

Balancing independence with accountability: A third-metre waltz?

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Abstract

This article assesses the past and current balance of independence with accountability for the European Central Bank (ECB). The concept of accountability is adapted to the central bank context, notably with the contextualisation of ‘accountable independence’ in the early ECB’s inception. Different endogenous and exogenous determinants might influence such balance. If initially a communication-driven strategy embodied a somehow weak accountability regime, additional accountability practices – beyond the Treaty provisions – progressively readjusted the balance; yet, without guaranteeing to *call* and *fully hold* the ECB to account. The magnitude of the responsibilities assumed by the ECB in the recent years, after the economic and financial crisis, triggered an increased demand for accountability. The intensification of ECB’s accountability practices, the provision of justifications beyond mere explanations and an increased scrutiny over the ECB all demonstrate an ongoing step towards an enhanced accountability regime. This is nevertheless a potentially reversible oscillation of the balance towards more accountability. The legal framework for ECB’s accountability seems flexible enough to encompass accountable independence, independence *but* accountability, to a third-metre waltz of independence *and* accountability.

Keywords

European central bank, independence, accountability, balance, accountable independence, communication

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I. Introduction

Is the European Central Bank (ECB) still, as has been claimed, the most accountable Central Bank in the world?¹ Has it been endowed with an ‘operational and goal independence that no other Central Bank in the world has attained’?² These incredibly strong views from 1999 are in discordance with the prevailing views expressed since then. Accountability is a multifaceted concept, controversial in its relationship with the principle of independence.³

Historically, the status of the ECB has been determined in a Treaty ratified by all Member States giving a formal source of accountability and legitimacy to the ECB.⁴ The clarity of the ECB’s mandate facilitates the assessment of the scope of its actions and of the fulfilment of its tasks.⁵ The initial ECB’s creation and its democratic determination as part of the European System of Central Banks (ESCB) is, however, not sufficient per se to guarantee its accountability.⁶ The democratic control should be continuous during the ECB’s operations⁷ insofar as the ECB is a non-majoritarian institution benefiting from a delegation of powers.⁸ The independence of the ECB does not mean that the ECB constitutes an entity independent of and separated from the Union, as the ECB ‘falls squarely within the [European Union (EU)] framework’⁹ and is generally subject to various kinds of ‘[EU] controls’.¹⁰ The ECB embeddedness in the EU legal order matters for the balance of independence with accountability. Indeed, the ECB coexists with other EU institutions and actors.

The two principles are often presented as ‘two sides of the same coin’.¹¹ Legally, both principles are framed respectively, in Article 130 of the Treaty on the Functioning of the European Union

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1. Former ECB’s Executive Board member, O. Issing, ‘The Eurosystem: Transparent and Accountable or “Willem in Euroland”’, 37 *Journal of Common Market Studies* (1999), p. 503-519, 505.
 2. European Parliament, ‘Report of the Institutional Committee on the constitutional implications of EMU in the context of enlargement Committee on Institutional Affairs’, *European Parliament* (1999), http://www.europarl.europa.eu/doceo/document/A-8-2016-0390_EN.html.
 3. On the conceptualization of the principles of independence and accountability see the introduction of this volume.
 4. O. Issing, 37 *Journal of Common Market Studies* (1999), p. 509; 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. 332; C. Zilioli and M. Selmayr, *The Law of the European Central Bank* (Hart Publishing, 2001), p. 48.
 5. European Central Bank, ‘ECB Annual Report 1999’ *European Central Bank* (2000), <https://www.ecb.europa.eu/pub/pdf/annrep/ar1999en.pdf?94f617e383ca3cf41a839372bf8c8bb3>, p. 130: the mandate serves as a benchmark.
 6. The Treaty of Maastricht was indeed approved by Member States and ratified by national parliaments.
 7. R. M. Lastra, ‘The Independence of the European System of Central Banks’, 33 *Harvard International Law Journal* (1992), p. 499.
 8. G. Majone, ‘Independence vs. Accountability? Non-Majoritarian Institutions and Democratic Government in Europe’, *EUI Working Papers in Political and Social Sciences* No. 3 (1994), <http://cadmus.eui.eu/handle/1814/245>.
 9. Case C-11/00 *Commission v. ECB*, EU:C:2003:395, para. 92. The *OLAF* case, the first decision on the ECB’s institutional framework, has been fully reasserted by the recognition of the ECB as an EU institution in Article 13 of the Treaty on European Union (TEU).
 10. *Ibid.*, para. 135. Regarding the ECB’s status as an EU institution in the EU legal order, the Court of Justice has affirmed: ‘the ESCB represents a *novel legal construct* in EU law which brings together national institutions, namely the national central banks, and an EU institution, namely the ECB, and causes them to cooperate closely with each other, and within which a different structure and a *less marked distinction between the EU legal order and national legal orders* prevails’, see Joint Cases C-202/18 *Ilmārs Rimšēvičs v. Republic of Latvia* and C-238/18 *ECB v. Republic of Latvia*, EU:C:2019:139, para. 69 (emphasis added).
 11. O. Issing, 37 *Journal of Common Market Studies* (1999), p. 509; R.M. Lastra, 33 *Harvard International Law Journal* (1992), p. 496 and 519; also, European Central Bank, ‘ECB, Monthly Bulletin, November 2002’, *European Central*

(TFEU) for the principle of independence, and in Article 284(3) TFEU for the principle of accountability.¹² The ECB has, I argue here, balanced its independence with accountability with oscillations towards more accountability over time. The practices, operations and policies of the ECB model its accountability regime, de facto. The ECB's accountability is increasingly operationalised beyond the Treaty provisions.

This article envisions the evolving balance of independence with accountability as a duple-metre waltz: the first metre is accountable independence; the second metre, independent *but* accountable. The first is one-sided while the second represents an opposition. The next – wishful thought – step is to fully reach the third-metre waltz: independent *and* accountable.¹³

The article first contextualises and explains the concepts of accountable independence and accountability but independence for the ECB. Against this background, this article assesses the past and current balance of independence with accountability and identifies some of its evolutions in the pre-crisis and post-crisis era. The analysis is primarily qualitative¹⁴ and some results stem from a textual study of some ECB's institutional documents (that is, ECB's annual reports and bulletins) and the European Parliament's Resolutions. The magnitude of the responsibilities, tasks and functions assumed by the ECB in the recent years justify a reinforcement of the ECB's accountability regime, de jure, while duly preserving its independence.¹⁵ Accountability practices have shown an intensification of accountability channels between the ECB and other institutions and an increased scrutiny. Such evolutions observed de facto might be a preliminary step for grounding independence and accountability on an equal footing.

The balance of independence with accountability is contextualised and delineated for the ECB, leaning to accountable independence (Section 2). Remarkably, the ECB's balance of independence with accountability has evolved over time with an apparent strengthening of its accountability practices since the crisis (Section 3).

2. Defining the balance of independence with accountability: Meaning and determinants

After adapting and refining accountability in the Central Bank independence context, the article identifies the ECB's account callers and holders, and its 'accountable independence' (Section 2.A).

Bank (2002), <https://www.ecb.europa.eu/pub/pdf/mobu/mb200211en.pdf>, p. 46; Transparency International EU, 'Two Sides of the Same Coin? Independence and Accountability of the European Central Bank', *Transparency International* (2017), https://transparency.eu/wp-content/uploads/2017/03/TI-EU_ECB_Report_DIGITAL.pdf.

