more important “to lift the economy out of a low-growth, low-inflation trap”. Obviously, this speech occurred before the recent surge in inflation, which started in 2021 and was then exacerbated by (the European response to) the Russian invasion in Ukraine as energy prices soared. Geo-political affairs and foreign policy also affect monetary policy.⁸¹

The interdependency between monetary policy and other policies is what drives the institutional relations of central banks. The emphasis is then on the relationship between central banks and the fiscal policy maker (usually embodied by the Minister of Finance).

II. The institutional relations of the Bundesbank⁸²

In the discussions on European monetary integration prior to the Maastricht Treaty it was clear that the new central bank would have to resemble the *Bundesbank*.⁸³ Famous for its independence, the *Bundesbank* had acquired a reputation for strict monetary policy, aiming at low inflation. In combination with the post-war economic miracle, the policies of the *Bundesbank* lead to a strong currency in comparison with many other currencies in the European Economic Community. As hyper-inflation had contributed to the downfall of the *Weimar*-republic, the independence of the *Bundesbank* was seen as a crucial pillar of the German political system.

From a legal perspective, and especially in comparison with the ECB, the independence of the *Bundesbank* was not particularly strong. The German Basic Law (*Grundgesetz*) did not require independence of the central bank, and allowed the legislator to decide on the competences, goals and institutional shape of the central bank. Moreover, the *Bundesbank*’s monetary policies or institutional characteristics were rarely subject to judicial scrutiny.⁸⁴ This means that two key pillars of the German state in the aftermath of WWII, the strong constitution and the strong currency, had few *direct* connections. This only changed with the rulings of the *Bundesverfassungsgericht* on the constitutionality of the Maastricht Treaty.

The independence of the *Bundesbank* was regulated in Art. 12 of the Bundesbank Act. It stipulated that the *Bundesbank* was not subject to instructions from the Federal Government. A caveat to this independence was the right of the Government to postpone decisions by the *Bundesbank* by two weeks. The *Bundesbank* was fur-

81 Also see the contribution by *Armin Abari* in this issue about the role of central banks in the EU in the EU sanctions following the Russian invasion of Ukraine.

82 This section and the next one build on my earlier work: *van der Sluis*, in: Adams/Fabbrini/Larouche (eds.).

83 *Verdun*, *Journal of Public Policy* 1998/2, p. 109.

84 *Stern*, in: *Bundesbank* (ed.), p. 136.

thermore obliged to provide information to the Government upon request and support the Government's economic policy insofar that it did not conflict with its monetary objectives. The relation between the *Bundesbank* and the German Parliament was minimal. The *Bundesbank* was not obliged to provide information, nor did it appear regularly in Parliament to give an account of its policies.⁸⁵

In public conflicts with the government, the *Bundesbank* often had the upper hand. *Marsh* attributes the resignation of three Chancellors to actions by the *Bundesbank*.⁸⁶ The *Bundesbank* moreover continuously sought to strengthen its position by educating the German public about the dangers of inflation, or to be more precise, to keep the memory of hyper-inflation alive. The aim of these campaigns, other than maintaining public support, was to strengthen its hand in conflicts with the government. By arguing for its restrained position and mandate, the *Bundesbank* tried to put the onus of accommodation on the government. As the *Bundesbank* often succeeded in this strategy, it attained its reputation as highly independent.

However, the independence of the *Bundesbank* did not always lead to a situation of monetary dominance. Often, the *Bundesbank* accommodated governmental policies to resolve conflicting positions.⁸⁷ As monetary policy is most effective when it is in unison with fiscal and economic policies; it is thus in the interest of the monetary policy maker to seek a positive relationship with the relevant policy makers (most often the Minister of Finance), whilst maintaining an aura of independence.⁸⁸ For the policy makers, this meant that attempts to influence monetary policy would be most successful if they would not appear to infringe on the *Bundesbank*'s independence. In other words, both sides had an incentive to work together smoothly and resolve tensions before they became public.

Accountability mechanisms have played only a marginal role in its political embedding as an independent central bank in the German *body politic*. The relations with the parliament were minimal; relations with the government cannot be described as an accountability mechanism, as it was a reciprocal relationship rather than a unidirectional one. Moreover, this reciprocal relationship with the government was not primarily concerned with holding the other to account, but with achieving closely related goals. Examining the accountability mechanisms of the *Bundesbank* thus offers very little insight into its institutional position. From a normative perspective, the *Bundesbank* shows that a lack of accountability is not problematic.

