BCE – Independence at risk?

LUISS - SEP

(27 September 2017)
Summary (1)

I. The Independence of the ECB
II. Independence Threats
III. Accountability: categories
IV. Political Accountability; The monetary dialogue with the EP
V. Political Accountability: The monetary dialogue with the Council and the Eurogroup
VI. Political Accountability: The banking dialogue with the EP and the Council /Eurogroup
VII. Political Accountability – The banking dialogue with the NPs
Summary (2)

VIII. Judicial Review
IX. Transparency
X. Transparency Practice
XI. Transparency – SSM
XII. Independence vs Accountability/transparency
XIII. Options and Dilemmas
XIV. Prospects

Gian Luigi Tosato 3
I) The Independence of the ECB

- Definition: shield from political interferences
- Rationale: better results
- Legal base
  - Eurosistem: art. 130, 282.3 Tfue, 7 statute
  - SSM: art. 19 SSM Reg.
- Institutional, personal, budgetary independence
- The status of NCBs and NCAs

Gian Luigi Tosato
II) Independence Threats

- Expanded role of ECB
  - monetary policy un-conventional measures
  - banking supervision
  - macro-prudential supervision
  - last resort lending (ELA)
  - ESM adjustment programs

- Democratic legitimacy issue
  - the ECB exception
  - falling trust levels
  - demands for more accountability and transparency
III) Accountability: categories (1)

- **Political accountability**
  - EP, Council, NPs

- **Judicial review**
  - European Courts

- **Accounting audit**
  - external auditors
  - Court of Accounts
III) Accountability: categories (2)

- Administrative practices review
  - Ombudsman

- Legal effects
  - answerability
  - enforcement
IV) Political Accountability: The monetary dialogue with the EP (1)

- The Treaty base; art. 284, 3 Tfeue, art 15, 3 Statute
  - annual report debate
  - hearings before EP Committees
IV) Political Accountability: The monetary dialogue with the EP (2)

- The practice
  - appointment procedure of Executive Board
  - quarterly hearings of the President before the ECON Committee
  - hearings of Executive Board members before EP Committees
  - written questions from MEPs, answers within six weeks
  - appearance of ECB President before NPs (Spain, Italy, France, Netherlands, Germany)
V) Political Accountability: The monetary dialogue with the Council and the Eurogroup

- Attendance of Governing Council’s meetings by Council’s President, submission of motions (art. 284,1 Tfue)
- Attendance of Council’s meetings by the ECB’s President (art. 284,2 Tfue)
- ECB member of Economic and financial Committee (art. 134,2 Tfue)
- Attendance of Eurogroup meetings by the ECB’s President and Governing Council’s meetings by Eurogroup’s President (Protocol n. 14)
VI) Political Accountability: The banking dialogue with the EP and the Council/Eurogroup

- Legal framework
  - Art. 20 SSM Reg.
  - Interinstitutional Agreement CP/ECB
  - Memorandum of Understanding Council/ECB

- Banking dialogue mirrors monetary dialogue
  - Annual Report
  - Hearings
  - Oral and written questions
  - Closed doors and no minutes for confidential hearings
VII) Political Accountability - The banking dialogue with the NPs

- Legal base: art. 21 SSM Reg.
- Tools
  - annual report
  - reasoned observations from NPs
  - answers to written questions
  - exchange of views on national problems
- Rationale and limits of ECB accountability towards NPs

Gian Luigi Tosato
VIII) The Judicial Review (A)

- **Judicial activism**
  - Case C-11/00, Olaf (Commission/ECB)
    judgement 10.7.2003
  - Case T – 496/11 (UK/ECB)
    judgement 4.3.2015
  - Joined Cases C-8-10/15P (Ledra)
    judgement 20.9.2016
  - Joined Cases C-105-109/15P (Mallis)
    judgement 20.9.2016
VIII) The Judicial Review (B)

- Judicial restraint
  - Case C-370/12 (Pringle)
    judgement 27.11.2012
  - Case C-62/14 (OMT)
    judgement 16.6.2015
IX) Transparency

- Treaty framework (art. 284.3 Tfue, art. 15.1 e 3,26 Statute)
  - quarterly activity reports
  - weekly financial statements
  - annual activity report
- Confidentiality restrictions
  - Governing Council’s meetings confidential (art. 10.4 Statute)
  - decisions, recommendations, opinion published at discretion (art. 132 Tfue)
  - access only to documents related to administrative tasks (art. 15.3 Tfue)
X) Transparency - Practice

- Monthly Bulletin
- Quarterly economic forecasts
- Press conferences after Governing Council’s meetings
- Accounts of Governing Council’s meeting
- Diaries of Executive Board members
- Public speeches of Executive Board member published on ECB website
XI Transparency - SSM

- Similar to Eurosystem
- Specific requirements
  - supervisory methodologies
  - quarterly statistics on banking data
  - stress test results on individual banks
XII Indipendence vs Accountability/Transparency

- Narrow task, more independence, less accountability and transparency
- Broader tasks, less independence, more accountability and transparency
- The different nature of ECB Tasks
- The potential conflicts
XIII Options and Dilemmas: A) For the ECB

- Protect Independence
  - discretionary powers
  - confidentiality

- Gain political support
  - Expanding dialogue
  - Increasing transparency
XIII Options and Dilemmas: B) For EU Political Institutions

- Claim more accountability and transparency
- Support and rely on ECB independence
  - to promote integration (EP)
  - To shift “dirty” work? (Council)
XIV Prospects

- The ECB mandate: strengthening or restraining
- Independence, Accountability/Transparency: plus and cons
- The decisive relevance of the EMU evolution