12. For the principle of central bank independence, see Opinion of Advocate General Jacobs Opinion in Case C-11/00 *Commission v. ECB*, EU:C:2002:556, para. 50. In the constitutional framework: see also Article 130 and 15(3) of the ESCB Statute.
13. A waltz follows triple metre as a rule. Exceptionally, some pieces are in duple-metre, i.e. F. Chopin, *Waltz in A-flat major*, Opus 42.
14. Quantitative studies are extensive in the economics and legal literature: see A. Alesina and L.H. Summers, 'Central bank independence and macroeconomic performance: some comparative evidence', 25 *Journal of Money, Credit and Banking* (1993), p. 151–162; A. Cukierman, S.B. Web, and B. Neyapti, 'Measuring the independence of central banks and its effect on policy outcomes', 6 *The World Bank Economic Review* (1992), p. 353–398; N.N. Dincer and B. Eichengreen, 'Central Bank Transparency and Independence: Updates and New Measures', 10 *International Journal of Central Banking* (2014), p. 189–253; J. De Haan, F. Amtenbrink and S.C.W. Eijffinger, 'Accountability of central banks: aspects and quantification', *BNL quarterly review* (1999), p. 169–193, 171 and 177.
15. See the general introduction.

The potential exogenous and endogenous determinants of the balance of independence with accountability are further conceptualised (Section 2.B).

A Refining accountability

The ECB has defined its acceptance of accountability in early publications as ‘the legal and political obligation of an independent central bank to justify and explain its decisions to the citizens and their elected representatives’¹⁶ ‘thereby holding the central bank responsible for achieving its objectives’.¹⁷ This definition, reiterated in ECB’s Annual Reports before the crisis,¹⁸ is adjusted in 2007 and reads: ‘the obligation to explain *how it used its powers* and to justify its decisions to citizens and their elected representatives’.¹⁹ For instance, the ECB President had been invited to an additional hearing before the European Parliament’s Committee on Economic and Monetary Affairs (ECON) ‘to explain the ECB’s operations in the money market in response to the financial market turmoil during the second half of 2007’.²⁰ However, in 2008, this definition is simplified: ‘the obligation to explain and justify its decisions to citizens and their political representatives’.²¹ From 2009 onwards, the Annual Reports state roughly that accountability is the necessary counterpart of independence.²²

I Tailor-made accountability

The features of accountability are commented in light of a doctrinal conceptualisation. Bovens defined accountability as:

‘a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences’.²³

This borrowed definition needs to be slightly adapted for an independent Central Bank. Firstly, there are a number of forums instead of a unique forum. Secondly, whereas explaining makes a situation, a measure or a policy clearer, justifying necessitates proving the measure or policy is reasonable or right, in a given situation. If the ECB has many occasions to explain itself, the instances for justification seemed fewer, at least until the crisis and post-crisis era. Thirdly, the

16. European Central Bank, ‘ECB, Monthly Bulletin, November 2002’, *European Central Bank* (2002), p. 45.

17. European Central Bank, ‘ECB Annual Report 2003’, *European Central Bank* (2004), <https://www.ecb.europa.eu/pub/pdf/annrep/ar2003en.pdf?6a8f34490d6044e9cf6b4fd4761a9d18>, p. 142.

18. *Ibid.*, and ECB Annual Reports 2004 to 2006, respectively, p. 142, 152, 166.

19. European Central Bank, ‘ECB Annual Report 2007’, *European Central Bank* (2008), <https://www.ecb.europa.eu/pub/pdf/annrep/ar2007en.pdf?e8d45fad08e7d67e5d824ddac2f6db07>, p. 178 (emphasis added).

20. *Ibid.*

21. European Central Bank, ‘ECB Annual Report 2008’, *European Central Bank* (2009), <https://www.ecb.europa.eu/pub/pdf/annrep/ar2008en.pdf?0da1f91236eeb11eed9f832a4a874095>, p. 184.

22. European Central Bank, ‘ECB Annual Report 2009’, *European Central Bank* (2010), <https://www.ecb.europa.eu/pub/pdf/annrep/ar2009en.pdf>, p. 170; European Central Bank, ‘ECB Annual Report 2017’, *European Central Bank* (2018), <https://www.ecb.europa.eu/pub/pdf/annrep/ecb.ar2017.en.pdf?8887833fa471f64f8293868ae8260877>, p. 99; European Central Bank, ‘ECB Annual Report 2018’, *European Central Bank* (2019), <https://www.ecb.europa.eu/pub/pdf/annrep/ar2018~d08cb4c623.en.pdf?d4db50437f47e3b9914e1381b1a2cde>, p. 96.

23. M. Bovens, ‘Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism’, 33 *West European Politics* (2010), p. 951.

ability of all the fora to pass judgment is limited. Judicial control exerted by the Court of Justice of the European Union (CJEU),²⁴ and the ECB's interactions with the European Parliament are the main avenues 'to pass judgment' on the ECB. The judgment of the general public has gained attention. The European citizens' trust in the ECB is, indeed, regularly monitored.²⁵ The public distrust observed during the crisis²⁶ has forced the ECB to face this public judgment. Fourthly, the possibility to 'face consequences' is a softer version of sanction or reward²⁷ and has a deterrence effect. Public 'sanctions' and consequences may have grounded (some of) the ECB's accountability practices' evolutions (see the third section).

The definition of accountability is, therefore, adjusted in the Central Bank independence context in relation to the forums, the explanation and justification provided, the judgment and consequences faced. Moreover, calling to account differs from holding to account.²⁸ Calling the ECB to account should result in giving information, explanation and justification of its actions and policies. Holding to account should refer to the obligation of the ECB to accept the consequences.

2 Identifying the ECB's account callers and holders

The forums respecting ECB's independence, and calling or holding it to account are manifold: the public, EU institutions including the European Parliament, the Council, the Commission, and the European Council.²⁹ The CJEU, the European Ombudsman, the European Court of Auditor (ECA), and the European Anti-Fraud Office (OLAF) strengthened their scrutiny position in the ECB's accountability regime over years.

The European Parliament is the main account holder/caller considering its place in the EU democratic system of checks and balances as the only institution fully composed with directly elected representatives of EU citizens.³⁰ It benefits from 'stringent reporting requirements'³¹ with hearings and regular appearances of the ECB President and the Chair and Vice-Chair in Banking

24. Articles 263, 265, 267, 268 and 340 TFEU, and Article 35 of the ESCB Statute.

25. Eurobarometer surveys, available on European Commission, 'Public Opinion', *European Commission* (2019), <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm>.

26. The tasks assumed during the crisis led to the highest level of distrust in the ECB. See M. Ehrmann, M. Soudan and L. Stracca, 'Explaining EU citizens' trust in the ECB in normal and crisis times', *ECB Working paper series* No. 1501 (2012), <https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1501.pdf>, p. 10–11; T. Tesche, 'Instrumentalizing EMU's democratic deficit: the ECB's unconventional accountability measures during the eurozone crisis', (2018) *Journal of European Integration*, p. 5–6.