85 *Amttenbrink*, pp. 304–305.

86 *Marsh*, p. 146. Another important factor, not discussed here for reasons of brevity, in the relations between the *Bundesbank* and the Government was German external monetary policy.

87 *Berger/Schneider*, in: De Haan, p. 17.

88 *Marsh*, p. 7.

III. The institutional loneliness of the ECB

The ECB stands out as a central bank. In the previous section it was already discussed how the fact that the ECB was created through a treaty with constitutional characteristics affects the assessment of the democratic legitimacy of the ECB's actions. Here, another peculiar aspect of EMU is discussed, namely the imbalance between the economic and the monetary side of EMU. Whereas for monetary integration the Union would get an exclusive competence, for economic integration the Union would only get coordinating competences, in the form of the multilateral surveillance procedure and the excessive deficit procedure.⁸⁹ The powers of the Union would be strictly circumscribed in this area. The Treaties regulated the procedures already in detail, with limited opportunities for secondary legislation to deepen integration. The Member States surrendered their ability to conduct their own monetary policies, but they would remain in charge of their own economic and fiscal policy. This imbalance has been one of the most heavily discussed topics in EMU, both in the period before the adoption of the Maastricht Treaty and afterwards.⁹⁰ The point of contention in these discussions is whether or to what extent monetary integration requires economic and fiscal integration. Can a monetary union survive without a fiscal union? Less attention is paid to what the imbalance means for the institutional environment of the ECB, although it certainly has not escaped the notice of prominent scholars of EMU.

Padoa-Schioppa wrote in this regard about the “institutional loneliness” of the ECB, noting firstly that it creates a risk for the ECB as the only macro-economic policy player on the European level it could get blamed for adverse economic conditions. Secondly, he noted that the strength of a currency ultimately depends on the political system that carries it: “A strong currency requires a strong economy and a strong polity, not only a strong and capable central bank”.⁹¹ As noted by *Louis*, the ECB is missing a political counterpart: “the ECB has an interest in having an interlocutor in economic affairs”, in order to achieve a proper policy mix of monetary and fiscal policy.⁹² This means that the relationship between the monetary policy and fiscal policy makers is rather different in the Eurozone than in national contexts (prior to the euro). The lopsidedness of EMU does not only affect the economic developments of the euro area, it also greatly affects the institutional relations.⁹³ As the provisions of EMU have protected the primary responsibility for economic and fiscal policies of the Member States, the ECB engages with a plurality of policy-makers. A single monetary policy, set for the entire Eurozone, faces the economic conditions created by twenty different economic policies.⁹⁴ A single member of the Eurozone will therefore not easily be persuaded to align its policies

89 Art. 121 and 126 TFEU.

90 See *James* and *Szasz*.

91 *Padoa-Schioppa*, pp. 180–181.

92 *Louis*, in: *Louis* (ed.), p. 365.

93 *Smits*, *Fordham International Law Journal* 2007/6, pp. 1617–1618.

94 *Padoa-Schioppa*, p. 57.

with a single monetary policy set for the entire Eurozone and vice-versa. This does not mean fiscal and monetary policies in the Eurozone do no longer respond to one another, but that the institutional dynamics connected to this interaction is different in the Euro area.

The changes brought by the euro-crisis and subsequently by the COVID19-pandemic show the relevance of these two aspects of the position of the ECB, in the form of two exceptions to the standard functioning of EMU. First, there was the limited localization of monetary policy, combined with a limited centralization of economic policy. During the euro-crisis, the ECB employed several tools that were directed at Member States individually, most notably the supervision of Emergency Liquidity Assistance and the Securities Markets Programme.⁹⁵ The use of these tools led to a deepened interaction between the ECB and some Member States. Suddenly, individual Member States listened closely to the ECB and *vice-versa*. Secondly, the bailouts and the attached conditionality-packages led to a situation where economic policies for a significant part of the Eurozone were co-determined on the European level. Suddenly, and for a short period of time, there was an institutional re-connection between economic and monetary policy. This dual movement led to an institutional re-connection of monetary and fiscal policy makers, but only in relation to the use of specific tools. The creation of the Recovery Fund as part of the Next Generation EU in response to the corona crisis presents another opportunity for a better articulated European economic policy, and thus for a renewal of the relationship between economic and monetary policy makers.⁹⁶

As a result, the institutional loneliness of the ECB has been somewhat relieved, meaning that for the accomplishments of its tasks, the ECB engages in direct relations with a European economic policy maker, usually through the Eurogroup.⁹⁷ In this environment, both the independence and accountability of the ECB have acquired a different connotation. To achieve its goals and maintain its status as premier central bank on the world stage, the ECB has acted as a strategic actor throughout the crisis. This meant that in its interaction with other European bodies, it acted based on the premise that a) it needed their cooperation, and b) that its own actions influenced the degree to which other actors were willing to cooperate.⁹⁸

95 See *Beukers*, Common Mkt. L. Rev. 2013/6, pp. 1594 and 1600.

96 Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility, OJ L 57 of 18 February 2021.