27. M. Bovens, 33 *West European politics* (2010), p. 951.

28. This distinction has already been applied to the executive, L.F.M. Verhey, 'Fostering executive accountability in the EU: a key issue', in J. Wouters, L.F.M. Verhey and P. Küiver (eds.), *European constitutionalism beyond Lisbon*, (Intersentia, 2009), p. 249.

29. Articles 284(3) TFEU, in Banking Supervision's accountability regime, also the Eurogroup. See Article 21 of 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 (the SSM Regulation).

30. European Central Bank, 'ECB, Monthly Bulletin, November 2002', *European Central Bank* (2002), p. 45; see Article 10 TEU, on democratic accountability, see F. Amtenbrink, *The Democratic Accountability of European Central Banks. A Comparative Study of the European Central Bank* (Hart, 1999).

31. Emphasised since European Central Bank, 'ECB Annual Report, 1999', *European Central Bank* (2000), <https://www.ecb.europa.eu/pub/pdf/annrep/ar1999en.pdf?94f617e383ca3cf41a839372bf8c8bb3>, p. 130.

Supervision before the ECON committee. These monetary and supervisory dialogues³² are central in the ECB's accountability regime.

The parliamentary forum has, therefore, a European dimension but may have a national dimension. Initially, the formal national parliaments' participation in the processes of ECB's control has been set aside. Either hearings of the Executive Board's members before national parliaments or the setting of interparliamentary committee including European and national Parliaments' members were rejected.³³ National parliaments have henceforth had a role in the ECB's accountability framework with its supervisory functions,³⁴ even though the Single Supervisory Mechanism (SSM) accountability regime takes on a specific nature in comparison with the ECB's accountability existing at the EU level with EU counterpart institutions.³⁵ It is not within the scope of this article to analyse the SSM accountability regime in details,³⁶ only to mention this policy reform has been shaping the ECB's accountability regime in practice.

3 Accountable independence

Independence and accountability are conceptually put together under 'accountable independence', for which independence is counterbalanced with accountability.

The concept of accountable independence first suggested in the early 1990s³⁷ – then revived at the ECB's early time – is still discussed nowadays.³⁸ It puts in tension different accountability mechanisms, in between permanent parliamentary scrutiny and parliamentary controls.³⁹ In the context of independence, a priori and a posteriori controls may be replaced by a 'permanent influence'.⁴⁰ Such permanent influence over the ECB is possible only with a clear Central Bank mandate and a statement of the reasons for its actions.⁴¹

Overall, a 'European tradition of accountable independence' may be reached through the balance of full transparency, in the liberal Anglo-Saxon tradition, and public explanation, in the

32. Also with members of the ECB's Executive Board, Article 284(3) TFEU, second indent. See F. Amtenbrink and K. Van Duin, 'The European Central Bank Before the European Parliament: Theory and Practice After Ten Years of Monetary Dialogue', 1 *European Law Review* (2009), p. 561–583; S. Collignon and S. Diessner, 'The ECB's Monetary Dialogue with the European Parliament: Efficiency and Accountability during the Euro Crisis?', 54 *Journal of Common Market Studies* (2016), p. 1296–1312; F. Amtenbrink and M. Markakis, 'Towards a Meaningful Prudential Supervision Dialogue in the Euro Area? A Study of the Interaction between the European Parliament and the European Central Bank in the Single Supervisory Mechanism', *ADEMU Working Paper* No. 2017/081 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3218861; D. Fromage and R. Ibrido, 'The "Banking Dialogue" as a model to improve parliamentary involvement in the Monetary Dialogue?', 40 *Journal of European Integration* (2018), p. 295–308.

33. P. Magnette, 6 *European Law Journal* (2000), p. 333.

34. Article 21 of the SSM Regulation.

35. D. Fromage and R. Ibrido, 'Accountability and Democratic Oversight in the European Banking Union', in G. Lo Schiavo (ed.), *The European Banking Union and the Role of Law*, (Cheltenham, Edward Elgar, 2019) (forthcoming).

36. See in this volume: D. Fromage, 'Guaranteeing the ECB's democratic accountability in the post-Banking Union era: An ever more difficult task?', 26 *Maastricht Journal of European and Comparative Law* (2019); and P. Nicolaidis, 'Accountability of the ECB's supervisory activities (SSM): evolving and responsive', 26 *Maastricht Journal of European and Comparative Law* (2019).

37. R.M. Lastra, 33 *Harvard International Law Journal* (1992), p. 481.

38. P. Magnette, 6 *European Law Journal* (2000), p. 326–340; D. Curtin, "'Accountable Independence" of the European Central Bank: Seeing the Logics of Transparency', 23 *European Law Journal* (2017), p. 28–44.

39. P. Magnette, 6 *European Law Journal* (2000), p. 327.

40. *Ibid.*, p. 338.

41. *Ibid.* There are the two conditions to make a new model of accountable independence acceptable.

continental tradition.⁴² Following Magette's views, the Anglo-Saxon and Scandinavian model follows a strongly accountable Central Bank in which the traditions of openness are key; whereas in the continental tradition – to which the ECB presumably pertains – the independent institution is deemed accountable if it respects its mandate⁴³ and strives for explanation. In this regard, the ECB's Annual Report from 2017 emphasised that accountability 'ensures that independence does not lead to arbitrariness and that the mandate is fulfilled'.⁴⁴ This approach insists on the preeminent respect granted to the mandate.

B Determining the balance

A balance includes at least two elements that represent counterweights from one another. Different events may determine such balance: either exogenous or endogenous to the Central Bank. Could some 'shocks' on the ECB's independence and/or accountability alter their application, existence or development?

Exogenously, some external 'shocks' relate to unexpected events, which differentiate ordinary and extraordinary times.⁴⁵ The Central Bank's political autonomy may differ if there is a deliberate choice made by the people, even though a 'high level of insulation from political pressure is desirable for any central bank'.⁴⁶ Extraordinary circumstances pertain to a political transformation that changes the balance between the independence and accountability of a Central Bank. The argument of extraordinary times per se is omnipresent in the rhetoric of the ECB's unconventional measures adopted during the last crisis.⁴⁷ The most visible external shock is, indeed, a crisis. Let's imagine a disruption in the environment: could the European Council give temporary instructions to the ECB or suspend temporarily its adoption of decisions? Such instructions or the suspension of decision-making cannot be retained for the ECB as they would ultimately undermine its independence; furthermore, accountability would be reinforced – temporarily – only to some extent with the possibility given to the Council to pass judgment, and, the ECB forced to face consequences imposed by another institution.⁴⁸

Moreover, Treaty changes are exogenous events to the Central Bank. The principle of independence, defined in the Treaty and the ESCB Statute, needs to be amended with the unanimity of

42. Ibid., p. 339.

43. Ibid., p. 335.

44. European Central Bank, 'ECB Annual Report 2017', *European Central Bank* (2018), p. 99 and European Central Bank, 'ECB Annual Report 2018', *European Central Bank* (2019), p. 96.

45. R. Lastra and G. Miller 'Central Bank independence in ordinary and extraordinary times', in J. Kleinman (ed.) *Central Bank independence. The economic foundations, the constitutional implications and democratic accountability* (Kluwer law international, 2001), p. 35.

46. Ibid., p. 35 and 41.

47. See for instance M. Draghi, Questions and Answers, Governing Council's Press Conference of 26 July 2018: 'The extraordinary historical circumstances produced a pretty exceptional monetary policy response' *European Central Bank* (2018), <https://www.ecb.europa.eu/press/pressconf/2018/html/ecb.is180726.en.html>; P. Praet, 'Maintaining price stability with unconventional monetary policy', *European Central Bank* (2018), <https://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp180129.en.html>.

48. Nevertheless, the measures adopted during the crisis in the context of the Troika and the adjustment programmes showed more openness from the ECB towards the actions of the EU executive. See in this volume, P. Dermine, 'Out of the Comfort Zone? The ECB, Financial Assistance, Independence and Accountability', 26 *Maastricht Journal of European and Comparative Law* (2019).

the Member States.⁴⁹ This shows some rigidity for the principle of independence. On the other hand, the constitutive elements of accountability stated in the Treaty seem flexible in practice.⁵⁰ An extended scope of application of the ECB's accountability framework demonstrates this difference,⁵¹ between constitutional rigidity – for independence – and operational flexibility – for accountability. As will be further examined infra, the ECB has increasingly gone beyond the Treaty provisions in operationalising its accountability regime. A flexible approach to accountability should certainly be praised provided the ECB embraces fully the developing accountability practices pursued (third section) and keeps enhancing them.

In addition, a judicial control is exogenous and likely to influence the ECB's independence and accountability. The Court of Justice has already identified the factors conducive to the strengthening of the ECB's principle of independence: the ECB's legal personality, its own resources and budget, its own decision-making bodies, privileges and immunities in the performance of the tasks, the removal of Executive Board's members by the Court of Justice as well as the protection of the functional and personal independence of a National Central Bank's governor sitting in the ECB Governing Council.⁵² Likewise, a case law held in the future on the accountability principle in the ECB's remit would be a significant game changer in the balance of independence with accountability.

Sanction mechanisms are, eventually, an exogenous determinant of the balance of ECB's independence with accountability. The proposal for a censure motion against the ECB's President in the extreme case of repeated failure to comply with the Treaty provisions was made in 1999.⁵³ Even though this proposal was left aside in plenary, a censure motion by the European Parliament would witness a mutation of the ECB into part of the executive and undermine the collective accountability of the ECB decision-making bodies.⁵⁴ In addition, sanction mechanisms in case of suboptimal performance of the ECB appeared inadequate considering the time-lags and uncertainty around the transmission mechanism of the monetary policy.⁵⁵

The ability to override the ECB's decisions would, furthermore, decrease its degree of independence and contradict the case law affirming that '[article 130 TFEU], seeks, in essence, to shield the ECB from all political pressure in order to enable it effectively to pursue the objectives attributed to its tasks, through the independent exercise of the specific powers conferred on it for

49. Some articles of the ESCB Statute, as referred in Article 129(3) TFEU, may be amended by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure. The principle of independence (Article 7 of the ESCB Statute) is not amongst them.

50. N. Fraccolari, A. Giovannini, and J.-F. Jamet, 'The evolution of the ECB's accountability practices during the crisis', 5 *ECB Economic Bulletin* (2018), p. 47–71, 58.

51. Some authors argue that the 'conciseness' of the Treaty framework has not prevented accountability practices from extending beyond the letter of the Treaties but remain consistent with its spirit, see A. Giovannini and J. Jamet, 'Matching accountability with independence: the ECB's experience', in J. Ziller (ed.), *The Communication of the European Central Bank: an Interdisciplinary Analysis* (Giappichelli, 2018) (forthcoming).

52. Case C-11/00 *Commission v. ECB*, para. 132, and on the functional and personal independence, see Joint Cases C-202/18 *Ilmārs Rimsšēvičs v. Republic of Latvia* and C-238/18 *ECB v. Republic of Latvia*, para. 51.

53. Draft of the European Parliament's Resolution, Report of the Institutional Committee on the constitutional implications of EMU in the context of enlargement Committee on Institutional Affairs, European Parliament, 25 January 1999, A4-0030/99.

54. European Central Bank, 'ECB, Monthly Bulletin, November 2002', *European Central Bank* (2002), p. 50.

55. *Ibid.*, p. 47.

that purpose by the EC Treaty and the ESCB Statute'.⁵⁶ The Court acknowledged a 'far-reaching'⁵⁷ degree of independence, with not yet any equivalent for the principle of accountability. Therefore, the possibility of the ECB 'facing consequences' in the achievement of its objectives is preferred rather than pure sanctions.

Lastly, the adverse effect of formal sanction mechanisms for the fulfilment of the mandate justified that, instead, the constant scrutiny by the Parliament and the public is the 'appropriate method for *holding* an independent central bank accountable'.⁵⁸ This constant scrutiny recalls the accountable independence model; yet, is insufficient to *call* and fully *hold* the ECB to account, that is, its obligation to accept the consequences. Nevertheless, those oppositions to sanctions developed at a time of narrow central banking can be debated considering the ECB's gained powers.

Endogenously, the ECB decision-makers, some internal rules and practices and the communication strategy also determine the balance of independence with accountability.

The decision-makers may play a role at a personal level and at a collegial level within the ECB decision-making bodies. Recent political science literature has underlined the entrepreneurship role played by the ECB's President as a political leader during the crisis.⁵⁹ Such a leadership position is also deemed at the root of the demand for increased accountability. Moreover, internal rules and practices may influence the balance of independence with accountability. For instance, some internal rules provide for the ethics framework applicable to the ECB employees and members sitting in the ECB's decision-making bodies.⁶⁰ The ethics framework, applicable at the personal level, influences the practices of accountability and independence at the aggregate level. Thus, internal rules shape the balance of independence with accountability. Finally, the communication policy is a fundamental endogenous determinant of the balance of independence with accountability, extensively discussed thereafter.

The delineation of the balance of independence with accountability has relied on a definitional and conceptual exercise. Accountability should be refined in the Central Bank independence context. For some years, the balance of independence with accountability has shown the ECB leaning to 'accountable independence'. Diverse exogenous and endogenous determinants may further influence such balance. An intensification of accountability channels and an increased

56. Case C-11/00 *Commission v. ECB*, para. 134 and Joint Cases C-202/18 *Ilmārs Rimšēvičs v. Republic of Latvia* and C-238/18 *ECB v. Republic of Latvia*, para. 47.

57. C. Zilioli and M. Selmayr, 'The Constitutional Status of the European Central Bank', 44 *Common Market Law Review* (2007), p. 369.

58. *Ibid.* (emphasis added).

59. See S. De Rynck, 'Banking on a union: the politics of changing eurozone banking supervision', 23 *Journal of European Public Policy* (2016), p. 119–35, 129–31; A. Verdun, 'Political leadership of the European Central Bank', 39 *Journal of European Integration* (2017), p. 207–221.