97 See *Torres*, who credits *Padoa-Schioppa* for coining the phrase “institutional loneliness”: *Torres*, Journal of European Integration 2013/3, p. 294.

98 The most famous example is the Outright Monetary Transactions program by the ECB, which followed the decision to start banking union by the European Council. See *Véron*, Europe’s radical banking union, available at: https://www.bruegel.org/system/files/wp_attachments/essay_NV_CMU.pdf (17/01/2025).

D. Conclusion

The euro is a bold experiment; a currency shared by 20 Member States, governed by a supranational central bank, and part of a Union that comprises 27 Member States. Fiscal and economic policies mostly remained in the purview of the Member States. The euro now stands as key pillar of European integration, having withered an intense crisis between 2010 and 2015. To setup the experiment, the Member States used the Maastricht Treaty to lay down the main rules of Economic and Monetary Union. These rules guaranteed a high level of independence for the new central bank and included few rules on how the new central bank should interact with other institutions of the EU and the governments of the Member States. The first and foremost concern was the independence of the ECB. If anything, accountability was an afterthought. *Brentford* argued in 1998 that “[i]f we consider the costs of inflation, the price of reduced accountability in the form of a highly independent European Central Bank may be worth having”.⁹⁹ This was the deal struck with the Maastricht Treaty.

To argue now that the democratic legitimacy of the ECB depends on improving its accountability and that the ECB should participate in various accountability mechanisms would be to ignore these key features of the Maastricht Treaty. Instead, one can argue that the Maastricht Treaty itself is problematic from the perspective of democratic legitimacy. As of the 1980s, there had been a discussion in EU law about the constitutional nature of the European project. One can argue that it is a bad idea to constitutionalize economic ideas. The drafters should not have embedded their economic views on monetary union so deeply into the Treaties, and the various parliaments across the EU should not have ratified the Treaty.

There is certainly room for another perspective. Constitutions can have a wide variety of objectives, and so the charge of over-constitutionalization should not be used lightly. However, accepting the democratic legitimacy of the Maastricht Treaty precludes complaints about the democratic legitimacy of the ECB, whenever it acts within the boundaries set by the Treaties.

Bibliography

- AMTENBRINK, FABIAN, *The Democratic Accountability of Central Banks: A Comparative Study of the European Central Bank*, 1st Edition, Oxford, 1999
- AMTENBRINK, FABIAN; DE HAAN, JAKOB, *Accountability and Central Bank Independence: A Response*, *West European Politics*, 2000, Vol. 23(3), pp. 179–190
- AMTENBRINK, FABIAN, *The European Central Bank’s Intricate Independence Versus Accountability Conundrum in the Post-Crisis Governance Framework*, *Maastricht Journal of European and Comparative Law*, 2019, Vol. 26(1), pp. 165–179

⁹⁹ *Brentford*, *International and Comparative Law Quarterly* 1998/1, p. 109.