60. See notably: The ethics framework of the ECB, [2015] OJ C 204, Guideline (EU) 2015/856 of the European Central Bank of 12 March 2015 laying down the principles of an Ethics Framework for the SSM, [2015] OJ L 135. For the ECB decision-making bodies' members: there is a consolidation of rules in a single code, see European Central Bank, Code of Conduct for high-level ECB officials, *European Central Bank* (2018), https://www.ecb.europa.eu/ecb/legal/pdf/en_single_code_conduct_for_high_level_ecb_officials_f_sign.pdf. This single code repeats three previous sources: the Code of Conduct for the Members of the Governing Council, [2002] OJ C 123/9 (as amended by Memorandum of Understanding amending the Memorandum of Understanding on a Code of Conduct for the members of the Governing Council, [2007] OJ C 10) and its Supplementary Code of Ethics Criteria for the members of the Executive Board of the European Central Bank (in accordance with Article 11.3 of the Rules of Procedure of the European Central Bank, [2010] OJ C 104. For Banking Supervision: Code of Conduct for the Members of the Supervisory Board of the European Central Bank, [2015] OJ C 93.

scrutiny may well reflect an oscillating balance towards more accountability: is the ECB ready for a third-metre waltz?

3. The ECB's independence–accountability balance over time

How to improve the accountability mechanisms without jeopardising the independence? The effectiveness of the control is particularly important: an increased focus on monetary policy issues⁶¹ could improve qualitatively and quantitatively the monetary dialogue (i.e. allocating more time, and more reliance on the monetary expert panel). The monetary dialogue is still, in some authors' views, a flawed form of 'accountability'.⁶² However, the evolving accountability practices, as a result of the crisis, have shown an intensification of the ECB's accountability channels and, more broadly, an increased scrutiny. The balance of independence with accountability has notably been determined by a communication-driven strategy, in the pre-crisis period (Section 3.A). The independence-accountability balance evolved significantly after the crisis (Section 3.B). It is henceforth time for a triple-metre waltz (to replace the duple-metre tempo), the ECB seems, indeed, on the verge of being independent *and* accountable (Section 3.C).

C Communication-driven accountability pre-crisis

At a time of narrow communication-driven accountability, the ECB used instruments which are discussed in turn: public speeches and publications directed to the public, an increased effort for transparency, the organisation of public consultations, and publications related to the outcomes of the Governing Council's meetings.

The development of a communication strategy is barely satisfactory to fully ensure accountability. The ECB is not *stricto sensu* called and held to account when it develops such strategy, which consists in informing the public and conveying knowledge and understanding. However, this strategy has been a pillar of its accountability reporting, in particular during the pre-crisis period. In the ECB's Annual Reports, 'accountability' first put together with external communication⁶³ – and for a period as an independent Chapter –⁶⁴ disappeared as forefront title from the 2014 ECB's Annual Report onwards, giving pre-eminence to external communication.⁶⁵

Publications and public speeches by the ECB decision-making bodies' members are favoured communication tools in the pre-crisis period⁶⁶ (and they are still extensively used). If such

61. F. Amtenbrink and K. Van Duin, 1 *European Law Review* (2009), p. 582.

62. This flawed form is explained by the weak institutional position of parliaments to hold a central bank accountable, the ignorance of its political involvement and role in policies beyond monetary policy, see D. Curtin, 23 *European Law Journal* (2017), p. 31–32; M. van der Sluis, 'Maastricht Revisited: Economic Constitutionalism, the ECB and the Bundesbank', in M. Adams, F. Fabbrini and P. Larouche (eds.), *The Constitutionalization of European Budgetary Constraints* (Hart Publishing, 2014), p. 115. According to the latter, it is due to the constitutionally enshrined competences of the ECB and the European Parliament.

63. ECB Annual Reports 1999 to 2002, respectively, p. 128, 150, 160, 174. Again between 2011 and 2013, ECB Annual Reports 2011 to 2013, p. 144, 147, 163.

64. ECB Annual Reports 2003 to 2010.

65. See European Central Bank, 'ECB Annual Report 2014', *European Central Bank* (2015), <https://www.ecb.europa.eu/pub/pdf/annrep/ar2014en.pdf?20def41d1b09b84d5889c707f92c9e4a>, p. 98 and European Central Bank, 'ECB Annual Report 2017', *European Central Bank* (2018), p. 99, with a section on 'discharging democratic accountability', as well as in European Central Bank, 'ECB Annual Report 2018', *European Central Bank* (2019), p. 96.

66. European Central Bank, 'ECB, Monthly Bulletin, November 2002', *European Central Bank* (2002), p. 51.

communication is essential to explain, it remains unidirectional and descendant: from the ECB towards other actors. The ECB selects the information published and explains its decisions to contribute to public understanding, with a utilitarian and instrumental approach of its accountability obligations.

This ECB's orientation on the communication strategy is intertwined with its transparency policy. According to Issing, 'accountability is linked essentially to "deeds" (...) whereas transparency refers primarily to "words"'.⁶⁷ For instance, the Governing Council clarified its monetary policy strategy in May 2003, with the price stability objective 'to maintain the inflation rate below, but close to, 2% over the medium term'.⁶⁸ This clarification is an element of transparency, which is thought by the ECB as a facilitator in the 'process of holding central banks accountable for their actions'.⁶⁹ Nevertheless, this approach diverts somehow from the second leg of accountability, namely there is not only a need to explain, but also to justify.

Public consultations may be, however, relevant to shape the ECB's accountability mechanism in a multi-directional dimension, without undermining its independence. Giving information and explaining are inherently top-down in a 'traditional' push strategy (the information is pushed outside the institution). The organisation of public consultations, first launched in March 2002,⁷⁰ introduces a pull strategy, whereby stakeholders – well-informed and knowledgeable – take part in the ECB giving to account.⁷¹ This element of participation comes closer to the (usually missing but needed) justification and intervenes a priori, at the draft-making stage.⁷²

Conceptually, public consultations form a selective – semi-public – system of accountability. The public consultation is deemed going beyond a *stricto sensu* communication policy, even though the ECB depicts it as a 'communication instrument'.⁷³ It is semi-public insofar as the participants are supposedly experts, also coming from the private sector. On the other hand, public consultations are organised with a specific purpose and remain consultations to influence, rather not to constraint or limit the ECB's functional and operational independence.

Moreover, the Governing Council meetings' outcomes are only restrictively published. Could the publication of minutes and individual voting records undermine the ECB's collegial decision-making and its independence, but enhance accountability? Those two publications have been excluded by principle. The Treaty protects the personal independence of the Governing Council

67. O. Issing, 37 *Journal of Common Market Studies* (1999), p. 506.

68. European Central Bank, 'ECB Annual Report 2003', *European Central Bank* (2004), p. 16.

69. *Ibid.*, p. 142.

70. European Central Bank, 'ECB Annual Report, 2002', *European Central Bank* (2003), <https://www.ecb.europa.eu/pub/pdf/annrep/ar2002en.pdf>, p. 174. All public consultations are available on the ECB website, European Central Bank, 'Public consultations', *European Central Bank* (2019), <https://www.ecb.europa.eu/paym/cons/html/index.en.html>.

71. There are also, in a pull communication strategy, clearer rules as regards the public access to ECB documents since 2004. Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents, [2004] JO L 80/42, which was amended during and after the crisis.

72. Public consultation on a draft Regulation of the ECB establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation)

European Central Bank, 'Draft ECB SSM Framework Regulation', *European Central Bank* (2014), <https://www.bankingsupervision.europa.eu/legalframework/publiccons/html/framework.en.html>.

73. European Central Bank, 'ECB Annual Report 2002', *European Central Bank* (2003), p. 174.

members and the confidentiality of the proceedings of the meetings.⁷⁴ That is why the Governing Council *may* decide to make public the outcome of its deliberations pursuant to the ESCB Statute.⁷⁵ However, since December 2004, a monthly-based publication of the Governing Council decisions takes place, in addition to those of the decisions related to the interest rates.⁷⁶ The ESCB Statute provides for a publication of reports on the ESCB's activities 'at least quarterly'.⁷⁷ The ECB has exceeded this minimum reporting commitment with the publication of the Monthly Bulletin to explain its monetary policy decisions. In addition, the press conferences following the Governing Council meetings allow a real-time communication of the reasons of its decisions. They intervene at an earlier stage than the formal adoption of minutes.⁷⁸ Those additional (public) reporting practices are part of the ECB's accountability framework to foster the understanding of the public.⁷⁹ This reporting takes place, again, mainly in a descendant fashion, to the exception of the questions and answers at the end of the press conferences. This is a phase during which the ECB is independent but accountable: the two coexist in tension.

Regarding individual voting records, their disclosure could (re)nationalise the discussions amongst members of the Governing Council⁸⁰ and put at risk the 'collegial nature'⁸¹ of the Governing Council, with an attempt to predict what the individual members' voting patterns are.⁸² A distortion in which the governors are required to act with a European perspective but could be politically sanctioned at the national level because of the stance expressed in their – then – published vote is not acceptable. NCBs' governors are members of the Governing Council because of their national position (with a nationally-led appointment). On the other hand, this decision behind closed doors is criticised as encouraging consensus-seeking and compromise.⁸³ Nevertheless, the European Parliament has recognised the 'difficulties' related to both minutes and votes' publications 'leading to pressure from Member State governments on Governing Council members'.⁸⁴

Notwithstanding the one-sided character of accountable independence,⁸⁵ this concept well reflects part of the oscillations of the balance of independence with accountability of the ECB.

74. Articles 130 TFEU and 10(4) of the ESCB Statute. Regarding the personal independence of the Governing Council members, see recent Joint Cases C-202/18 *Ilmārs Rimšēvičs v. Republic of Latvia* and C-238/18 *ECB v. Republic of Latvia*, EU:C:2019:139.

75. In accordance with Article 10(4) of the ESCB Statute (emphasis added).

76. European Central Bank, 'ECB Annual Report 2004', *European Central Bank* (2005), <https://www.ecb.europa.eu/pub/pdf/annrep/ar2004en.pdf?7df6f155394757406c9fa2be00c65447>, p. 142 and 148.

77. Article 15(1) of the ESCB Statute.

78. European Central Bank, 'ECB Annual Report 2002', *European Central Bank* (2003), p. 176; European Central Bank, 'ECB Annual Report 2004', *European Central Bank* (2005), p. 143.

79. As presented by the institution itself, *ibid*.

80. ECB Annual Reports 2002 to 2004, respectively, p. 177, 145, 144. Also, leading to undue pressure on NCBs' governors, European Central Bank, 'ECB, Monthly Bulletin, November 2002', *European Central Bank* (2002), p. 53-54.

81. European Central Bank, 'ECB Annual Report 2002', *European Central Bank* (2003), p. 177; European Central Bank, 'ECB Annual Report 2004', *European Central Bank* (2005), p. 144

82. O. Issing, 37 *Journal of Common Market Studies* (1999), p. 512.

83. W.H. Buiters, 37 *Journal of Common Market Studies* (1999), p. 181–209.

84. European Parliament, 'European Parliament resolution of 9 July 2008 on the ECB annual report for 2007 (2008/2107(INI))' *European Parliament* (2008), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0357+0+DOC+XML+V0//EN&language=GA>, para. 17.

85. F. Amtenbrink, *The Democratic Accountability of European Central Banks. A Comparative Study of the European Central Bank*, (Hart, 1999), p. 60.

Central Bank independence cannot be absolute and accountability demand is even stronger when the powers, tasks, and functions of a given central bank expand.⁸⁶ The non-standard measures adopted during the crisis triggered a ‘demand for stronger scrutiny’.⁸⁷ Therefore, accountability should not be opposed to independence (as conveyed by the expressions counterpart or counterweight) but, rather making a step towards an equal footing, this is accountability *and* independence, the third metre to complete the waltz.

D An oscillating balance towards more accountability post-crisis

As an inheritance from the crisis, the ECB’s operational accountability has been more incisive and broader, with practices geared towards the public and the markets. The European Parliament, in its reinforced position, has partly ceased the opportunity to exert its demand for accountability, *calling* the ECB to account.

Vis-à-vis the public and the markets, a broader range of publications is released, inherited from a crisis time: regular monetary policy accounts, (a new format and frequency of) the economic bulletins and ECB’s forward guidance. Therefore, the independence-accountability balance oscillates towards reinforced accountability practices that surpass the Treaty requirements.

Regular accounts of the Governing Council’s monetary policy discussions have been published since 2015,⁸⁸ though ‘summary minutes’ were excluded in the early 2000s.⁸⁹ Those accounts give an overview of financial market, economic and monetary developments and summarise the discussion on the monetary policy stance. They are, however, in an unattributed form, to keep the viewpoint of the Governing Council’s members unrevealed and preserve its collective decision-making. The ECB’s willingness to explain further its monetary policy decisions happened in a specific context of crisis measures: the objective is ‘to improve [the public] understanding of the Governing Council’s assessment of the economy and its policy responses in the light of evolving conditions’.⁹⁰

Moreover, the Economic Bulletin is released two weeks after the ECB’s monetary policy meetings of the Governing Council, eight times a year since 2015. This change, from a Monthly Bulletin to the Economic Bulletin, mirrors the new six-week cycle for monetary policy meetings that started in January 2015.⁹¹ Such interval is justified operationally and intervened at the same time the voting arrangements were changed when Lithuania joined as the nineteenth country of the

86. C. Goodhart and R. Lastra, ‘Populism and Central Bank Independence’, 29 *Open Econ Rev* (2018), p. 49–68; N. Fraccaroli, A. Giovannini, and J.-F. Jamet, 5 *ECB Economic Bulletin* (2018), p. 55 and 71.

87. Y. Mersch, ‘Aligning accountability with sovereignty in the European Union: the ECB’s experience’, *European Central Bank* (2017) <https://www.ecb.europa.eu/press/key/date/2017/html/ecb.sp170904.en.html>.

88. European Central Bank, ‘Decisions taken by the Governing Council of the ECB (in addition to decisions setting interest rates)’, *European Central Bank* (2014), <https://www.ecb.europa.eu/press/govcdec/otherdec/2014/html/gc141219.en.html>.

89. European Central Bank, ‘ECB, Monthly Bulletin, November 2002’, *European Central Bank* (2002), p. 53; European Central Bank, ‘ECB Annual Report 2002’, *European Central Bank* (2003), p. 177.

90. European Central Bank, ‘ECB to publish accounts of monetary policy discussions from January’, *European Central Bank* (2014), <https://www.ecb.europa.eu/press/pr/date/2014/html/pr141218.en.html>. (emphasis added).