- AMTENBRINK, FABIAN; MENELAOS, MARKAKIS, *The Legitimacy and Accountability of the ECB at the Age of Twenty*, in: Beukers, Thomas; Fromage, Diane; Monti, Giorgio (eds.), *The New European Central Bank: Taking Stock and Looking Ahead*, 1st Edition, Oxford, 2022, pp. 265–291
- BERGER, HELGE; SCHNEIDER, FRIEDRICH, *The Bundesbank's reaction to policy conflicts*, in: De Haan, Jakob (ed.), *The History of the Bundesbank: Lessons for the European Central Bank*, 1st Edition, London, 2000, pp. 43–66
- BEUKERS, THOMAS, *The New ECB and Its Relationship with the Eurozone Member States: Between Central Bank Independence and Central Bank Intervention*, *Common Market Law Review*, 2013, Vol. 50, pp. 1579–1620
- BOBIC, ANA, *The Individual in the Economic and Monetary Union: A Study of Legal Accountability*, 1st Edition, Cambridge, 2024
- BOVENS, MARK, *Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism*, *West European Politics*, 2010, Vol. 33(5), pp. 946–967
- BOVENSCHEN, WILLEM; TER KUILE, GIJSBERT; WISSINK, LAURA, *Tailor-Made Accountability within the Single Supervisory Mechanism*, *Common Market Law Review*, 2015, Vol. 52(1), pp. 155–190
- BRENTFORD, PHILIP, *Constitutional Aspects of the Independence of the European Central Bank*, *International & Comparative Law Quarterly*, 1998, Vol. 47(1), pp. 75–116
- CRUZ, JULIO BAQUERO, *What's Left of the Law of Integration? Decay and Resistance in European Union Law*, 1st Edition, Oxford, 2018
- DAVIES, GARETH, *Democracy and Legitimacy in the Shadow of Purposive Competence*, *European Law Journal*, 2015, Vol. 21(1), pp. 2–22
- DAWSON, MARK; MARICUT-AKBIK, ADINA; BOBIĆ, ANA, *Reconciling Independence and Accountability at the European Central Bank: The False Promise of Proceduralism*, *European Law Journal*, 2010, Vol. 25(1), pp. 75–93
- DERMINE, PAUL, *Out of the comfort zone? The ECB, financial assistance, independence and accountability*, *Maastricht Journal of European and Comparative Law*, 2019, Vol. 26(1), pp. 68–81
- FRACCAROLI, NICOLÒ; GIOVANNINI, ALESSANDRO; JAMET, JEAN-FRANÇOIS, *The Evolution of the ECB's Accountability Practices during the Crisis*, *ECB Economic Bulletin*, 2018, Issue 5, pp. 47–65
- FROMAGE, DIANE; IBRIDO, RENATE, *The 'Banking Dialogue' as a Model to Improve Parliamentary Involvement in the Monetary Dialogue?*, *Journal of European Integration*, 2018, Vol. 40(3), pp. 295–308
- FROMAGE, DIANE; DERMINE, PAUL; NICOLAIDES, PHEDON; TUORI, KLAUS, *ECB Independence and Accountability Today: Towards a (Necessary) Redefinition?*, *Maastricht Journal of European and Comparative Law*, 2019, Vol. 26(1), pp. 3–16

- GORMLEY, LAURENCE; DE HAAN, JAKOB, *The Democratic Deficit of the European Central Bank*, *European Law Review*, 1996, Vol. 21(2), pp. 95–112
- GRIMM, DIETER, *The Constitution of European Democracy*, 1st Edition, Oxford, 2017
- GRÜNEWALD, SERAINA; VAN 'T KLOOSTER, JENS, *New strategy, new accountability? The European Central Bank and the European Parliament after the strategy review*, *Common Market Law Review*, 2023, Vol. 60(4), pp. 959–998
- HARLOW, CAROL, *Accountability and Constitutional Law*, in: Bovens, Mark; Goodin, Robert E.; Schillemans, Thomas (eds.), *The Oxford Handbook of Public Accountability*, 1st Edition, Oxford, 2014, pp. 195–210
- HEIDELBERG, ROY, *Reconsidering the Good of Improving Accountability*, in: Dawson, Mark (ed.), *Substantive Accountability in Europe's New Economic Governance*, 1st Edition, Cambridge, 2023, pp. 45–62
- JAMES, HAROLD, *Making the European Monetary Union*, 1st Edition, Cambridge, 2012
- JOURDAN, STANISLAS; VAN TILBURG, RENS; SIMIC, ALEKSANDAR; KRAMER, BRENDA; BRONSTERING, GASTON, *A Green Interest Rate For The Eurozone: Evaluating The Design Choices*, *Sustainable Finance Lab Working Paper*, October 2024
- KELEMEN, DANIEL R., *The Politics of 'Eurocratic' Structure and the New European Agencies*, *West European Politics*, 2022, Vol. 25(4), pp. 93–118
- KUMM, MATTIAS, *Constituent power, cosmopolitan constitutionalism, and post-positivist law*, *International Journal of Constitutional Law*, 2016, Vol. 14(3), pp. 697–711
- LASTRA, ROSA MARÍA; DIETZ, SARA, *Accountability of greening the ECB*, *Maastricht Journal of European and Comparative Law*, 2023, Vol. 30(4), pp. 377–395
- LASTRA, ROSA MARÍA; SKINNER, CHRISTINA PARAJON, *Sustainable Central Banking*, *Virginia Journal of International Law*, 2023, Vol. 63(3), pp. 397–446
- LASTRA, ROSA MARÍA, *The Independence of the European System of Central Banks*, *Harvard International Law Journal*, 1992, Vol. 33(2), pp. 475–519
- LENAERTS, KOEN, *The Principle of Democracy in the Case Law of the European Court of Justice*, *International & Comparative Law Quarterly*, 2013, Vol. 62(2), pp. 271–315
- LOUIS, JEAN-VICTOR, *The Euro-Group and Economic Policy Coordination*, in: Louis, Jean-Victor (ed.), *The Euro in the National Context*, *British Institute of International and Comparative Law*, London, 2002, pp. 351–371

- MADURO, MIGUEL POIARES, *We the Court: The European Court of Justice and the European Economic Constitution: A Critical Reading of Article 30 of the EC Treaty*, 1st Edition, Oxford, 1998
- MARSH, DAVID, *The Bundesbank: The Bank that Rules Europe*, 1st Edition, London, 1992
- MARKAKIS, MENELAOS, *Accountability in the Economic and Monetary Union: Foundations, Policy, and Governance*, 1st Edition, Oxford, 2020
- OLSON, JOHAN P., *Democratic Accountability, Political Order, and Change: Exploring Accountability Processes in an Era of European Transformation*, 1st Edition, Oxford, 2017
- PADOA-SCHIOPPA, TOMMASO, *The Euro and Its Central Bank: Getting United after the Union*, 1st Edition, Cambridge, 2004
- PASSCHIER, REIJER; STREMLER, MAARTEN, *Unconstitutional Constitutional Amendments in European Union Law: Considering the Existence of Substantive Constraints on Treaty Revision*, Cambridge Journal of International and Comparative Law, 2016, Vol. 5(2), p. 337–362
- PETIT, CHRISTY ANN, *Balancing independence with accountability: a third-metre waltz?*, Maastricht Journal of European and Comparative Law, 2019, Vol. 26(1), pp. 17–34
- PUNTSCHER RIEKMANN, SONJA, *In Search of Lost Norms: Is Accountability the Solution to the Legitimacy Problems of the European Union?*, Comparative European Politics, 2007, Vol. 5, pp. 121–137
- SMITS, RENE, *The European Central Bank's Independence and Its Relations with Economic Policy Makers*, Fordham International Law Journal, 2007, Vol. 31, pp. 1614–1636
- STERN, KLAUS, *The Note-Issuing Bank within the State Structure*, in: DEUTSCHE BUNDESBANK (ed.), *Fifty Years of the Deutsche Mark: Central Bank and the Currency in Germany since 1948*, 1st Edition, Oxford, 1999, pp. 307–334
- SZÁSZ, ANDRÉ, *The Road to European Monetary Union*, 1st Edition, London, 2000
- TUORI, KLAUS, *This time it is for real – the ECB's accountability amidst rampant inflation*, Maastricht Journal of European and Comparative Law, 2023, Vol. 30(4), pp. 491–505
- TORRES, FRANCISCO, *The EMU's Legitimacy and the ECB as a Strategic Political Player in the Crisis Context*, Journal of European Integration, 2013, Vol. 35(3), pp. 287–300
- VAN 'T KLOOSTER, JENS; DE BOER, NIK, *What to Do with the ECB's Secondary Mandate*, Journal of Common Market Studies, 2023, Vol. 61(3), pp. 730–746

- VAN DER SLUIS, MARIJN, *Maastricht Revisited: Economic Constitutionalism, the ECB and the Bundesbank*, in: Adams, Maurice; Fabbrini, Federico; Larouche, Pierre (eds.), *The constitutionalization of European budgetary constraints*, 1st Edition, Oxford, 2014
- VAN DER SLUIS, MARIJN, *EU law for a new generation?*, *International Journal of Constitutional Law*, 2016, Vol. 14(2), pp. 480–485
- VAN DER SLUIS, MARIJN, *In Law We Trust: The Role of EU Constitutional Law in European Monetary Integration*, PhD Thesis, European University Institute, Florence, 2017
- VAN DER SLUIS, MARIJN, *Contesting the monetary policies of the European Central Bank*, in: Arcuri, Alessandra; Coman-Kund, Florin (eds.), *Technocracy and the Law*, 1st Edition, London, 2021, pp. 91–108
- VERDUN, AMY, *The Institutional Design of EMU: A Democratic Deficit?*, *Journal of Public Policy*, 1998, Vol. 18(2), pp. 107–132



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