91. Instead of monthly, see European Central Bank, ‘Governing Council decision, 3 July 2014’, *European Central Bank* (2014), <https://www.ecb.europa.eu/press/govcdec/otherdec/2014/html/gc140718.en.html>.

eurozone.⁹² The ECB engages on specific topics within the Economic Bulletin, including a recent article on the evolutions of the ECB's accountability practices during the crisis.⁹³

Furthermore, the Central Bank's 'forward guidance' communicates about the future monetary policy intentions to help actors forming their expectations. Adopted since July 2013, ECB's forward guidance on its unconventional monetary policy measures was initiated in a context of zero lower bounds (interest rates close to zero or negative). Forward guidance provides ex ante explanations, at the crossroads of transparency and accountability,⁹⁴ and informs on the future path of the ECB's policy interest rates conditional on the outlook for price stability.⁹⁵ It is therefore a new practice that is meant to stay, both for the greater clarity provided on the future monetary policy stance⁹⁶ and the increased openness and transparency conveyed on the ECB's internal analysis and policy assessment.⁹⁷

Those three examples all give more teeth to the transparency efforts of the ECB towards the public and the markets. These efforts reinforce the accountability supply side in the balancing of independence, which has also been reinforced by a stronger position of the European Parliament.

Vis-à-vis the European parliament, there are seemingly opportunities for sound justifications, beyond mere explanations. The written questions from the Members of Parliament (MEPs) and their answers by the ECB form an accountability practice, which is framed legally in the European Parliament's Rules of Procedures.⁹⁸ The MEPs' written questions increased significantly between the sixth and (current) eighth term of the European Parliament. The number of written questions in 2015 equals the total amount of written questions asked previously during the seventh term between 2009 and 2014.⁹⁹ This evidence shows that the post-crisis era strengthened this accountability mechanism, *calling* the ECB to account.

Besides, after the European Parliament's request, the ECB has published its feedback on the inputs provided by the Parliament as part of its resolution on the previous year ECB's Annual Report since 2016.¹⁰⁰ The ECB presents this new practice¹⁰¹ as a proof of its 'commitment to accountability', going beyond the Treaty requirements.¹⁰² There has been so far, however, a delay

92. For the voting rotation system, Article 10(2) of the ESCB Statute.

93. N. Fraccaroli, A. Giovannini, and J.-F. Jamet, 5 *ECB Economic Bulletin* (2018), p. 47–71.

94. S. Collignon and S. Diessner, 'The ECB's Monetary Dialogue with the European Parliament: Efficiency and Accountability during the Euro Crisis?', 54 *Journal of Common Market Studies* (2016), p. 1296-1312, 1299.

95. European Central Bank, 'Monthly Bulletin: The ECB's Forward Guidance (April 2014)', *European Central Bank* (2014), p. 65.

96. Account of the monetary policy meeting of the Governing Council of the ECB, 13–14 June 2018, <https://www.ecb.europa.eu/press/accounts/2018/html/ecb.mg180712.en.html>; ECB Annual Report 2017, p. 102.

97. European Central Bank, 'Monthly Bulletin: The ECB's Forward Guidance (April 2014)', p. 67.

98. Since 2002: European Central Bank, 'ECB Annual Report 2002', *European Central Bank* (2003), p. 176. See Rules 131 and 131a of the Rules of Procedures of the eighth legislature of the European Parliament and its Annex II.

[http://www.europarl.europa.eu/RegData/leglement/2018/07-31/EP-PE_REGL\(2018\)07-31_EN.pdf](http://www.europarl.europa.eu/RegData/leglement/2018/07-31/EP-PE_REGL(2018)07-31_EN.pdf); see also, N. Fraccaroli, A. Giovannini, and J.-F. Jamet, 5 *ECB Economic Bulletin* (2018), p. 59–60.

99. European Central Bank, 'Annual Report 2015', *European Central Bank* (2016), p. 90-91 and European Central Bank, 'European Central Bank', *European Central Bank* (2018), p. 100.

100. European Parliament's request: see European Parliament, 'European Parliament resolution of 25 February 2016 on the ECB Annual Report for 2014 (2015/2115(INI))', *European Parliament* (2016), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0063+0+DOC+PDF+V0//EN>, para. 23.

101. Before 2016, ECB's feedback used to be transmitted with each Annual Report, but only to MEPs. European Central Bank, 'ECB Annual Report 2016', *European Central Bank* (2017), p. 95.

102. ECB Feedback on the input provided by the European Parliament as part of its resolution on the ECB Annual Report for 2014, 2015, 2016, and 2017.

of two years in the release of the explanation and justification provided by the ECB insofar as the ECB's feedback is on the previous year European Parliament's Resolution – a Resolution which was itself adopted for the (year before) Annual Report. Furthermore, the first three ECB's Feedbacks published – though publicly available – are not reported next to the Annual Reports on the ECB's website.¹⁰³ Giving an easier and more visible access would prove the ECB's readiness to engage transparently in its intensifying dialogue with the European Parliament. In this regard, the most recent ECB's Feedback on the input provided by the European Parliament as part of its resolution on the ECB Annual Report for 2017 has been published, on the ECB's webpage, within a distinct section called 'related' right below the 2018 ECB's Annual Report. This first move accommodates an easier access to part of the ECB dialogue with the European Parliament.

Therefore, the ECB's post-crisis practices testify a multiplication of the instruments used to foster accountability channels. Those practices also reinforce the position of the ECB's main account *holder* – the European Parliament – which is increasingly asserting its position as account *caller*. This reality calls for a genuine reflection on the evolution of the balance of independence with accountability for the ECB.

E A third-metre waltz?

A third-metre waltz heads towards an equal footing between independence *and* accountability. The Monetary Dialogue could be revamped 'to strengthen [its] focus, interactivity and relevance of the exchange of views with the ECB President and other members of the Executive Board'¹⁰⁴ with a concrete opportunity in view with the ninth European Parliament's term starting in 2019. Moreover, the balance of accountability with independence could differ at the personal level of the ECB decision-making bodies' members. The European Parliament asked the Council to engage in a dialogue on the improvement of the process for future appointments, after the new Vice-President's nomination.¹⁰⁵ Likewise the European Parliament asked that the ECB's shortlists of

103. Either on the Annual Reports' page itself European Central Bank, 'ECB Annual Report 2018, *European Central Bank* (2019), <https://www.ecb.europa.eu/pub/annual/html/index.en.html> or another dedicated tab under accountability channels European Central Bank, 'Accountability', *European Central Bank* (2019), <https://www.ecb.europa.eu/ecb/orga/accountability/html/index.en.html>. The European Parliament has requested a dedicated chapter or annex in particular: European Parliament, 'European Parliament resolution of 25 February 2016 on the ECB Annual Report for 2014 (2015/2115(INI))', *European Parliament* (2016), para. 43, and European Parliament, 'European Parliament resolution of 6 February 2018 on the ECB Annual Report for 2016 (2017/2124(INI))', *European Parliament* (2018), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0025+0+DOC+XML+V0//EN&language=EN>, para. 43.

104. European Parliament, 'European Parliament resolution of 6 February 2018 on the ECB Annual Report for 2016 (2017/2124(INI))', *European Parliament* (2018), para. 42.

105. European Parliament, 'Press release: Parliament endorses Luis de Guindos as new ECB Vice-President', *European Parliament* (2018), <http://www.europarl.europa.eu/news/en/press-room/20180309IPR99426/parliament-endorses-luis-de-guindos-as-new-ecb-vice-president>; see Article 283(2), second paragraph, TFEU. Also, Transparency International recommends giving the European Parliament, via the ECON committee, confirmation power in the appointment process for Executive Board members, Transparency International EU, 'Two Sides of the Same Coin? Independence and Accountability of the European Central Bank', *Transparency International* (2017), https://transparency.eu/wp-content/uploads/2017/03/TI-EU_ECB_Report_DIGITAL.pdf, p. 47.

candidates are submitted for the appointment of the President, Vice-President and other executive board members of the ECB.¹⁰⁶

Some of the account callers/holders are more inquisitive in a context of crisis. The judicial and quasi-judicial review over the ECB has intensified.¹⁰⁷ As a consequence, the number of publications of some internal rules increased, for instance the SSM Supervisory Manual in ECB Banking Supervision¹⁰⁸ and the Emergency and Liquidity Assistance Framework for the Eurosystem.¹⁰⁹ Moreover, the ECB's increased scrutiny has seemingly triggered an organisational change with the creation of a Compliance and Governance Office whose mission is to strengthen the ECB's accountability and transparency, and constitutes the 'liaison point for the European Ombudsman and OLAF'.¹¹⁰ This intensified scrutiny should perpetuate in the future to maintain the accountability demand exerted on the ECB.

Broadly speaking, with the creation of the European System of Financial Supervision, the ECB is embedded in a more complex institutional system in the EU. The EU policy reforms adopted to restructure the financial supervisory architecture,¹¹¹ as well as the ECB's organisational expansion and gained responsibilities (that is, Banking Supervision and European Systemic Risk Board), evidently transformed the ECB and impacted the balance of its independence with its accountability obligations. One recent study showed that there might be spill-overs from the accountability regime developed in Banking Supervision to the accountability regime in monetary policy.¹¹² Conversely, I argue that some evolving accountability practices observed in monetary policy could benefit the Banking Supervision realm. For instance, the monetary policy accounts published could lead to some sort of publications after the Supervisory Board's meetings, as 'Banking Supervision accounts', while duly respecting professional secrecy and confidentiality requirements.¹¹³

106. European Parliament, 'European Parliament resolution of 6 February 2018 on the ECB Annual Report for 2016 (2017/2124(INI))', *European Parliament* (2018), para. 41.

107. For instance, the European Court of Auditors, 'Special report No 29/2016, 'Single Supervisory Mechanism – Good start but further improvements needed'', *European Court of Auditors* (2016), https://www.eca.europa.eu/Lists/ECA_Documents/SR16_29/SR_SSM_EN.pdf; decision of the European Ombudsman, '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" (Case 1697/2016/ANA)', *European Ombudsman* (2018). On the extended scope of review but judicial restraint, see C. Zilioli, 'From form to substance: judicial control on crisis decisions of the EU institutions (with a focus on the Court of Justice of the European Union)', in F. Allen, E. Carletti and M. Gulati (eds.) *Institutions and the crisis* (European University Institute, 2018), p. 133–148.

108. SSM Supervisory Manual, 'European banking supervision: functioning of the SSM and supervisory approach', *SSM Supervisory Manual* (2018).

109. European Central Bank, Agreement on emergency liquidity assistance, *European Central Bank* (2017), https://www.ecb.europa.eu/pub/pdf/other/Agreement_on_emergency_liquidity_assistance_20170517.en.pdf.

110. European Central Bank, 'ECB Annual Report 2016', *European Central Bank* (2017), p. 110.

111. M. Andenas, *Regulating and Supervising European Financial Markets More Risks than Achievements* (Springer International Publishing, 2016); A. Hinarejos, *The Euro area crisis in constitutional perspective*, (Oxford University Press, 2015).

112. D. Fromage and R. Ibrido, 40 *Journal of European Integration* (2018), p. 305–307.

113. See the non-confidential versions of the ECB's fail or likely to fail assessments for ABLV Bank AS and ABLV Bank, S.A., published on 3 and 26 June 2018, European Central Bank, 'Fail or Likely Fail Assessments', *European Central Bank* (2018), https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.2017_FOLTF_ESPOP.en.pdf and https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.2017_FOLTF_ITPVI.en.pdf.

4. Conclusions

Generally, the magnitude of the ECB's powers calls for a reinforcement of its accountability regime. The evolving accountability practices witness a move into this direction. A web of accountability mechanisms penetrates, more or less intensively over time, into the far-reaching independence of the ECB. This web cannot hold in a restraint closed circle. The ECB is part of the EU legal order and benefits from a 'maturing relationship' with the European Parliament.¹¹⁴ The European Parliament is one forum (among many others) that needs further attention, together with the public. The relevant forums for the ECB's independence–accountability balance expand in the post-crisis context (namely financial markets, other formal and informal institutions like the Eurogroup, the Economic and Financial Affairs Council, the International Monetary Fund and debtor and creditor Member States (in the Euro area) due to the financial assistance programme). This expansion calls for research and systematisation of the ECB's accountability framework 'in action'.

There is, however, a progressive sliding where *how* becomes as important as *who* is independent (from whom) and accountable to *whom*. Hence, the article emphasised diverse accountability practices: the public consultations, some publications released since the crisis (monetary policy accounts, economic bulletins, and forward guidance), the numerous answers to MEPs written questions and ECB's feedback to the European Parliament's Resolutions on the ECB's Annual Reports. They are all sounder justifications than (former) mere explanations provided in a descendant fashion within the ECB's communication policy. However, there are still some remaining deficiencies considering the unidirectional and instrumental character of some practices put under 'accountability' by the ECB.

The accountability regime of the ECB has been practically operationalised beyond the Treaty requirements, even further after the crisis, due to stronger public demand and an increased scrutiny. Legally, this progress in accountability supply could be turned over with a return to a strict reading of the legal framework. However, considering the ECB's accountability practices developed as a result of the crisis, this dismantling is deemed highly unlikely. A backsliding is both publicly unacceptable and unsustainable considering the ECB's gained powers and responsibilities.

Finally, the overarching ECB's objectives (primary, secondary and broader objectives, democracy, legitimacy, efficiency) must be first agreed upon, before trying to remedy a potential – denounced – imbalance between independence and accountability. If the choice of the objectives results in a balance favouring one principle over the other, this does not put into question the outcome (democratically decided upon). The balance of independence with accountability may be considered suboptimal when examined on the basis of the requirements of democracy and legitimacy.¹¹⁵ When examining the efficiency of the underpinning objectives of monetary policy, for instance the inflation rate, the evaluation of the balance differs. Therefore, accountable

114. F. Amtenbrink and K. Van Duin, 1 *European Law Review* (2009), p. 581–582. The maturity of the relationship of the ECB with the European Parliament has shown, in early 2019, a noticeable positive tone in the European Parliament resolution, see European Parliament, 'European Parliament resolution of 16 January 2019 on the ECB Annual Report 2017' (2018/2101(INI)), *European Parliament* (2019), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2019-0029+0+DOC+XML+V0//EN&language=EN>, paras. 50, 51 and 53.

115. See in this volume, A.-L. Högenauer and D. Howarth, 'The democratic deficit and European Central Bank crisis monetary policies', 26 *Maastricht Journal of European and Comparative Law* (2019).

independence, accountable but independent, and, accountable and independent may all be legitimate expressions of the ECB's balance of independence with accountability in a given *demos*.

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